SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION. JUNE 8TH, 1914.

WILLIAMSON v. PLAYFAIR.

6 O. W. N. 462.

Contract — Hypothecation of Stock — Sale or Pledge—Evidence—Liability of Pledgee to Account for Price of Shares Sold.

SUP. CT. ONT. (1st App. Div.) affirmed the judgment of HON. MR. JUSTICE LENNOX, 26 O. W. R. 182.

The appeal was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS, JJ.A.

Leighton McCarthy, K.C., for the appellant.

Hamilton Cassels, K.C., for the plaintiff, the respondent.

HON. MR. JUSTICE MAGEE:—It would be difficult upon the evidence in this case to come to a different conclusion from that arrived at by the learned trial Judge. The defendant will not deny that he supposed the application to him through Grundy for an advance of the money was made really on behalf of the plaintiff, though he asserts, no doubt with truth, that he did not know how much the plaintiff was to get and points to the fact that $10 was in fact retained by Grundy. It is impossible to believe that he considered the plaintiff's note and the shares as two separate and unconnected items of property in the hands of either Grundy, the negotiator, or Stewart, whose name appeared as payee of the note and who endorsed it without recourse. He is in the position either of having notice that the shares were security for the note in the hands of an existing holder or that an application was being made to him on behalf of the plaintiff the maker of the note for a loan secured by the note and by the shares. If the former then he cannot resist redemption. If the latter it may be that he refused to advance the money in that way and that he required that the sums should be absolutely transferred to him to become his property if the note was not paid at maturity, but none the less he required and obtained the note and therewith the personal liability of the plaintiff for the amount of the advance and which he has