

B.C.]

CASTLEMAN v. WAGHORN.

[Dec. 15, 1908.]

Sale of stock—Evidence of title—Duty of vendor—Defective certificate.

Where shares in the stock of a company are sold for cash and a certificate delivered with a form of transfer indorsed purporting to be signed by the holder named therein who is not the seller the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate and transfer. A transfer was signed by the wife of the holder at his direction but not acted upon until after his death.

Held, that the authority of the wife to deal with the certificate was revoked by the holder's death and on a cash sale of the shares the purchaser who received the certificate and transfer so signed being unable to be registered as holder had a right of action to recover back the purchase money from the seller.

The fact that the purchaser endeavoured to have himself registered as holder of the shares was not an acceptance by him of the contract of sale which deprived him of his right of action to have it rescinded. Nor was his action barred by loss of the defective certificate by no fault of his nor of the seller.

Judgment appealed from (13 B.C. Rep. 351) reversed. Appeal allowed with costs.

Nesbitt, K.C., and *Livingstone*, for appellant. *Ewart*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

Osler, J.A.]

GATES v. SEAGRAM.

[Dec. 7, 1908.]

Court of Appeal—Leave to appeal—Order of Divisional Court—Claim and counterclaim—Form of judgment—Costs.

Leave to appeal to the Court of Appeal from the order of a Divisional Court of the High Court affirming an order of a judge directing judgment to be entered for the plaintiff on his claim with costs of the action and for the defendant on his counterclaim with costs thereof, was granted, under s. 76 (1) (e) and