

situation. The proposition quoted is based on the theory that the purchaser can on that day go into the market and buy shares, and the difference between the price he would then have to pay and the price he has contracted to pay forms the measure of damages. But when the vendor retains his shares and ultimately sells them at a profit, to say that he can still recover substantial damages for breach of a contract to sell them at a less price is certainly against reason and common sense, and we also venture to think unapproachable in law.

The other case to which we referred is that of *Goodall v. Clarke*, 23 O.L.R. 57, which was an action for breach of contract for delivery of shares, to which the proposition above quoted would apply, but in that case there was the difficulty that the shares had no recognized market value. They were mining shares of fluctuating and uncertain and speculative value. An injunction had been obtained pendente lite to restrain the defendant from parting with the shares in question, which had been subsequently dissolved, on consent, to enable the defendant to carry out a sale of them at 26c. a share. A sale had been made in exceptional circumstances about the time of the breach at 40c. and the referee had fixed the damages on that basis. Meredith, C.J., on appeal from his report, fixed them on the basis of 26c. per share, the price at which they had been actually sold, a Divisional Court fixed them on a basis of 33 $\frac{1}{2}$ c. on some sort of indiscoverable rule of thumb, and the Court of Appeal affirmed that decision, Meredith, J.A., dissenting; the reasoning of Mr. Justice Meredith seems unanswerable and to carry conviction. While there was reasonable ground for fixing the value of the shares at 26c. there appears to have been no evidence at all for fixing it at 32 $\frac{1}{2}$ c., there being no evidence whatever of any sale at that figure, and though, as Mr. Justice Meredith points out, the onus was on the plaintiff of proving the damage he had sustained, yet the Divisional Court and the Court of Appeal seem to have come to the conclusion that the court was at liberty to guess at the damages, and to determine them on some sort of conjecture and not on the evidence adduced. If we had a receptacle for "bad law" we are inclined to the opinion that both of these cases would be fitting subjects for such a depository.