

ROSE, J.

JULY 5TH, 1918.

*McMAHON v. KIELY SMITH & AMOS.

Contract—Brokers—Stock Exchange—Sale by Brokers of Customer's Shares to another Broker—Sale not Made upon Exchange—Failure of Purchaser to Make Payment in Full—Liability of Brokers to Customer for Breach of Duty in not Making Sale upon Exchange—Remedies Open in such Case—Damages—Assessment of.

Action to recover \$1,469.40, the balance alleged to be due upon a sale by the defendants (brokers) for the plaintiff of certain shares of the capital stock of a mining company.

The action was tried without a jury at Haileybury.

J. M. Ferguson, for the plaintiff.

Hamilton Cassels, K.C., for the defendants.

ROSE, J., in a written judgment, said that the plaintiff, being the owner of certain "pooled" shares, which he would not be able to deliver until the opening of the pool, instructed the defendants, who were members of the Standard Stock and Mining Exchange, to sell the shares at 55 or better, "seller's option 60 days or delivery 60 days." The defendants sold the shares, at 60, to a broker, a member of the same Exchange; but the sale was not made upon the Exchange, and so could not be recorded as a Stock Exchange transaction. The purchaser had paid for 2,050 of the shares, and had had delivery of 2,000 of them, but was in default as to the balance, and, apparently, was not in a position financially to pay the balance at present.

The plaintiff's case was, that the obligation of the defendants was to make the sale on the Exchange and subject to the rules of the Exchange; that, if they had performed their duty, there would have been security for the payment of the price; and that the defendants, therefore, were liable to him for the unpaid balance.

The contract between the plaintiff and the defendants was as the plaintiff stated it: Queensland Investment and Land Co. Limited v. O'Connell and Palmer (1896), 12 Times L.R. 502; Forget v. Baxter, [1900] A.C. 467, 479.

The evidence fell short of establishing an adoption by the plaintiff of the defendants' action, in any such sense as involved a release of whatever claim he would otherwise have against them; and the plaintiff was entitled to recover whatever actual damage

* This case and all others so marked to be reported in the Ontario Law Reports.