

any moment after receiving the scrip from defendants, and they would have been in a position to sell immediately after.

Upon the evidence it is clear that there was a plain intention on the part of plaintiffs to sell. They were not intending to hold the shares as an investment. Their intention was to make sale as soon as practicable in order to being about a speedy liquidation of the assets for the creditors of the Elgin Loan Co. They were desirous of selling as soon as possible, and at all events whenever the shares reached par in the market. And they would and could have sold at the figures which were reached early in July.

I think we should conclude that, if the shares had been transferred to plaintiffs, they would have sold them during the first 10 days of July, at which time the Dominion Coal Co. stock had risen above par, and the Dominion Iron and Steel Co. stock was selling in Montreal at from 58 to 60 per share. Upon this footing, and taking 31st July, 1903, as the limit, as found by the Chancellor, the damages awarded by him appear to be a fair and reasonable compensation to plaintiffs.

But plaintiffs, by way of cross-appeal, contend that the period within which the differences are to be fixed is that between 30th June and 12th September. And but for the order made in this action on 28th July that would be the case. Plaintiffs did not receive actual delivery of the scrip until the 12th September. But, the matter having been brought into Court, an order was made which afforded an opportunity to plaintiffs to avoid further loss in a declining market. True, the order was not framed to provide for a sale under the direction of the Court, but, in view of its having been made in the action brought to settle the question of right, and of the financial standing of defendants, it would have been reasonable for plaintiffs, if they were desirous of then selling, to have accepted this proposal and allowed sales to be made in accordance with the order. The proceeds would have been secure, and the Court could have dealt with them and with all questions of damages. On the other hand, if plaintiffs were not desirous of selling, there is no reason why they should be entitled to ask damages by reason of a further decline in price. And, as the Chancellor has held, their unwillingness to agree to a sale at that time is attributable to their disinclination to sell at the then current prices. These considerations create a position entirely different to that arising upon the offer of 30th June. All parties were now in Court, and the subject matter of the action was before the Court and subject to its jurisdiction. The order made opened the way towards the prevention of further dam-