

maintains that his client is entitled to recover the amount by which the rental now payable to the defendant exceeds that which the plaintiff had agreed to pay. He says that this amount represents the difference between the actual rental value of the premises and the rent payable by his client, and is therefore the proper measure of the damages sustained. He further urges that the defendant should not be allowed to profit by his breach of contract, and that, unless damages are awarded upon this footing, the breach of contract will in fact prove profitable.

For the defendant, on the other hand, it is urged that the plaintiff's financial position after the fire, his selling and otherwise disposing of his shop fixtures and furniture, and his leaving the city of Ottawa without any definite understanding with the defendant as to the repairs, or as to the time when the shop would be ready for occupation, indicate clearly that he had no intention of resuming business, and that the evidence shews that he was not in fact financially able to again fit up and open his confectionery shop.

No evidence whatever was given to shew that the plaintiff could not have readily procured other premises equally suitable for his purposes, and at a rental not greater. The plaintiff made no effort to procure such premises, although, according to his own statement, he knew early in February that the defendant did not intend to allow him to have possession of his property.

The plaintiff gave some evidence to shew the profits which he had made in carrying on his business before the fire took place. His evidence upon this branch of the case I think decidedly extravagant.

In *Marrin v. Graver*, 8 O. R. 39, it was held by the Queen's Bench Divisional Court, Wilson, C.J., dissenting, that the proper measure of damages in an action by a tenant against his landlord for refusing to give him possession of the demised premises, is the difference between what the tenant agreed to pay for the premises and what they were really worth. It is not open to the tenant to shew that he rented the premises for the purpose of carrying on a business, for which the landlord was aware that he could not procure other premises, and to claim the profits which he might have made in such business, had he been let into possession. The early case of *Ward v. Smith*, 11 Price 19, where loss of profits