BREACH OF CONTRACT—DAMAGES—PROFITS.

NEW YORK COURT OF APPEALS, JANUARY 19, 1886.

WAKEMAN v. WHEELER & WILSON CO.

A party violating his contract should not be permitted entirely to escape liability because the amount of damages which he has caused is uncertain.

When it is certain that damages have been caused by a breach of contract, and the only uncertainty is as to their amount, there can rarely be good reason for refusing, on account of such uncertainty, all damages whatever for the breach.

EARL, J. This action was brought to recover damages for the breach of an agreement made in the city of New York, in February, 1878, which is set forth in the complaint as follows: "That if the plaintiffs shall succeed in placing, that is to say, selling, fifty of the defendant's sewing machines to one firm, or party, in the republic of Mexico, during the next trip of their agent to that country, then about to be made, they, the plaintiffs, for every fifty machines so sold, shall have the sole agency for the sale of the defendant's sewing machines in that locality and its vicinity in that republic, and the defendant should furnish to the plaintiffs machines at the lowest net gold prices." The defendant denied the agreement, but the jury found it substantially as alleged, and it is conceded that we must assume here that such an agreement was made.

The plaintiffs at once entered upon the performance of the agreement, purchased a sample machine of the defendant, caused their agent to be instructed in its mechanism and management, and then sent him to Mexico. After reaching there he sold fifty machines to one Mead, of San Louis Potosi, on his promise to Mead that he should be the general agent of the defendant for that locality and its vicinity. The order for fifty machines was sent to the defendant and filled by it, and those machines were forwarded to Mexico and paid for. Shortly thereafter plaintiffs' agent made another sale of fifty machines for another locality in Mexico, and an order for those machines was sent to defendant, which it absolutely refused to fill. Plaintiffs' agent procured another order for one machine, and sent that to the defendant, which it also refused to fill; and then it refused to fill any further orders from the plaintiffs, or their agents, and absolutely refused to perform and repudiated its agreement.

Upon the trial of the action the plaintiffs made various offers of evidence to show the value of their contract with the defendant, the most of which were excluded. In his charge to the jury, the judge held as a matter of law that the plaintiffs could recover damages only for the refusal of the defendants to fill the orders actually given; and the plaintiffs' profits having been shown to be $4 on a machine, their recovery was thus limited to $204. They excepted to the rule of damages thus laid down, and the sole question for our determination is what, upon the facts of this case, was the proper rule of damages? Were the plaintiffs confined to the damages suffered by them in consequence of the refusal of the defendant to fill the two orders for fifty-one machines, or were they entitled also to recover the damages which they sustained by a total breach of the agreement on the part of the defendants?

The judge limited the damage, as stated in his charge, because any further allowance of damages for the breach of the agreement would, as he claimed, be merely speculative and imaginary. It is frequently difficult to apply the rule of damages, and to determine how far and when opinion evidence may be received to prove the amount of damages, and the difficulty is encountered in a marked degree in this case.

One who violates his contract with another is liable for all the direct and proximate damages which result from the violation. The damages must not be merely speculative, possible and imaginary, but they must be reasonably certain, and such only as actually follow or may follow from the breach of the contract. They may be so remote as not to be directly traceable to the breach, or they may be the result of other intervening causes, and then they cannot be