

certain contracts which defendant was then "about to enter into" for the supply to certain persons and companies of sand from a gravel pit owned by defendant. Defendant, in breach of this agreement, sold his gravel pit. Plaintiff sued for damages, claiming an account of profits which defendant might have made had he obtained and carried out the contracts in contemplation when the agreement was entered into. The action came on for trial before Meredith, J., who found that the sale of the gravel pit by defendant was a breach of his contract with plaintiff, because defendant had thereby put it out of his power to perform such contract, and . . . referred it to the Master. . . . "to assess the damages suffered by reason of the said breach of contract by defendant."

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The Master . . . interpreted the judgment pronounced at the trial as entitling plaintiff to damages in respect of the several contracts mentioned in his agreement with defendant, upon the footing that defendant had contracted absolutely and in any event to obtain such contracts and to carry them out, and account for profits to arise therefrom; he declined to receive evidence tendered by defendant to shew that several of such contracts could not have been procured, on the ground that upon this issue the judgment at the trial was conclusive against defendant; . . . and he proceeded, upon this basis, to inquire what profits might have been made by plaintiff had he procured and carried out all the contracts in question. The amount so ascertained he has awarded to plaintiff as damages.

The Master has, I think, wholly misconceived the effect of the judgment at the trial and the scope of the reference to himself. The formal judgment certainly does not determine that plaintiff is entitled to damages upon this basis. Nor does the opinion of the trial Judge support such an interpretation of the judgment as entered. Although . . . he is reported as saying, "The plaintiff now becomes entitled to damages to the extent of what his profits would have been if these contracts had been carried out," upon being asked . . . if he will make any direction as to the method of ascertaining the damages, the Judge replies: "I think I must leave the whole question of damages to be dealt with by the proper officer. The defendant was to enter into contracts. It may very well be that, if he could not enter into