Securities Holding Co., brokers are accustomed and entitled to consider the shares held by them for their clients, when all of one sort, as being practically one fund, in so far that they are not bound to ear-mark any particular shares for any particular client, but can deliver those which they receive for one to another.

If, therefore, the defendants had held 10 shares or more upon the 2nd December, when they made the pledge to the Bank of Hamilton, the plaintiff could not have complained. They have not shewn that they did. I think the result of the evidence is that they did not. It devolved upon them to shew that they did have other shares when they make the admission that the 10 shares which they bought for the plaintiff were really included in the 90. They not having offered any evidence to negative that, I think it must be assumed that they had not any other of the shares.

Then the case stands that they pledged the plaintiff's shares to the Bank of Hamilton. They had purchased the shares for $1,762.50, on which their commission would be $2.50, and they had at that time to the plaintiff's credit $263.75. The plaintiff, therefore, owed them upon those shares $1,501.25. To the extent of the amount owing them, they were quite entitled to pledge the stock, because the plaintiff could not be damnified nor endangered, if he was at any time enabled to get his stock upon paying the amount that he owed. But, as I have said, I am left in the dark entirely as to the terms of the pledge to the Bank of Hamilton. I have only the simple statement that 90 shares were pledged as security for the $14,400. The defendants could have produced the bargain, they could have offered proof that, according to an agreement or custom binding upon bankers and brokers, the shares would be given up upon payment of the amount owing in respect to them alone; but they have offered no such proof as offered in the case of Clark v. Baillie, 19 O. L. R. 545, to which I was referred during the course of the argument, and, therefore, I simply have the broad statement as to the 90 shares being pledged. That would mean that I must infer that each and all were held by the Bank of Hamilton as security for the $14,400.

That being so, the defendants were doing something which they were not warranted in doing. They could have pledged the plaintiff's shares for the $1,500, but they pledged them for $14,400, and, although the amount per share for which they pledged the 90 shares is very close to the amount the plaintiff owed to them, yet they did not take the precaution to provide that they should be entitled to get back these shares on payment of the amount owing from them, and therein I think they were guilty of conversion. See Conmee v. Securities Holding Co., 38 S. C. R. 601.