$175 was deducted in respect of one item of the counterclaim, and gave judgment for the plaintiff accordingly with costs; with a provision that the defendant was to receive the rent for 1920 and pay the taxes, including drainage rates. No reference was made by the trial Judge to the claim in deceit. The case based on deceit was a weak one, and probably for that reason was given the go-by by both Judge and counsel.

What then was the proper measure of the plaintiff's damages?

Reference to Marrin v. Graver (1885), 8 O.R. 39; Rotman v. Pennett (1920), 47 O.L.R. 433; Grindell v. Bass, [1920] 2 Ch. 487, 494; Hadley v. Baxendale (1854), 9 Ex. 341, 346, 355, 356.

There was no reason why the rule given in Hadley v. Baxendale should not be applied in the case at bar in assessing the damages which the defendant should pay for the breach of his covenant for quiet enjoyment. It was known to the defendant that the purpose of the plaintiff in buying the farm was to grow sugar beets upon it, and the parties to the contract must have contemplated that the result of the plaintiff not getting possession would be loss of the profit he would make from growing the beets on the farm; and the defendant was, therefore, liable for the loss which the plaintiff sustained by not being able to obtain possession.

Nothing that was decided in Marrin v. Graver was opposed to that view.

The cases as to damages for breach of an agreement to sell and convey, arising from defect of title, were not applicable.

In this view, it was unimportant whether the plaintiff was entitled to recover for breach of the covenant or for deceit, for the damages would be the same in either case.

As grantee of the reversion, the plaintiff became, by the conveyance to him, entitled to the rent payable by the tenant, and he had lost the crop of wheat which was in the ground at the time of the conveyance and also the profit which he would have made if he had been let into possession and had carried out his intention of growing sugar beets on the farm.

The trial Judge erred in assessing the damages as to the sugar beet crop at $1,200. It was satisfactorily shewn that it was practically impossible to grow sugar beets successfully during the season of 1920.

The damages in respect of the wheat were assessed at $850, made up of the value of the wheat raised, less the cost of harvesting, threshing, and hauling.

The loss the plaintiff sustained in respect of the wheat, assuming that he was to get the rent for 1920, was not $850, but that sum less the proportion of the rent attributable to the 18 acres on which it was grown. The farm consisted of 100 acres, and the rent was $625 per annum. The deduction would therefore be $112.50.