

the general freight agent of the company, ratified. Under the Judicature Act it is not the form in which the case is presented that should be considered, but the substantial question in dispute between the parties; and so although the defendants may, on the issue raised by the first plea, be entitled to succeed, the real question is, have they performed the contract they really entered into, to carry the seed of the plaintiff in their possession to London, and if not, what is the damage that has actually flowed to the plaintiff from their neglect to do so? Any amendment necessary to present this question in pleading should be made. It is clear the defendants did not carry the seed to London, and the plaintiff is entitled to judgment for the breach of their contract for such amount of damages as naturally flow from the breach, or which may be said to have been in the actual contemplation of the parties.

The authorities on the measure of damages are not all reconcilable. In *The Great Western Railway Co.*, appellants, and *Redmayne*, respondent, L. R. 1 C. P. 329, it was held, in the absence of notice to the defendants of the object for which the goods were sent, where the plaintiff had sent goods by the defendants' railway from Manchester to his traveller at Cardiff, the delivery of which was delayed until after the traveller had left Cardiff, and plaintiff lost the profits that he would have derived from a sale at Cardiff, the plaintiff could not recover such loss of profits as damages for the delay. In *Horne v. Midland Ry. Co.*, L. R. 7 C. P. 583, and in Appeal, 8 C. P. 131, with a good deal of diversity of opinion among the Judges upon the effect of the notice in that case to the defendants, it was held the plaintiff was not entitled to recover for delay in delivery of goods, the difference between the price a purchaser agreed to pay, and what they had to be sold at by reason of the purchaser's refusal to accept them owing to the carrier's delay. Kelly, C. B., Blackburn, J., Mellor, J., Martin, B., and Cleasby, B., held—Lush, J., and Pigott, B., dissenting—that the damage was not such as might reasonably be considered as arising naturally from the