I agree that the plaintiff's own statements as to the condition of the company shew that his stock does not comply with the above decision, and that the order should go for security (to be available for both defendants if plaintiff so desires). Costs in the cause.

Shares of this kind, which have no material existence, differ from real estate or chattels. When allowed as security, the plaintiff must undertake not to deal with them in any way wihout notice to defendant's solicitor.

TEETZEL, J. MAY 9TH, 1906.

CHAMBERS.

McCARTHY v. McCARTHY.

Summary Judgment—Action against Executor—Recovery of Legacy—Assent—Admission of Assets—Abatement.

Appeal by plaintiff from order of local Master at Ottawa refusing plaintiff's motion for summary judgment under Rule 603.

C. A. Moss, for plaintiff.

Grayson Smith, for defendant.

TEETZEL, J.:—Plaintiff, as legatee under will of J. J. McCarthy, sues defendant, as executor of the will, for a legacy of $1,000, and interest from June, 1901. The material does not satisfy me that defendant, as executor, has ever assented to plaintiff's legacy, either expressly or by implication, or that he has admitted receiving from the estate assets sufficient to satisfy debts and legacies. For this reason the case has not been brought within the authority of Hamilton v. Brogden, 60 L. J. N. S. 88. . . . On the other hand, defendant proves that the stock which represented the estate out of which plaintiff's legacy is payable could not, since testator's death, have been sold for sufficient to pay the legacies in full. If defendant's affidavit is true, plaintiff would not be entitled to judgment as asked. I think, in order to entitle a legatee to recover judgment for his legacy as a debt or liquidated demand, he must at least shew that the executor has received an estate sufficient to pay the debts and