

cent. from the 17th March, 1909, on which date the defendant made a sale of 100,000 shares, including the plaintiff's 20,000, at 26 cents per share. On the 11th March there was a sale by McLeod at 19 cents a share; and on the 11th April there was a sale by Millar at 40 cents a share.

On appeal from the Referee's report, the Chief Justice thought the damages assessed were too liberal; that it would be unfair to charge the defendant with more than 26 cents a share, which was the price he got. He therefore reduced the damages from 40 cents to 26 cents per share.

The appeal was heard by CLUTE, SUTHERLAND, and MIDDLETON, JJ.

R. S. Cassels, for the plaintiff.

F. E. Hodgins, K.C., for the defendant.

CLUTE, J.:— . . . There is no doubt that the Millar sale was exceptional. All the stock had been got in, except his, which was necessary to complete the consolidation that had been arranged, and probably induced the higher rate for his shares in order to close the transaction. There was no market value for the shares. The plaintiff had advanced certain sums to the defendant, and held for a short time these shares as security, and afterwards purchased them. From the nature of the transaction, and the conduct of the parties throughout, I think it probable that Goodall would not have sold the shares when Clarke sold them. At all events he was not bound to do so. Clarke should have known, and he did know, that he was selling what did not belong to him, in breach of trust and in breach of contract. As the matter now stands, he has simply paid what money Goodall advanced to him, with possibly the interest. His wrongdoing has not cost him a cent. Goodall knew all the conditions: he had the right to be allowed to exercise his judgment and to fix his own time for the sale of shares which belonged to him. . . .

[Reference to Michael v. Hart, [1901] 2 K. B. 867, [1902] 1 K. B. 482; Mayne on Damages, 7th ed., p. 195, 8th ed., p. 221; McArthur v. Lord Seaforth, 2 Taunt. 257; Simons v. London Joint Stock Bank, [1891] 1 Ch. 284; Williams v. Peel River Land Co., 55 L. T. N. S. 689; Frost v. Knight, L. R. 7 Ex. 111; Johnstone v. Milling, 16 Q. B. D. 460.]

The writ of summons was issued in this case on the 27th March, 1909. The plaintiff claims a declaration that he is entitled to receive from the defendant the 20,000 shares. The shares having been disposed of, specific performance for the