

The
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COURT OF APPEAL.

DECEMBER 30TH, 1911.

*SHARPE v. WHITE.

*Damages—Breach of Contract to Take and Pay for Shares—
Measure of Damages—Ascertainment of Market-price of
Shares at Date of Breach or Breaches—Difference between
Contract-price and Market-price.*

Appeal by the defendants from the order of CLUTE, J., 2 O.W.N. 849, dismissing the defendants' appeal from the report of an Official Referee, and directing judgment to be entered for the plaintiff for \$66,106.65, the damages assessed by the Referee, and interest.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., for the defendants.
C. A. Moss, for the plaintiff.

GARROW, J.A. :—The defendants agreed to purchase from the plaintiff 1,000,000 shares of . . . Cobalt Merger Limited, at the price of \$150,000, payable \$5,000 down, \$25,000 on the 30th June, 1907, \$25,000 on the 25th June, 1907, \$50,000 on the 25th July, 1907, and \$45,000 on the 25th August, 1907. The \$5,000 payment was duly made.

On the 1st June, 1907, the plaintiff was notified by the defendants that they did not intend to carry out the contract; and this action was commenced on the 6th June, 1907, in which the plaintiff asked for specific performance, or, in the alternative, for damages. At the trial he was put to his election, and elected to take damages, whereupon the reference was directed. The judgment is dated the 18th June, 1908.

*To be reported in the Ontario Law Reports.