

But the plaintiff was not consenting to anything but the dissolution of the injunction. By his action he was seeking a declaration that he was entitled to receive 20,000 shares from the defendant and an injunction pending the determination of that question. The defendant or his advisers desired the immediate removal of the injunction. The plaintiff's counsel resisted it except on terms which, with the \$5,100 already in hand, would secure the plaintiff against any possible loss on the contract. The plaintiff was not concerned whether the defendant ever afterwards carried out the agreement he had made or whether he ever obtained payment from the purchaser. What the plaintiff had desired, as his evidence plainly shews, was to be put in a position to do his own dealing with his shares, to negotiate by himself for their sale to others, and to make the best bargain open to him and obtain the most he could get for them. His just rights were to be placed in this position. He had fully performed his part of the agreement, and the defendant had received the consideration upon which it was founded.

But the plaintiff was willing to forgo these rights provided he was placed substantially in the same position as if the shares had been handed over to him. There is nothing in what he did that can reasonably be construed into an acceptance of the sale made by the defendant or any recognition of the defendant's acts in relation to it. The sale should not be disregarded as an element in assisting to ascertain what should be allowed as damages, but no greater weight should be attached to it.

If this be the true position, the fact that by the defendant's breach of contract the plaintiff was deprived of his right to deal with these particular shares and to make his own bargain or bargains with respect to them, forms a most important factor in considering the damages to be allowed to him. All the tribunals concur in holding that the shares had no market value in the sense in which that term is ordinarily used. Their value to a holder depended almost entirely on the circumstances under which he was able to negotiate for their sale, and the manner in which he could affect the business sense of the only persons who apparently were seeking to purchase them. They were not wishing to sell what they had, but were desirous of purchasing any that had not come to their hands. There was no fixed or definite price. Each holder approached by the proposing purchasers was left to make such bargain as he could obtain. Some holders failed to obtain as much per share for theirs as the defendant did for his. On the other hand, other holders succeeded in obtaining a considerably higher price than the defendant did. It might not be fair to the defendant to hold him, as the Official