If the plaintiff seeks to enlarge the defendant's liability by reason of special circumstances existing at the time of the making of the contract, as, for example, the plaintiff's intention to breed from the mare registrable stock, he must shew that such special circumstances were brought to the defendant's knowledge at the time of the contract, and were accepted by him as the basis on which the contract was made. If such a case had been shewn here, then damages because of the non-production of the pedigree might, under such special circumstances, be said to have been in the contemplation of the parties in the event of a breach of the contract, and therefore recoverable: Hammond & Co. v. Bussy (1887), 20 Q.B.D. 79; Randall v. Raper, E. B. & E. 84.

But no such case was made. The parties were strangers to each other, and no communication had passed between them as to the purpose for which the plaintiff was purchasing the animal. It is true that she was offered for sale as standard-bred with a pedigree, but that circumstance does not, with reasonable certainty, imply that she was being bought for breeding purposes; and, therefore, it would not justify imputing to the defendant knowledge of the plaintiff's object.

I, therefore, think that damages because of inability to register the mare's progeny were not within the contemplation of the parties at the time of the contract; and, therefore, were not the reasonable and natural result of the defendant's breach of contract: Sapwell v. Bass, [1910] 2 K.B. 486.

For these reasons, I think that the only damages recoverable by the plaintiff are the $100, being the mare's diminished value because of the absence of the pedigree.

The judgment, therefore, should be reduced to $100, with costs on the County Court scale up to the time of payment into Court of $100 by the defendant, with a set-off of the defendant's subsequent costs; no costs of this appeal to either party.

SUTHERLAND and LEITCH, JJ., agreed with MULOCK, C.J. Ex.

RIDDELL, J., agreed in the result, for reasons stated in writing. He referred to the following cases: Hadley v. Baxendale, 9 Ex. 341; Sapwell v. Bass, [1910] 2 K.B. 486; Powell v. Vickers Sons & Maxim, [1907] 1 K.B. 71; Gretton v. Mees (1878), 7 Ch. D. 839; Buckstone v. Higgs (1889), 44 Ch. D. 174; Wheeler v. United Telephone Co. (1884), 13 Q.B.D. 597; Mullett v. Mason (1886), L.R. 1 C.P. 559; Sherrod v. Longdon (1886), 21 Iowa 518; Smith v. Green (1879), 1 C.P.D. 92.

Judgment below varied.