

ment of claim the plaintiff starts out with the allegation that there was to be a margin of 15 per cent., although his own is the only evidence upon that subject, and he says there was no agreement for margin. No application has been made to amend the statement of claim in that respect, and the defendants were therefore entitled to rest upon the evidence given in that respect, and having offered no evidence upon it, and no amendment having been asked which would require evidence from them, I must hold that there was an agreement, as alleged in the statement of claim, that it should be 15 per cent., and that that margin was to be kept up.

The evidence is that upon the 1st December the defendants did purchase 10 shares for the plaintiff. They purchased apparently 25 shares on that day from Mr. O'Hara, another broker, 15 of which were for another client, and 10 they intended for the plaintiff. Upon the following day, the 2nd December, they pledged 90 shares of the same sort of stock to the Bank of Hamilton for \$14,400.

Now, their total purchases of that stock upon the previous day, the 1st December, had been 90 shares. The evidence is practically left there. It is very meagre upon the part of the plaintiff, and none is offered upon the part of the defendants. I have no evidence as to the exact nature of the pledge or the terms of it to the Bank of Hamilton; I have no evidence as to how long it continued; and I have no certain evidence as to whether at that time they held any other shares whatever than those which they had purchased upon the 1st December, or whether they subsequently held any.

I am shewn that the defendants purchased 90 shares upon one day, and upon the following day they pledged 90 shares. It is said for the plaintiff that that is prima facie evidence that those were the same shares. Upon the part of the defence it is said that there is no evidence that they had not other shares.

I think that, inasmuch as the defendant Jaffray upon his examination said that the 10 shares bought from Mr. O'Hara, intended for the plaintiff, were presumably in the 90 shares—he could not ear-mark them, but he believed they were in the 90 shares—I think I must hold that there is sufficient to warrant an inference that those shares were pledged to the Bank of Hamilton.

Now, if at that time the defendants did in fact hold 10 other shares free, it would, I think, have been quite open to them to have considered that they were not committing any breach of duty in pledging the 10 shares which they got that day.

As pointed out in *Ames v. Conmee*, 10 O. L. R. 159, 12 O. L. R. 435, afterwards reported in 38 S. C. R. 601, as *Conmee v.*