

the price is sued for, the defendant may show that the machine was not as warranted, and so reduce the claim by the difference between the value of the machine as warranted and its actual value in fact."

Compare *Copeland v. Hamilton* (1893), 9 Man. L.R. 143.

*Damages governed by market price.* Where the defendant failed to deliver according to contract, the plaintiff's damages were held to be the difference between the contract price and the market price. Defendants sought to reduce this amount by saying that the plaintiff had contracted to sell the goods at a lower price, so that he had not in reality lost as much as he was claiming. "But, said Osler, J., in *Ballantyne v. Watson* (1880), 30 U.C.C.P. 529, at 541, "this is not the way to look at it. The defendant has nothing to do with the profit the plaintiff might have made. Assuming that the plaintiff sold this cheese, he was not able to deliver it, for he had not got it from the defendant. If the sub-sale went off for that reason, the plaintiff was not thereby disentitled from going into the market and purchasing the same quantity at the market price, which was ten cents per lb., or it is perhaps not assuming too much to infer that he filled the sub-contract by the delivery of other cheese which he would have had to purchase in the market at the increased price, or to supply from his own stock, which was then worth to him ten cents per pound. In either case he would sustain a loss of four cents per lb. There seems no reason, therefore, to reduce the damages."

*Notice of purpose for which goods required. Damages in such case.* In *Watrous v. Bates* (1854), 5 U.C.C.P. 366, defendants agreed to furnish plaintiff with railway ties to enable them to carry out a contract for the supply of ties to Sykes & Co. The trial judge directed the jury that the measure of plaintiff's damages was the difference between what he was to pay defendant for the ties and the price he was to receive from Sykes & Co. Although the profits to be made on the article contracted for are in general too remote to be considered as damages for a breach of contract, this principle is subject to be controlled by the circumstances of the particular case. The words of Baron Alderson in *Hadley v. Baxendale* (1854), 9 Ex. 341, 156 E.R. 145, were quoted: "Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such contract which they would reasonably contemplate would be the amount of the injury which would ordinarily follow from a breach of contract, under these special circumstances so known and communicated."

An attempt was made to apply this principle in *Feehan v. Hallinan*, (1856), 13 U.C. Q.B. 440, the purpose for which cordwood was bought being the burning of bricks, and the defendant having failed to supply wood according to his contract. Plaintiff claimed that he was entitled to recover damages occasioned by the fall in the price of bricks while he was waiting for the wood. It does not appear that the purpose for which the wood was bought was communicated, but the judgment does not seem to proceed upon this ground. It reads as if the damages would have been considered remote under any circumstances.

"The plaintiff's case shows nothing more than that he dealt with the bricks which he intended to make and burn, in the same manner that a mer-