

In this statement, the defendants set forth items of payment and outlay on account of the plaintiff, aggregating \$1,613.55, and it is admitted that these items are correct. But in the same statement the defendants credit the plaintiff with \$2,279.60 value of shortage in supply of slops, and strike a balance purporting to shew the defendants indebted to the plaintiff in the sum of \$666.05. And, if there had been no claim by the plaintiff for damages, this might have been adopted as a rough and ready adjustment of accounts between the parties. Or, if the plaintiff had accepted the allowance of \$2,279.60 and the dropping of all claim for the difference between \$2,914.28 and \$2,550 per month, as a settlement of his claim for damages, the same result would have been achieved.

But, in dealing at the trial with the plaintiff's claim for damages, the learned Chancellor treated this statement as entitling the plaintiff to the balance of \$666.05, as well as to his full claim for damages. It is plain, however, that the plaintiff was not entitled, under the circumstances, to the credit of \$2,279.60, and this sum should have been stricken from the account, leaving the plaintiff indebted on this account to the defendants in the sum of \$1,613.55, as well as for the difference of amounts due for rental, and the assessment of damages should have been proceeded with upon that footing.

Then as to the amount of damages. An examination of the defendants' accounts rendered to the plaintiff and the plaintiff's own records, shew that the plaintiff was put to a considerable additional outlay for fodder in consequence of the failure of the slop supply; and, on the defendants' own shewing in this respect, as disclosed by an analysis of their accounts, the amount so expended exceeded what would have been necessary if the contract had been carried out.

The testimony as to the fattening and weight-producing qualities of the slop and the rate of increase per month or during the season discloses a very considerable variance of opinion. It is admitted apparently that the average gain or increase in weight of the plaintiff's cattle up to the time of the fire was about 69 lbs. per head. There is evidence tending to shew that it should have been as much as 250 lbs. per head, while others place it at considerably less. The plaintiff estimates 215 lbs., and, deducting 69 lbs., the actual increase therefrom, he makes claim for 146 lbs. per head. There seems to be very little, if any, dispute as to the price, viz., 5½ cents per lb. It is of course impossible to estimate the exact amount of the shortage;