

was held to be recoverable as damages under an allegation of general damages, was disapproved of in *Marrin v. Graver*.

In *Day v. Singleton*, [1899] 2 Ch. 320, Lindley, M.R., and Rigby, L.J., expressed the view that, where a lessee fails to obtain possession through the fault of the lessor, he is entitled to the damages which he sustains by the loss of his bargain; and Sir F. H. Jeune was of the opinion that in estimating the amount of these damages the fact that a larger rental was subsequently obtained by the defaulting landlord would be material for consideration (at p. 335).

In *Jacques v. Millar*, 6 Ch. D. 153, Fry, J., awarded to a disappointed tenant, in addition to specific performance, damages for the period during which he was kept out of possession upon the footing of "what would have been the value of the possession of the premises to the plaintiff" during such period.

The text-writers and the authorities agree that where by leasing to a third person, a lessor puts it out of his power to give possession of demised premises, he is liable to pay damages to the person aggrieved to the extent of the value of his bargain. In such a case the difference between the rent to be paid and the actual value of the premises at the time of the breach for the unexpired term, is considered the natural and proximate damage.

Upon the authority of *Marrin v. Graver*, a tenant cannot recover in Ontario for prospective loss of profits from the business which he intended to carry on upon the premises. Neither is he entitled to treat his landlord as a trustee of the premises, and to hold him accountable for whatever increase in rental he may gain upon a re-leasing of the premises. In some cases of breach of contract between master and servant, this measure of damages has been applied. See *Sheppard Publishing Co. v. Harkins*, 9 O. L. R. 504, 7 O. W. R. 482. But, so far as I can discover, it has not been applied in any other class of cases to the assessment of damages for breach of contract. The basis upon which the tenant's damages should be assessed is compensation to him for the loss of his lease, and not punishment to the landlord for his breach of duty.

What, then, upon the evidence, was the value of his bargain to the plaintiff—what was the difference at the time of breach between the rental which he was to pay for the premises and their actual value? The evidence shews that between 1905—when the agreement was made—and