

tion as unfounded in justice, and has decreed relief to a plaintiff standing in the precise predicament:" 1 Story's Equity Jurisprudence, § 161.

Finally, we quote from a well-known writer on equity. "The principles which underlie the theory advocated by the Massachusetts court, if carried out to their legitimate results, would work a virtual revolution in equity jurisprudence, would confine its most salutary remedial functions within very narrow limits, and would overturn doctrines which have been regarded as settled since the earliest periods of the jurisprudence. They would greatly abridge the remedy of reformation; they would prevent the court from establishing and enforcing parol contracts which the defendant's actual fraud had prevented from being put into writing; and, in fact, these principles cannot be reconciled with the doctrines upon which the jurisdiction of equity to enforce parol contracts in cases of part performance is vested. The Statute of Frauds is no real obstacle in the way of administering equitable remedies so as to promote justice and prevent wrong. Equity does not deny nor overrule the statute; but it declares that fraud or mistake creates obligations and confers remedial rights which are not within the statutory prohibition; in respect of them, the statute is uplifted:" 2 Pomeroy's Eq. Jur., § 867.

Of course it is everywhere understood that any act distinctly amounting to a part performance of the agreement takes the case out of the statute.

H. CAMPBELL BLACK.

Saint Paul, Minn.

RECENT ENGLISH DECISIONS.

High Court of Justice; Queen's Bench Division.

SHAW v. PORT PHILLIP AND COLONIAL GOLD MINING CO.

The secretary of a joint-stock company issued a share certificate which purported to be signed by a director and by the secretary, and bore the seal of the company. The director's signature was forged and the seal had been improperly affixed. It was the regular and authorized duty of the secretary to have transfers registered, to procure the preparation, execution, and signature of certificates with all requisite and prescribed formalities, and to issue them. The plaintiff, to whom the shares were transferred by the person to whom the forged certificate was issued, applied to the company to have the shares registered in his name. The company refused to register them on the ground that the certificate was forged.

Held, that the company having made it the duty of their secretary and within the

scope of his authority to warrant the genuineness of the certificates he issued, the plaintiff was entitled to recover the value of the shares from the company.

SPECIAL case, of which the following are the material facts :

On December 1st 1880, Thomas Gledhill bought through the plaintiff, as his broker, 200 of the defendant company's shares, and the plaintiff received, as buying broker from the selling brokers, a transfer of forty shares, signed by a Mr. Schofield, accompanied by the certificates of the shares, and a transfer of 160 shares, signed by a Mr. Purchase, the company's then secretary, also accompanied by what purported, and in all respects appeared, to be regularly signed certificates of those shares.

In January 1881, Gledhill deposited the aforesaid transfers and certificates at the company's offices in London with the said Mr. Purchase, the company's secretary, and requested that the company should register him as proprietor of the said 200 shares, and issue him a certificate for the said shares in the usual way.

On March 16th 1881, a certificate, or what purported to be a certificate, of the said 200 shares, and of the registration thereof, was forwarded by the company's secretary to Gledhill.

This certificate purported to be signed by one of the directors and by Mr. Purchase, the secretary, and bore the seal of the company, and was in the usual and authorized form in all respects.

It was part of the regular and authorized duty of the said Mr. Purchase, as the company's secretary, to receive and examine transfers and certificates of shares, to have transfers registered to procure the preparation, execution, and signature of certificates with all requisite and prescribed formalities, and thereupon to issue them to the persons entitled to receive them.

By the deed of settlement of the company it is provided that "the secretary shall keep in safe custody the books and the common seal of the company, affixing the seal of the company, or allowing its use to such documents, and on such occasions only, as he is authorized and required to affix it, or allow it to be used by the board of directors by resolution duly passed." By a resolution of the board of directors duly passed, it was ordered "that the seal be only used in the presence of either the chairman or deputy-chairman; and that certificates of shares be signed by one director, the secretary, and the accountant." At the time of issuing the certificate in question J. W. Purchase was both secretary and accountant.

The company in March 1881, paid a dividend to Gledhill upon the 200 shares, by check signed by the secretary and two directors of the company. Gledhill subsequently deposited the certificate for the 200 shares with the plaintiff, who was his stockbroker, by way of security for any moneys which might become due from him to the plaintiff.

In December 1882, the plaintiff gave the company notice that the certificate for 200 shares had been so deposited with him as security. He was then informed by the company that there was no such number of shares standing in Gledhill's name in their books; that the signature of the director appended to the certificate was forged, and the seal of the company was affixed thereto without the knowledge or authority of any one of the directors. Neither Gledhill nor the plaintiff had, up to the date of such communication, any knowledge or ground for suspecting, that the certificate was not a genuine document.

Gledhill subsequently executed what, in form, was a legal transfer of the 200 shares to the plaintiff, and the plaintiff left such transfer with Mr. Matthias, the present secretary of the company, with a request that the 200 shares should be registered in his name, pursuant to such transfer. The company declined to register the transfer, or to recognise the plaintiff's title to any of the said shares, except the aforesaid forty, as to which they were willing to recognise his title.

The question for the court was whether the plaintiff had a good title, as against the company, to the said 160 shares. If the opinion of the court was in the affirmative, judgment was to be entered for the plaintiff for the value of those shares.

R. O. B. Lane, for the plaintiff.

Moulton, for the defendants.

STEPHEN, J.—The question we are asked is whether the plaintiff has a good title, as against the company, to the shares in question. The whole matter turns on the following facts:—A certificate was issued, upon which the plaintiff bases his title. The certificate was in the usual and authorized form; it bore the seal of the company, and purported to be signed by one of the directors and by the secretary. It was issued by the secretary from the company's office. On the strength of this certificate a formal

transfer of the shares to the plaintiff was executed by Gledhill, and the question is, whether he now has a good title. The facts, which are not very clearly stated in the case, appear to be that the secretary did sign the certificate, and, without any authority, affixed the seal of the company, which was in his custody, and either himself forged the signature of the director, or procured it to be forged, and finally issued the certificate. That being so, it is admitted, on behalf of the defendant, upon the authority of the cases which have been cited, that, if there had merely been a false issue of the certificate in the absence of the directors, it would have bound the company. But it is contended that the present case differs from those referred to, because the director's name was forged, and the secretary carried out his fraud by means of forgery. How does this fact make any difference? It is said that it does so, because no decision has ever yet given validity to a forged document. It is asserted that there is a distinction between forgery and other fraud, but I fail to see that it is so. A director is to sign every certificate, and certain other formalities are to be observed. These formalities had, in the present case, apparently been observed. It is the duty of the secretary to see to the registration of transfers, to procure the preparation, execution, and signature of certificates with all requisite and prescribed formalities, and then finally to issue the certificate. His duties clearly give him the opportunity of forging. The person who receives the certificate knows whether he received it from the secretary, but he cannot verify the due observance of the other formalities. I think, therefore, that the company have made it part of the duty of the secretary, and within the scope of his authority, to warrant the genuineness of each certificate he issues, and that the plaintiff in this case is entitled to our judgment.

MATHEW, J.—I am of the same opinion. It is contended by the plaintiff that the company is responsible for the fraud of their agent. I cannot doubt but that what was done was within the scope of their secretary's employment. It cannot be intended, where formalities are laid down to be observed in the issuing of certificates, that it should be incumbent on the person receiving a certificate to ascertain for himself whether the formalities really have been complied with. I think, therefore, the secretary must be the company's agent to warrant the genuineness of the signa-