

ceased actively to concern himself in the new business, the damages which the defendant should pay may be fairly put at \$500.

Appeal allowed to this extent, and Master's report varied by fixing the damages at \$500. No costs to either party of any of the appeals.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

OSLER, GARROW, and MACLAREN, JJ.A., also concurred.

DECEMBER 31ST, 1909.

BARBER v. WILLS AND KEMERER.

*Contract — Transfer of Shares — Condition — Sale of Shares —
Notice—Conversion—Damages.*

Appeal by the plaintiff from the judgment of RIDDELL, J., dismissing the action, which was brought by the assignee for the benefit of creditors of the firm of Stewart & Lockwood, to compel delivery of 705 shares of the capital stock of the Nipissing Mines Limited, or for conversion thereof and an account.

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

Shirley Denison and A. R. Clute, for the plaintiff.

W. R. Smyth, K.C., and M. P. Vandervoort, for defendant Wills.

M. H. Ludwig, for defendant Kemerer.

MEREDITH, J.A.:—The trial Judge has found, upon testimony which, however much it might arouse suspicion, is not contradicted by any other testimony, that there was no obligation, on the part of either of the defendants, to transfer the stock in question until every indebtedness of Stewart to Wills was paid. That finding cannot be disturbed. One may be doubtful whether it is in accordance with the actual fact; and if the opposite had been found at least equally doubtful.

Starting with that fact established, the rest of the case presents no great difficulty to my mind.