

[Reference to Attorney-General v. Sheffield Gas Co., 3 D. M. & G. 311, per Knight Bruce, L.J.]

There is no analogy between this case and Bell Telephone Co. v. Town of Owen Sound, 8 O. L. R. 74, or Re Rowland and Town of Collingwood, 11 O. W. R. 804. In these cases by-laws passed in bad faith were declared ultra vires and invalid; here the municipality ask the Court to enforce a legal right.

Appeal dismissed with costs.

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DIVISIONAL COURT.

OCTOBER 30TH, 1909.

CLARK v. BAILLIE.

*Broker—Pledge of Shares by Customer Buying on Margin—Re-pledge by Broker—Custom of Stock Exchange — Evidence — Amount Advanced to Brokers not Exceeding Amount Due by Customer—Action for Conversion of Shares—Damages—Interest.*

Appeal by the plaintiff from the judgment of MACMAHON, J., 14 O. W. R. 104, dismissing an action against brokers for damages for the alleged conversion of shares.

The appeal was heard by MULOCK, C.J.Ex.D., MACLAREN, J.A., and CLUTE, J.

C. Millar and W. C. Mackay, for plaintiff.

I. F. Hellmuth, K.C., and E. G. Long, for defendants.

The judgment of the Court was delivered by MULOCK, C.J., who, after setting out the facts, said the Court assumed it to be the law that the hypothecation of the plaintiff's stocks by the defendants for their own benefit for a large sum of money over and above the amount payable by the plaintiff in order to redeem her stocks, operated as a conversion, but the subsequent action of the plaintiff, whether with or without knowledge of such hypothecation, in accepting delivery of these stocks and selling them, altered her legal position and disentitled her to maintain trover. The stock which was purchased for the plaintiff was delivered to her the moment she demanded and paid for it. Till then she was not entitled to possession. At no time was delivery wrongfully withheld from her, and it is not suggested that she sustained any damage because of the hypothecation of the stocks.