

Sale at Market Price—Action for Difference—Contract—Breach—Damages—Stock Exchange Rules.—Action to recover \$2,082, as damages for a breach of contract. The plaintiffs (stock brokers) alleged that on the 22nd April, 1909, they sold to the defendants, subject to the rules of the Toronto Stock Exchange, 10,000 shares of Temiskaming Mining Co. stock, at \$1.09 a share, to be paid for in ninety days, or sooner if the defendants called sooner for delivery; that the defendants made the call on the 29th June, 1909, and the plaintiffs on that day tendered 10,000 shares to the defendants, who refused to accept or pay; that the plaintiffs thereupon sold the shares at the market price, and realised \$8,818; and their claim was for the difference between the contract price and what they actually got. The learned Judge finds that the real transaction was as follows: the defendants wanted \$10,000, and obtained it from the plaintiffs; they transferred to the plaintiffs 10,000 shares of Temiskaming stock, and the plaintiffs were to transfer back 10,000 shares within ninety days, on being paid \$10,900; it was an ordinary stock transaction, in which, instead of margins being put up in money, the same thing was arranged in effect by lowering the prices in the bought and sold notes. Before selling, the plaintiffs, by letter dated the 29th June, 1909, gave formal notice to the defendants that, if they failed to accept and take delivery, the plaintiffs would sell the shares at the market price and look to the defendants for the balance. The defendants paid no attention to this, and the plaintiffs proceeded to sell, treating the contract as at an end. In these circumstances, says the learned Judge, and in view of the distinct refusal on the part of the defendants to accept the shares after three o'clock on the 29th June, 1909, the plaintiffs appear to have been warranted under the rules of the Stock Exchange, in selling the stock as they did. The repudiation entitled the plaintiffs to sell and to bring this action for the balance owing: *Rhymney R. W. Co. v. Brecon and Merthyr Tydfil Junction R. W. Co.*, [1900] W. N. 169; *Hochster v. De la Tour*, 2 E. & B. 678. Judgment for the plaintiffs for \$2,082, with interest from the 29th June, 1909, and costs. Counterclaim by the defendants for an account or damages dismissed with costs. F. Arnoldi, K.C., for the plaintiffs. A. C. Macdonell, K.C., for the defendants.

BUCOVETSKY v. COOK—DIVISIONAL COURT—Nov. 9.

Vendor and Purchaser—Contract for Sale of Land—Possession—Improvements — Fraudulent Transfer by Vendor to An-