

purchase money of the company's mine, which was sold by him to the plaintiffs.

F. Arnoldi, K.C., and D. D. Grierson, for the plaintiffs, contended that the proper mode of carrying out the agreement as to these shares was to transfer them to the defendant Currie "in trust only in escrow as collateral security for \$190,000, under the terms of the written agreement dated September 18th, 1908, between W. F. Currie and E. D. Warren & Co., not transferable free from this trust except for delivery to E. D. Warren & Co., until remedies are exercisable for default on their part in payment of said money under said agreement," and they insisted that this should appear on the face of the certificate to be issued for the shares to the defendant Currie.

G. F. Shepley, K.C., and R. F. Segsworth, for the defendant Currie, contended that he was entitled to have the shares transferred to him absolutely without anything appearing to shew that he held them as security for the payment of the purchase money and subject to the terms of the agreement.

Eric N. Armour, for the defendants the Otisse Mining Co.

MEREDITH, C.J.:—The effect of the agreement is, I think, to constitute the plaintiffs pledgors and the defendant Currie pledgee of the shares, and to entitle the latter to have them stand in his name on the books of the company, and to have the certificate issued to him; but he is not, in my opinion, entitled to have the shares stand in his name as if the absolute owner of them.

That a pledgee of shares is entitled to have them transferred to him on the books of the company is stated by the text-writers on the subject, and there is an ample authority in the American cases for that statement. I have not, however, found any case in which it has been held that he is entitled to have the transfer made without it being shewn that it is made to him as pledgee and not as absolute owner of the shares.

Upon principle, it appears to me that the pledgee's right is to have the shares so transferred to him as to prevent the pledgor dealing with them to his prejudice; otherwise his security would be subject to destruction by a sale and transfer by the pledgor to a purchaser without notice; and that, on the other hand, he has not the right to have them so transferred as to put him in a position to deal with them in fraud of his pledgor's right and so as to defeat it, as would happen if he should sell and transfer them to a purchaser without notice.

I am of opinion, therefore, that the proper mode of dealing with the shares is to transfer them to the defendant Currie "in pur-