

mark, known as "Bostons," which had acquired a favourable reputation. The defendant was incorporated in Canada in 1896 by the name of "The Boston Rubber Company of Montreal," and manufactured and dealt in similar goods, on one grade of which was impressed its corporate name, these goods being referred to in its price lists, catalogues and advertisements as "Bostons" and the company's name frequently mentioned therein as "Boston Rubber Company." In an action to restrain the defendant from continuing to use such impressed trade-mark or any other similar mark on such goods as an infringement of the plaintiff's registered trade-mark,

*Held*, reversing the judgment appealed from, 7 Ex. C.R. 187, that under the circumstances the use by the defendant of its corporate name in the manner described on goods of its own manufacture similar to those manufactured by the plaintiff was a fraudulent infringement of the plaintiff's registered trade-mark and calculated to deceive the public, and so, in bad faith, to obtain sales of its own goods as if they were plaintiff's manufacture, and consequently, that the plaintiff was entitled to an injunction restraining the defendant from so using its corporate name as a mark upon such goods manufactured by it in Canada. Appeal allowed with costs.

*R. F. Sinclair*, for appellant. *Beique*, K.C., and *McGonn*, K.C., for respondent.

B.C.]

BRIGGS v. NEWSWANDER.

[May 15.

*Contract—Mining claim—Agreement for sale—Construction—Enhanced value.*

By an agreement in writing signed by both parties B. offered to convey his interest in certain mining claims to N. for a price named, with a stipulation that if the claims proved on development to be valuable and a joint stock company was formed by N. or his associates, N. might allot or cause to be allotted to B. such amount of shares as he should deem meet. By a contemporaneous agreement N. promised and agreed that a company should be immediately formed and that B. should have a reasonable amount of the stock according to its value. No company was formed by N., and B. brought an action for a declaration that he was entitled to an undivided half interest in the claims or that the agreement should be specifically performed.

*Held*, reversing the judgment of the Supreme Court of British Columbia that the dual agreement above mentioned was for a transfer at a nominal price in trust to enable N. to capitalize the properties and form a company to work them on such terms as to allotting stock to B. as the parties should mutually agree upon; and that on breach of said trust B. was entitled to a reconveyance of his interest in the claims and an account of monies received or that should have been received from the working thereof in the meantime. Appeal allowed with costs.

*Travers Lewis*, for appellant. *Davis*, K.C. for respondent.