

MIDDLETON, J., in a written opinion, said that it was contended by the defendants that the plaintiff was not entitled to recover damages because the profits made upon a certain business venture, in less than three months, brought him a sum in excess of the salary he would receive during the two years yet to run of his contract; and further that, not having sought employment, but having entered into business on his own account, he had precluded himself from recovering.

Reference to Labatt on Master and Servant, 2nd ed., p. 1181; Macdonell on Master and Servant, 2nd ed., p. 157 et seq.; Reid *v.* Explosives Co. Limited (1878), 19 Q.B.D. 264; Brace *v.* Calder, [1895] 2 Q.B. 253; Beckham *v.* Drake (1849), 2 H.L.C. 579, 606, 607; Hartland *v.* General-Exchange Bank (1866), 14 L.T.R. 863; Sowdon *v.* Mills (1861), 30 L.J.Q.B. 175; McKeen *v.* Crowley (1863), 7 L.T.R. 828.

Where the servant does not seek new employment, his failure to do so does not deprive him of his rights, but the Court must mitigate the damages by estimating his chance of having obtained employment if he had sought it; and the same principle applies where the servant does not choose to remain in idleness, but undertakes an entirely different occupation, or enters upon business for himself.

Applying this principle to the case in hand, it would not have been easy, and perhaps it would have been impossible, for the plaintiff to obtain as good a position as that which he lost. He was a specialist in the selling of linens. The only other linen factory in Ontario was a comparatively small institution. The employment he entered into, like his speculation, was something entirely different from that which he was called upon to undertake to mitigate the damages.

There would have been considerable delay before he could expect to obtain such a position as he was called upon to accept, and I am satisfied that he would not have been able to obtain a position where he would be called upon to perform services that could fairly be compared with services that he had to render under the contract in question, at anything like the same salary.

Having regard to all the considerations that the cases cited and others indicate, the damages should be assessed at \$4,000.