

and the order for a new trial should stand but be restricted to a proper assessment of the damages.

*Sale*, for appellant. *Rodd and Kenning*, for respondents.

Ont.]

CLARKE v. GOODALL.

[April 3.

*Appeal—Nature of action—Action in equity—Judicial proceeding—Declaration of rights—Injunction—Reference—Appeal from referee—Final judgment.*

An action was brought claiming a declaration that plaintiff was entitled to receive a certain number of shares of the capital stock of a company and for an injunction to restrain defendant from dealing with his shares until those claimed by plaintiff were transferred to him. On the trial it was held that plaintiff was entitled to damages for breach of contract to deliver him the shares and a reference was ordered to have such damages assessed, further directions and costs being reserved. On appeal to a Judge from the referee's report, the damages were reduced, but were increased on further appeal to a Divisional Court whose judgment was affirmed by the Court of Appeal. On appeal from the judgment of the registrar of the Supreme Court affirming the jurisdiction to entertain an appeal from the Court of Appeal.

*Held*, 1. The action was one at common law for breach of contract, and that neither the inclusion of the demand for an injunction nor the reservation by the trial Judge of further directions, made it a judicial proceeding in the nature of a suit or proceeding in equity within the meaning of sec. 38 (c) of the Supreme Court Act so as to permit of an appeal to the Supreme Court whether the judgment appealed against was final or interlocutory.

2. The judgment of the Court of Appeal, varying the assessment of damages by the referee, was not a final judgment from which an appeal would lie to the Supreme Court.

Appeal from registrar allowed with costs.

*Owen Ritchie*, for appellant. *G. F. Henderson*, K.C., for respondent.

Exch. Court.]

THE KING v. WALLBERG.

[April 3.

*Contract—Public work—Work dehors contract—Acceptance by Crown—Payment—Fair value.*

W. was a contractor with the Crown for constructing a car