

Allen (Mass.) 500; Beven on Neg. (2nd ed.), p. 90; Bigelow's Leading Cases on Torts, 611, etc., etc. It was also contended that to allow B. to set up the fact that the tug had no engine, would simply be permitting him to take advantage of his own breach of contract with C.

The contention of the counsel of the defendant was that plaintiff could recover such damage only as he could clearly show followed from defendant's breach of contract, i.e., the use of the tug without an engine, and he relied on *Hadley v. Baxendale*, 9 Exch. 341; *Gee v. Lau. & York. R. Co.*, 6 H. & N. 210; *McMann v. Field*, 7 Q.B.D. 591; L.R. 1 Exch. 185; 57 Penn. St. Rep. 209 (1895); 2 Q.B. 688, etc.

It was pointed out by plaintiff's counsel that if plaintiff could not recover from defendant for the loss of his tug that the same defence would be open to C., and thus the plaintiff by reason of having made two contracts was left practically without any remedy whatever. They put this case to the Court: Suppose a man to be the owner of a valuable marsh enclosed by a dyke which has two holes in it. He makes a contract with A. to repair one and with B to repair the other, and both are to complete their work by a certain time, when it is well understood by all parties that if the dyke is not repaired the tide will flood the marsh and destroy the crop. Both A and B break their contracts. Cannot the owner of the marsh recover the whole of his damage against either or both, or can A or B when sued, say "I admit a breach of contract, but the measure of damages is the loss sustained, which you can show was caused solely by my breach, i.e., simply nominal, because the marsh would have been flooded and the crop destroyed just the same by the breach of the other contract."

Only a brief outline of the argument, of course, here is given, but the writer would suggest that if the point is entirely novel, as was stated by the counsel for the plaintiff, it is a most interesting one, and this statement of the case is given in the hope that you or some of your readers may be able to throw some light on the point.

LEX.

Halifax, N.S., January 25th, 1897.