

The plaintiffs having failed to shew that the defendants were in default are not entitled to succeed against them, and their action should have been dismissed.

It follows that the plaintiffs, having failed to perform their part of the contract, are liable for the consequences of the breach, unless they can excuse themselves on the ground of prevention by the other vessels. But they were aware when they made the contract of the chance of there being a block of vessels awaiting their turn for the last trip, and must be regarded as having undertaken the chances resulting from that condition of affairs. Their insurance was liable to be ended unless they were on a voyage at noon on the 5th December, and, knowing that and the probability of a block at Fort William, they should have made sure of the arrival of the vessel in time to enable her to load in time. And not having done so and having departed without the cargo, the defendants are entitled to such damages as they can shew to be such as may be considered to have fairly resulted from the breach of the contract, and to have been in the contemplation of the parties. The defendants make claim for loss of interest on the price of the cargo, for insurance, for extra freight, and for depreciation in price. They were relieved by McGaw, the purchaser, from the contract they had made to deliver the grain at Goderich, and they were, therefore, not called upon to forward the grain by other means of conveyance at an increased rate, and no charge on that account can be maintained. The damages are, therefore, to be measured by the injury suffered by the cargo being left on the defendants' hands: *Mayne*, 3rd ed., p. 259.

It appears that the price that was to be paid by McGaw was regulated by the price of Chicago May wheat, and, although the defendants say there was a loss to them of profit by reason of such sale being given up, their manager, Mr. Phillips, was unable to put it into figures.

Besides, the defendants disposed of a considerable part, if not all, of the quantity to be carried, at the elevators or at Fort William, not long after the plaintiffs' breach, at figures which Phillips rather vaguely puts at from 3 to 4 cents a bushel below the price on the 5th December, but he furnishes no satisfactory data, and on the evidence it is not possible to say that the price realized was not equal to the price to be ultimately paid at Goderich, less the 4 1-2 cents per bushel for freight. The fact of the sales and that Mr. Phillips found it impossible to separate the grain intended for Goderich from the other grain in the elevators, upon which he had to pay storage and insurance, reduce the claim for interest, storage, and insurance to a small sum, which does not appear to