

damages to which the plaintiff is entitled under the judgment.

The Master disallowed a claim made by the plaintiff for expenditures in the construction and operation of a fruit-stand in connection with the business carried on by him, although, as the defendants allege, he included in the earnings of the steamship the receipts of the fruit-stand, and this constitutes the ground of the appeal by the plaintiff from the report.

I am of opinion that the damages have been assessed on a wrong principle. The measure of the plaintiff's damages is the additional sum beyond the contract price which it would have cost him to have hired another steamship to take the place of the one he had hired from the defendants, for the remainder of the season for which the latter had been hired by him, which had still to run when he was prevented from using it owing to its not being in a condition to pass inspection, or, if none could have been hired, the loss he sustained by not being able to run the steamship for the full term for which it had been hired; in other words, such a sum as would put him in the same position as he would have been in if he had not been prevented from running the steamship for the whole of the term for which he had hired it, but had been able to run it during the whole of that term if he had been so minded.

It is manifest that to assess the damages on the principle upon which they have been assessed would work great injustice to the defendants if, as they contend, the steamship could not have run by the plaintiff except at a loss, and would be practically to shift from the shoulders of the plaintiff to those of the defendants the loss necessarily incident to the carrying on of what from the beginning must have proved a losing venture.

I express no opinion, however, as to whether or not this contention of the defendants is well founded.

The appeal of the defendants must, therefore, be allowed, and it will be referred back to the Master to assess the damages on the principle I have indicated, and the appeal of the plaintiff must be dismissed.

There will be no costs of the appeals to either party.