

Glyn Osler, for the appellant.

J. C. Makins, K.C., for the plaintiff, the respondent.

MULOCK, C.J. Ex.:—This action arises out of the sale by the defendant to the plaintiff of a mare at public auction. The statement of claim alleges that at the sale "the defendant warranted that the said mare was standard-bred, and that he was in possession of her pedigree, shewing that she was standard-bred, and agreed that the said pedigree would be furnished forthwith to the purchaser of the said mare at the sale."

The plaintiff, being the highest bidder, became the purchaser at the price of \$178, but the defendant refused to furnish the promised pedigree. Hence this action.

The case was tried without a jury, and the plaintiff sought to shew that the mare was not standard-bred, but failed on that issue; and his only ground of complaint is the non-delivery of the pedigree, the absence of which prevents the registration of the animal's colts in the registry for standard horses.

The learned trial Judge disallowed any claim for damages because of the non-delivery of the pedigree, but allowed damages in these words: "But I do think that the plaintiff is entitled to damages for the failure to provide the pedigree, using it in this enlarged sense so far as the foals are concerned." That is, he holds the plaintiff entitled to damages because of the loss of profits from the mare's colts.

With respect, I am unable to agree with either of the conclusions of the learned trial Judge. He has found as a fact that what was sold and bought was a standard-bred mare, with a pedigree, but what the defendant got was a standard-bred mare without a pedigree. For this breach of contract the plaintiff is entitled to recover as damages a sum equal to the difference in value of the mare with and without a pedigree. Her value with a pedigree was established at the auction sale as being \$178; without a pedigree, the evidence, I think, shews the value to be about \$78, and the plaintiff is entitled to judgment for the difference, namely, \$100.

The general principle on which damages are awarded for breach of contract is, that the plaintiff is entitled to only such damages as may reasonably be supposed to have been in the contemplation of the parties when they made the contract as the probable result of a breach of it: *Hadley v. Baxendale*, 9 Ex. 341; *Halsbury's Laws of England*, vol. 10, p. 313; *Thomas v. Dingley*, 70 Me. 102.