

"The law, as it is found in the reported cases, has fluctuated; but the principle is now settled that, whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to the carrier from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object." But, while adopting it, he held it was not applicable to the case of a contract to carry goods for a long distance by sea; and, taken in connection with the cases put by him, in which loss of value from a fall in market may be recovered, it seems clear to me in his opinion such damages would not be applicable to the breach of the contract that occurred in the present case. The parties had not in contemplation a sale in future, a sale to be made, but a sale actually made; and that sale, the object in contemplation of the parties, failed through the neglect of the defendants to perform their contract. The consequences in contemplation of the parties ought to be assumed to be the loss of the benefit of the sale that had been made; but, as the terms of that sale had not been specially notified to the defendants, according to the decision in *Horne v. Midland Railway Co.*, L. R. 8 C. P. 131, that loss does not form a proper measure of the damages. In *Simpson v. London and North-Western Railway Co.*, in which Chief Justice Cockburn stated the law as I have above quoted it, no measure of damages was laid down. It was merely held, under the circumstances of that case, the plaintiff was not confined to the actual expenses he was out of pocket. It cannot be regarded as an authority that profits *qua* profits are recoverable against a carrier for failure to carry goods, and as overruling the decisions to the contrary.

In *Wilson v. The Lancashire and Yorkshire Railway Co.*, already quoted from 9 C. B. N. S. 641, Williams, J., expresses himself to the following effect: "As I collect from the report of the learned Judge in this case, the jury appealed to him for information as to how they were to assess the damages,