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## *DAMAGES FOR BREACH OF CONTRACT FOR NON-DELIVERY OR NON-ACCEPTANCE OF SHARES.*

In two recent cases in Ontario, the question has arisen as to the proper measure of damages for breach of a contract to take or deliver shares, and in both of these cases the conclusion arrived at appears to have been unsatisfactory from a legal point of view, and based on what we cannot help regarding as erroneous principles. In the first of these cases, *Sharpe v. White*, 2 O.W.N. 849, the action was by the vendor against the vendee for breach of a contract for the sale of shares. It would appear from the statement of facts in the note of the judgment, that the plaintiff contended that the damages should be assessed at the difference of the price agreed to be paid at the date of the breach, and the price the shares were then worth; but that the defendant claimed that the shares had subsequently appreciated in value and that such subsequent appreciation must be taken into account in estimating the plaintiff's damages. The referee refused to give effect to this contention, and Clute, J., affirmed his decision. With great respect to the learned judge we venture to think both he and the referee proceeded on an erroneous principle. The object of the action was to compensate the plaintiff for the loss he had sustained by reason of the defendant's default in carrying out the contract, but if and when those damages come to be ascertained it was found that the plaintiff had actually sustained none, but had in fact made a gain by reason of the defendant's default; it seems to offend against common sense and law and justice to suppose that he could in that event recover more than nominal damages. An action for breach of contract of this kind must be amenable to the same principles as govern other actions, and if it can be demonstrated at any time up to the assessment of damages that no loss has been actually sustained, nothing but nominal damages ought to be recoverable.