

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

Sir George C. Gibbons, K.C., for the appellants.

Hamilton Cassels, K.C., for the plaintiff, respondent.

HODGINS, J.A., reading the judgment of the Court, referred to *Jamal v. Moola Dawood Sons & Co.*, [1916] 1 A.C. 175; *Hamilton Gas and Light Co. and United Gas and Fuel Co. v. Gest* (1916), 37 O.L.R. 132; *British Westinghouse Electric and Manufacturing Co. Limited v. Underground Electric Railways Co. of London Limited*, [1912] A.C. 673; *Beckham v. Drake* (1849), 2 H.L.C. 579, 608; *Erie County Natural Gas and Fuel Co. v. Carroll*, [1911] A.C. 105; *Wertherm v. Chicoutimi Pulp Co.*, [1911] A.C. 301; *Bwlfa and Merthyr Dare Steam Collieries (1891) Limited v. Pontypridd Waterworks Co.*, [1903] A.C. 426; *Brace v. Calder*, [1895] 2 Q.B. 253; *Sowdon v. Mills* (1861), 30 L.J.Q.B. 175; *Emmens v. Elderton* (1853), 4 H.L.C. 624, 645; *Laishley v. Gould Bicycle Co.* (1902), 4 O.L.R. 350; and said that there was, if the profits made by the respondent were properly to be taken into account, no damage in fact suffered by him owing to the breach of contract, because in the period of two years he made more than his two years' salary. The trial Judge held that, as this was earned not in similar employment, but in a commercial venture which necessitated the respondent pledging his credit and involving his assets, it was not relevant to the question of damages on this contract. The contrary statement, that anything that shews that the respondent is not actually out of pocket must be considered in assessing damages, is too broad, and must be modified by eliminating everything that lies outside the idea that the respondent is in some way forced to do something caused by the breach of contract, thus mitigating the results which flow from its breach. If his time and ability, which he had exchanged for a salary, are, upon his employment ceasing, devoted to producing an income to take the place of that salary, whether by way of sale and purchase, commission, or otherwise, it is very difficult to suggest any reason why the amount he realises from the employment of these same two factors should not be treated as something to be set off against the damages. If it became evident that the respondent's responsibility and assets did in fact earn the profit, and not his time and ability, the connection would disappear. But, the connection being once granted, the profits, the making of which involved his time and ability, should be fully taken into account in mitigating the damages.

The fact that what the respondent did was entirely different