

3. Q. Was side carrier to be furnished? A. Yes.
4. Q. Was it furnished as agreed? A. No.
4. Q. Side carrier being returned and credited on note, was this a settlement of any claim for damages? A. No.
5. Q. If defendant entitled to damages by reason of side stacker not being furnished, how much would you assess it at? A. Two hundred dollars.
6. Q. Was the document of September 1st, 1906, signed by Feighen and part of the contract? A. Yes.

7. Q. What is the value of side stacker? A. \$17.50."

Although the title has not passed it is clear that special damages such as are claimed by the defendant in this case may be validly claimed if the facts justify this finding.

New Hamburg Manufacturing Co. v. Webb, 23 O.L.R. 44, is authority for this proposition, and the reasoning in that case is conclusive against the proposition that in general the amount of damages to be recovered is limited to the value of the machine supplied.

And whatever may have been the state of matters in *Sawyer-Massey v. Ritchie*, 43 S.C.R. 614, which led to the remarks of Mr. Justice Idington at p. 620, I can find nothing in the correspondence or in the conduct of the defendant to estop him from claiming damages if damages are in other respects due him.

Nor can I find that the jury is wrong in their estimate of damages; although the amount must necessarily not be easily capable of definite determination, the elements are quite as clear as in the case of *Chaplin v. Hicks*, 27 Times L.R. 458, and more so—there the defendant contracted that he would give to fifty ladies selected by the votes of readers of a newspaper a chance of presenting themselves before him so that twelve of them might be chosen by him for engagements at varying remuneration. The plaintiff was one of those chosen, but she was not given a reasonable opportunity of presenting herself to the defendant and sued for damages. The jury awarded her damages to the amount of £100, this was sustained by Pickford, J., and the Court of Appeal.

In the present case the damages, while in a sense nearly hypothetical, are not in my view impossible of estimation by a jury. I think therefore all the answers of the jury are justified by the evidence. But upon such answers the defendant proves himself out of Court. By his contract under his signature he agrees that no omission of the company shall confer any right of damages of any kind—he buys under a contract which expressly provides that the company assumes no liability for non-