

HON. MR. JUSTICE KELLY.

MAY 20TH, 1912

GRICE v. BARTRAM.

3 O. W. N. 1312.

Contract — Breach — Purchase of Assets of Company — Liabilities Assumed by Stockholder — "Without Corresponding Value" — Transfer of Shares — Damages — Reference — Rectification of Contract.

Two actions in respect of certain transactions arising out of agreements relating to dredging operations, which actions had been consolidated. Defendant, who was heavily interested in a dredging company which was selling its assets to a new company in which plaintiff was interested, undertook to pay all liabilities of the old company assumed by the new company "without corresponding value." Plaintiff in his first action claimed \$34,436.83 of the old company's liabilities to be assumed by defendant under this clause had not been so assumed, and also claimed \$50,000 damages for breach of contract. In his second action he claimed delivery over 100 shares of the new company's stock to plaintiff by defendant under a contract to make such delivery.

KELLY, J., *held* that defendant was liable to the new company for \$11,561.18 less certain credits as to which a reference was directed if needed. He was also liable to deliver over the stock sued for, not having shewn circumstances which would warrant rescission or rectification of the contract.

Tried without a jury at Toronto, January 9th to 16th.

W. M. Douglas, K.C., and J. R. L. Starr, for plaintiff.

F. E. Hodgins, K.C., and W. R. Wadsworth, for defendant.

HON. MR. JUSTICE KELLY:—Plaintiff, who is a contractor residing in London, England, brought two actions against the defendant in respect of certain transactions arising out of agreements relating to dredging operations in which the parties were interested. One of these actions was commenced on July 10th, 1911, and the other on July 13th, 1911. By order of November 7th, 1911, these actions were consolidated.

Prior to and in the early part of 1909 the plaintiff was engaged on a contract for railway construction in Nova Scotia, and the defendant was interested in a company known as the Cape Breton Dredging Company, Limited, which was engaged chiefly in carrying out dredging contracts made with the Government of the Dominion of Canada. Early in 1909 it became known to the plaintiff that the defendant was desirous of extending the dredging operations. At that time the Cape Breton Dredging Company, Limited, was the