

Drake, J.] DAVIES, SAYWARD MILL CO. v. BUCHANAN. [Nov. 26, 1903.
*Production of documents—Place of—Rules 4 and 5 of Rules of April,
 7, 1899.*

Summons to produce for inspection certain documents referred to in defendants' affidavits of documents. The plaintiffs and their solicitors lived in Victoria and the writ was issued out of the Victoria Registry. The defendant, Buchanan and his solicitor lived in Kaslo. Notice was given to plaintiffs' solicitors, that the documents might be inspected at Kaslo. Plaintiffs contended that the documents should be produced for inspection in Victoria where the defendants' solicitor had a registered agent.

Held, that all defendants' documents other than the books of account (the production of which in Victoria would be prejudicial to defendant's business operations) should be produced for inspection in Victoria: and that the books of account be produced in Kaslo.

Fell, for plaintiffs. *Barnard*, for defendant.

Full Court.] MILLER v. AVERILL. [Jan. 8.

*Specific performance—Contract to accept part payment for services in stock
 —Failure to deliver stock—Damages.*

Appeal from judgment of Leamy, Co. J. Plaintiff contracted with defendant to do certain work at the rate of \$7 per day whereof \$1.50 should be paid in cash and the balance of \$5.50 in stock in a mining company at fifteen cents a share, and after the lapse of over a year plaintiff sued for the cash balance due him for his services, or in the alternative for damages for breach of contract. At the trial, without any evidence as to the present value of the stock, the defendant was ordered to deliver stock at fifteen cents a share in satisfaction of plaintiff's claim.

Held, allowing the appeal, that on defendant's failure to deliver the stock plaintiff was entitled to damages for breach of contract and could not be compelled to accept stock.

W. H. P. Clement, for appellant. *J. H. Larson, Jr.*, for respondent.

Full Court.] [Jan. 27.

ESQUIMALT WATER WORKS CO. v. CITY OF VICTORIA.

By-law—Illegality—Insensible—Rules of construction.

Appeal from judgment of Drake, J., quashing a by-law on the ground that it was insensible and meaningless.

A by-law having for its object the closing of the Craigflower Road read thus: "That portion of the Craigflower Road by-law No. 327, being the 'Craigflower Road Re-opening by-law, 1900,' declared to be a public highway, is hereby stopped up and closed to public traffic." The word