

ants were to sell, plaintiffs prevented defendants from carrying out their agreement.

5. That, if ever bound by its terms, defendants were subsequently released by the company from their obligation.

6. That the breach of the agreement, if binding, caused no damage to the plaintiffs.

1. The agreement on the part of the company was substantially executed. Defendants had the 30,000 shares from Mohr; they were promptly appointed to the directorate; and the preferential debts of the company were converted into an unpreferred liability. In such circumstances, I have no hesitation in holding that the want of a formal acceptance under the seal of the company, could not avail as a defence to any action it might bring to enforce its rights under any *intra vires* agreement, whatever its nature. . . .

2. Nor is it material that a portion of the consideration passed, not from the company, but from Mohr. Defendants received the 30,000 shares under this agreement; the agreement is with the company and is enforceable by it.

These propositions, I venture to think, do not require to be supported by citation of authorities.

3. If the contract of defendants is to be construed as requiring them actually "to sell or cause to be sold" the 100,000 shares, the objection that there was no by-law under sec. 5 of the Mining Companies Act, sanctioning the discount at which such shares were to be disposed of, is formidable. Section 7 expressly prohibits, under severe penalties, the issue or disposal of any stock in a mining company at a rate less than par, unless a by-law has been passed.

Having regard to these statutory provisions, of which it must be assumed defendants as well as the directors of plaintiff company were aware, and having regard to the knowledge of all parties that the 100,000 shares in question consisted of unissued treasury stock, and that the requisite discount by-law had not been passed (surrounding circumstances such as always may be considered for purposes of construing an agreement), and applying the presumptions in favour of validity and legality and against intent to do that which is forbidden by law, I agree with the contention of Mr. Osler that defendants must be deemed to have undertaken merely to procure offers from solvent persons to take or subscribe for the company's shares to the number of 100,000, at not less than 5 cents per share, within the time limited. This they could legally do. I fully appreciate the