

Nor does the fact that some of the supplies of the appellants were used in connection with the work after the discovery had been made, necessarily render what was done work to the benefit of which the appellants are entitled. It was, no doubt, improper of Sharpe to make use of these supplies of his employers without their consent, but that is the most that can be said of it.

Nor is the fact that some of the appellants' men assisted in the work material, as the work was done after hours, and the men were paid for what they did, not by the appellants, but by Sharpe.

Upon the whole, we see no reason for differing from the view taken by the Commissioner, that the principle of equity which the Divisional Court thought was applicable, and entitled the appellants to the benefit of the discovery made by Wright, is not applicable, on the facts and circumstances as they appeared upon the evidence taken at the last hearing, and which were materially different from the hypothesis upon which the Divisional Court proceeded in reaching its conclusion.

The appeal fails and should be dismissed with costs.

DIVISIONAL COURT.

JULY 29TH, 1910.

\*GOODALL v. CLARKE.

*Damages—Breach of Contract—Conversion and Sale of Shares of no Market Value—Bona Fides in Selling at Best Price Obtainable—Higher Price Realised at Subsequent Sale—Exceptional Circumstances—Measure of Damages—Estimate as if by Jury.*

Appeal by the plaintiff from an order of MEREDITH, C.J.C.P., upon appeal from the report of George Kappelle, an Official Referee, varying the report by reducing the amount of damages assessed by the Referee.

The reference was to assess the damages which the plaintiff sustained from breach of contract in the sale of 20,000 shares of the capital stock of the Lawson Mine Limited.

The Referee found 40 cents a share to be the value of the shares at the time of their conversion, and assessed the damages by reason of the breach of contract at \$8,000. The Referee further found that the defendant had paid the plaintiff \$5,100, leaving a balance due of \$2,900 to be paid, with interest at 5 per

\* This case will be reported in the Ontario Law Reports.