

chant would do with goods which he was importing, viz., that he took his chance and incurred the risk of a rising or falling market. In such case the mere ordinary chances of the market cannot be supposed to have entered into the minds of the parties when the bargain was made for the delivery of the wood. If the fluctuations of the market are to form an ingredient in estimating damages in such a case as the present, then the contract must be special with reference to that. The contract here is not made for bricks, in which case the rise or fall might have had some bearing upon the question, but the contract is for wood to burn the bricks, and therefore the immediate damage is that which is connected with the price of wood at that time."

Contract price of goods fifty-two dollars, damages three hundred and ninety-seven dollars. Held not excessive for failing to supply them. The contract in *Lalor v. Burrows* (1868), 18 U.C.C.P. 321, was to furnish 180 sets of locks of malleablized iron. Damages were claimed in a lump sum of between \$700 and \$800, and the jury awarded \$397.50, without specifying the items allowed. The court held that there might be damages amounting to this sum and discussed the law as to the various items that might be claimed for, saying, among other things: "If the plaintiff be entitled to procure other goods by reason of the defendant's failure of contract, it makes no difference to him how little he paid, or was to pay the defendant for them, and how much he had to pay to procure or replace them. The damages the defendant may be liable to pay may be enormously beyond any profit or price he was ever to receive for his work, as in *Wilson v. The Newport Dock Co.* (1866), L.R. 1 Ex. 177, and as often happens when a lawyer, who was to get a few dollars for searching a title, has to pay the whole value of the property by reason of some defect which he should have guarded against; or, when a surgeon who has got a few dollars for his services, is called upon to pay for the loss of a limb, or some other misfortune which his patient has suffered from his alleged neglect, far beyond the trifling sum which was to have been his compensation."

Damages for goods not delivered according to contract. In *Colton v. Good* (1854), 11 U.C. Q.B. 153, 155, the plaintiff claimed as damages for the delivery of mill stones not according to the contract, the cost of endeavouring to repair the stones and expenses of dressing them and the damage done to his mill machinery by the broken stones. It was held that he could recover the cost of dressing the useless stones on the same principle as expenses incurred with respect to articles bought in the confidence that they would prove such as the vendor was bound to furnish. The cost of repairing the damage to the machinery was also allowed, the jury being satisfied that the breaking of the stones was not such an accident as could not be fairly charged against the manufacturer, but was occasioned by their not being secured by a sound and strong iron band as usual. The expense of attempting to repair the broken stones was not allowed. The plaintiff had done this on his own responsibility; he could have rejected the stones and recovered back what he had paid for them. He could not be allowed to recover back the amount paid for the stones and also the cost of attempting to repair them.

Note the difference between recovering the cost of dressing the stones under the assumption that they were such as the plaintiff was bound to accept, and the cost of attempting to repair them after it was clear that the plaintiff would be justified in refusing acceptance.