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preserve the dignity and independence of the Court. It has been urged that this endangers the liberty of the Press, and I desire, in reply thereto, to repeat here what I said in 1877 in *Phelan's* case, "Although no scandalous or improper reflection on the administration of justice can be allowed, everyone is undoubtedly at liberty to criticise the conduct of Judges on the Bench in a fair and legitimate manner. It is only when the bounds of moderation and of fair and legitimate criticism have been exceeded that the Court has power to interfere. I do not in the slightest degree desire to fetter free and open discussion in the public prints of the proceedings of this Court. The liberty of the Press is a great privilege and a great safeguard to the public; but the administration of justice is in like manner a matter of public importance. Consequently the law—the very protector of the liberty of the Press—will not, on grounds of public policy, allow that liberty, its own creature, to be abused and employed as an instrument to bring the administration of justice into contempt." We would in my opinion, be wanting in our duty if we did not mark our strong disapproval of the offence by meting out such punishment as is commensurate with the gravity of the contempt committed. Under the circumstances, I am of opinion that the Argus Company should be condemned to pay to the Treasury of the State a fine of £500, together with the costs of the proceedings.

CELLIERS *vs.* COSMAN, N.O.

Pledge of share-certificates.—Registration by pledgee.

Where, in an application for an order enjoining respondent to re-transfer certain shares in the books of the M. and B. Co. from the name of a clerk to that of the applicant, it appeared that the shares had been given to the manager of the company as security for the payment of certain promissory notes, and, being endorsed in blank, C., the manager, had registered them in the books of the company in the name of a clerk, the Court refused the application.

This was an application for confirmation of a rule *nisi* granted by Jorissen, J., upon February 6th, 1890, calling upon the respondent to show cause why he should not be ordered to re-transfer certain shares in the books of the Pretoria Market Buildings Co. from the name of a clerk to that of the applicants. The shares were given to Meyer, the former manager of the company, as security for payment of certain promissory notes, and the respondent had registered such share-certificates in the name of his clerk, such certificates having been endorsed in blank by applicants.

Hollard, with him *Jeppe*, for applicants, moved for confirmation of the rule *nisi*.

Curlewis, with him *Sauer*, for respondents, showed cause: The only question is whether a person who receives shares as security for moneys advanced has the right to register or transfer them in his own name? The shares were endorsed in blank. By delivery the creditor gets a real right in the thing pledged (*cf. Dig.*, 13, 7, l. 35, § 1; *Modderman*, bk. 2, § 169.) We have the right to secure ourselves by putting the shares into our own name for our own protection, and if there is a well-founded ground of apprehension that we shall make a wrong use of such registration, then the debtor has a means of redress, and can ask the Court to restrain us from making such wrong use. The mere registration itself does not constitute such misuse, for such registration is within our competency as creditor. The proceeds or *fructus* of the shares are also bound (*cf.* 3 *Burge, Foreign and Colonial Law*, p. 201; *Domat*, vol. i., bk. 3, tit. 1, § 1, art. 7; *Modderman*, p. 197, § 171). Thus we have a right over the dividends. They are also bound, and now how can we as creditors enjoy those *fructus* or dividends unless we can have the shares registered in our own name? (*Cf.* 3 *Burge*, 203; *Van der Linden*, p. 151; *Angle and Aimes on Corporations*, 11th ed., § 577—until registration takes place the pledge is not complete, § 578; *Lindley on Companies*, 5th ed., p. 474; *Local Law* 5, 1874, § 7.) Suppose that calls are made upon those shares, who will have to pay such calls? Certainly the creditor, as the shares are registered in his name. If the shares are not registered in his, *i.e.*, the creditor's name, then the debtor must do so. If he does not do it, what then is our position as creditor? We are content that if the

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Court so decides, an interdict should be laid upon the shares to ensure that we shall not burden or alienate them.

Hollard, in reply: The Laws of Pledge and of Property are different. We only gave the pledgee the right implied by pledge, and not a right of property. It was only four months after pledging that they proceeded to register. There is no stipulation that the creditor shall have the right to register (*cf. Domat*, vol. i., p. 349, § 5, l. 3). If the shares are registered, the debtor loses his right to become a director, and also to enjoy other advantages to which he is entitled as a shareholder. Why may he not sell the shares as debtor, subject to the pledge? The debtor has a perfect right to do so (*cf. Coaton* vs. *Alexander*, decided in the Cape Supreme Court). Suppose the creditor goes bankrupt to-morrow, and the shares are standing in his name, how can the debtor get back his shares? (*Cf.* 2 *Erskine Instit.*, p. 681; *Story on Bailments*, § 307, 350; *Addison on Contracts*, p. 832 (Library ed.); 3 *Burge*, p. 567).

Jeppe, on the same side: The decision must follow our own Law of Pledge, and not follow the English or American writers. Now the pledgee can also pledge the article pledged. Must there then be another registration of the shares? If there is no *traditio* of shares without registration, it does not follow that registration is necessary to constitute a pledge. It is a recognised custom that the property in share-certificates passes by endorsement. In England and America share certificates are not considered as negotiable documents. This is not so here. There may be a re-pledging, and then by the principle contended for by the other side the shares must be registered in the name of the re-pledgee. The pledgee is not entitled to the *fructus*, otherwise every farmer who mortgages his farm could not enjoy the crops.

Cur. adv. vult.

Posteà, March 24th, 1891.

The COURT, *per* DE KORTE, J., refused the application, with costs.