to cause to be transferred to Hartford Ashley, the respondents, one share of fully paid-up stock in the association, being the share "at present standing in the name of James A. Wheeler," and forthwith to cause a certificate for the share to be issued to the respondent as trustee.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

J. W. Bain, K.C., and M. L. Gordon, for the appellant association.

A. H. F. Lefroy, K.C., for the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:— . . . On the 24th June, 1903, letters patent were issued under the Ontario Companies Act, whereby Lewis Redner Terwilliger . . . (and others, one being James Albert Wheeler) and any others who had become subscribers to the memorandum of agreement of the company, and their successors, respectively, were created and constituted a corporation by the name of the Belleville Driving and Athletic Association, with a capital stock of $2,200 divided into eleven shares of $200 each.

The letters patent contain no provision authorising the directors or the association to restrict the right of a shareholder to transfer his shares, but it is contended that the right of the shareholders to transfer their shares is restricted by an agreement said to have been entered into by the incorporators before the issue of the letters patent, by which it was agreed that none of the shares should be transferred without the consent of all the shareholders.

It is also alleged by the appellant that at the first meeting of the shareholders held after the issue of the letters patent a similar agreement was entered into between the shareholders and the company, and by each shareholder with the others, and the appellant relies upon this alleged agreement as a justification for its refusal to register the transfer from Wheeler to the respondent.

The evidence as to the making of these agreements is not satisfactory, and that he was a party to them is denied by Wheeler.

I entirely agree with what was said by Osler, J.A., in Berkinshaw v. Henderson (1909), 1 O.W.N. 97, 14 O.W.R. 833, 834, as to the evidence which should be required in order to establish the making of such agreements. . . .

But, assuming that the making of the alleged agreements has been established, I am of opinion that they afford no valid