

NOVEMBER 20TH, 1911.

## DEAN v. CORBY DISTILLERY CO.

*Contract—Housing and Feeding of Cattle—Breach—Damages  
—Loss of Weight—Payments—Account.*

Appeal by the defendants from the judgment of BOYD, C.,  
2 O.W.N. 832.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN,  
MEREDITH, and MAGEE, J.J.A.

D. L. McCarthy, K.C., for the defendants.

I. F. Hellmuth, K.C., and D. Urquhart, for the plaintiff.

MOSS, C.J.O.:—Appeal by the defendants from a judgment of the Chancellor, after trial without a jury, awarding payment to the plaintiff of the sum of \$666.05, and directing a reference to the Master to ascertain and state what damages the plaintiff was entitled to over and above the sum of \$666.05, and dismissing a counterclaim of the defendants.

The learned Chancellor, upon the evidence before him, found that the plaintiff was entitled to \$7,500 as damages, in addition to the \$666.05, but stated that, if either party was dissatisfied with the amount, he was to be at liberty to elect to take a reference. The defendants accordingly elected to take a reference; but, upon the argument of the appeal, both parties expressed themselves as willing and desirous that this Court should, upon the evidence as set forth in the case, ascertain and fix the amount of damages (if any), instead of leaving it to the Master.

The sole question, therefore, is as to what, if any, damages the plaintiff is entitled to recover from the defendants.

The defendants entered into an agreement with the plaintiff, evidenced by two instruments in the form of leases, purporting to be made in pursuance of the Act respecting Short Forms of Leases, for the housing and accommodation of and the supply of a specified quality and quantity of distillery slop to cattle belonging to the plaintiff; to the number of 1,200, for a period (called "the season") commencing on the 15th November, 1906, and terminating on the 30th June, 1907. For this service the defendants were to be paid the sum of \$20,400, or \$2,914.28 for each of the seven months; but, for convenience, it was agreed to be paid in eight equal instalments, amounting to