

Referee did, to the highest price obtained. But, on the other hand, it would not be fair to the plaintiff to hold him to what the defendant was willing to sell for. The evidence shews that at least one holder was willing to take what would have amounted to about 31 cents per share of his holding, but, owing to the steadfastness of his co-owner, they ultimately obtained what amounted to 40 cents per share of their holdings.

Matters such as these which appear upon the evidence are not to be disregarded in dealing with shares occupying the exceptional position which these did at the time when the plaintiff was deprived of his right to deal with them. Looking at all the circumstances, the Divisional Court was of opinion that the price accepted by the defendant did not fix the selling value, and that the plaintiff was entitled to be allowed more than the price at which the defendant was willing to sell.

It may be difficult to ascertain the motives actuating him when he sold. It is not essential to inquire into them. In making the sale he was influenced by considerations in which neither the plaintiff nor his interests held part. What the plaintiff could or would have done was not taken into account.

It cannot be said that the sale by the defendant fixed in any degree the market value at 26 cents per share, any more than the sale by Millar and Bedell fixed the value at 40 cents per share. The damages must be got at as well as possible upon the whole evidence.

The matter being at large upon the evidence, the disposition of the damages by the Divisional Court cannot be said to be not warranted by the evidence. It seems fair and reasonable; certainly it is not so unfair or unreasonable as to justify an interference with it.

The appeal ought, therefore, to be dismissed.

GARROW, MACLAREN, and MAGEE, J.J.A., concurred.

MEREDITH, J.A., dissented, being of opinion, for reasons stated in writing, that the order of MEREDITH, C.J., should be restored.