

upon us by counsel for the defendants, may, I think, be distinguished from the present case.

In *In re Gresham Life Assurance Society*, L. R. 8 Ch. 446, the restriction was contained in the deed of settlement which had been executed by the party desiring to transfer, so that it was a matter of contract, which would not be subject to the same conditions and tests as a by-law under our Act. . . . In *In re Coalport China Co.*, [1895] 2 Ch. 404, the restriction in question was in the articles of association, which had been signed by the transferrer, and sec. 16 of the Act of 1862, under which the company were incorporated, provided that the articles "shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles." The grounds on which the directors might refuse a transfer were set forth in the articles, and the Court held that the applicant had not proved that the case did not come within these. This again was in reality a case of contract, and the test of reasonableness, which is the proper one under our Act, does not apply.

*Re Macdonald and Mail Printing Co.*, 6 P. R. 309, being under our own statute, is more nearly applicable; but in this the manager of the company stated in his affidavit that the company was formed for political purposes, and that the directors considered it inimical to these purposes to allow the transfer. *Hagarty, C.J.*, said in his judgment that the reasons suggested in the affidavits seemed amply to justify the refusal to allow the transfer. And see, contra, the judgment of *Richards, C.J.*, in *Smith v. Canada Car Co.*, 6 P. R. 107, under the Companies Act of 1864, which in this respect was similar to the present Act.

In the United States the course of the jurisprudence has been varied, but on the whole not very dissimilar to our own. The general result of the authorities appear to be fairly summed up as follows: "Shares of stock in a corporation being personal property, and the *jus disponendi* being incident to the very nature of property, it follows that a by-law which undertakes to prohibit a shareholder from freely transferring his shares is ordinarily void, as being in restraint of trade and against common rights:" 10 Cyc. p. 359.

On the whole I am of opinion that the by-law in question in this case goes beyond the spirit and intent of the Act, and is invalid and not binding upon the transferrer and transferee. The appeal should be dismissed with costs.