

actual market-value, and were, as the evidence shews, unsaleable, for such a large block, at practically any price. There was, therefore, no means then at hand whereby the plaintiff, acting reasonably, could have performed the defendants' contract by a then sale of the shares. And this condition of things continued for a very long period. And, indeed, but for the exertions of the plaintiff and his associates, involving the expenditure of much time and money in making new arrangements, including the assumption of new obligations, would have, so far as appears, still continued. Why should the defendants, having assumed none of the risks, get all the benefit of these protracted, and still, so far as actual realisation in money is concerned, incomplete, negotiations? Nothing in the cases to which I have referred, nor in any of the others which I have looked into, would give them such a right. If they had performed their contract, the plaintiff would have had \$145,000, in addition to the down-payment of \$5,000 in cash, by the middle of 1907. And, so far as I can gather from all the evidence, it is very doubtful if he will in the end, as the fruit of all his subsequent exertions and negotiations, even with the amount of damages assessed by the learned Referee, be made as well-off in money as if the contract had been duly performed at the proper time. . . .

Appeal dismissed with costs.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

MOSS, MACLAREN, and MAGEE, J.J.A., also concurred.

DECEMBER 30TH, 1911.

BEATH v. TOWNSEND.

*Contract—Mining Shares—Evidence—Findings of Trial Judge
—Appeal.*

Appeal by the defendant from the judgment of FALCONBRIDGE, C.J.K.B., 2 O.W.N. 1273.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.