

Local Master, confirming the report, and from the judgment on further directions.

See *Hyatt v. Allen* (1911-12), 2 O.W.N. 927, 3 O.W.N. 370, 1401, affirmed by the Judicial Committee of the Privy Council: *Hyatt v. Allen* (1914), 26 O.W.R. 215.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellants.

E. G. Porter, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.C.P., delivering judgment, said that the action was not brought to recover damages for deceit, but was brought and the plaintiffs' claim in it given effect to accordingly, to have it adjudged that the defendants were not personally entitled to the money and property in question in the action, but were, as directors, trustees of it for the benefit of all the shareholders of the Lakeside Canning Company; and the plaintiffs succeeded accordingly.

Upon the reference, the Local Master treated the defendants as if they were bound to account in money for the value of the property on the day when they received it, which was quite erroneous. The plaintiffs actually prevented the sale, and must bear the consequences. The appeal must be allowed as to this item.

So, too, the Master erred in charging the defendants with interest upon the money of which the defendants were held to be trustees for all the shareholders. This money was deposited in a chartered bank during part of the time of this lengthy litigation. Leaving it there was no breach of trust; it was a reasonable and proper thing to do; and all the interest to which the shareholders were entitled was that which it earned when so deposited. The appeal must be allowed as to this item also.

As to the application for a reference back upon the question of estoppel of some of the shareholders from claiming any benefit of the judgment in this action, the matter might well be opened again if there were any cogent evidence of any such estoppel; but, as it is, without any kind of evidence upon the subject, and without even an assertion of counsel that any such case exists, there could be no excuse for re-opening the reference as to this. The appeal as to this should be dismissed.

The appeal as to further remuneration for the trustees should also be dismissed. In all the circumstances, the trustees were well recompensed in the additional pay allowed by the Master.