RECENT ENGLISH DECISIONS.

Court of Queen's Bench.

WILLIAMS *v.* REYNOLDS AND ANOTHER.

On the 1st of April the defendants contracted to sell to the plaintiff a quantity of cotton at a certain price, to be delivered during the following August. In contracts for "forward delivery," it is the universal custom of the trade for the purchaser to resell the goods before the time for delivery. Between the date of the contract and the time of delivery, the plaintiff contracted with third persons for the sale to them of cotton, to be delivered in August, relying upon the performance by the defendants of their contract to enable him to fulfil his sub-contract. At the date of the resale, the price of cotton had risen considerably, but had fallen again before the last day of August, when, however, it was still in excess of the price for which the plaintiff had purchased in April. The defendants not having delivered the cotton—*Held*, that the plaintiff was entitled, by way of damages, only to the difference between the contract price and the market price at the time of delivery, and was not entitled to recover the profits he would have realized by the performance of the sub-contract.

The declaration stated that it was agreed between the plaintiff and defendants, that the defendants should sell and deliver to the plaintiff, and that the plaintiff should buy of the defendant, about 500 piculs of China cotton, at the price of 1*s.* 4¾*d.* per pound, to be delivered in the month of August 1864, guaranteed fair; that the defendants delivered, and the plaintiff accepted, 181 piculs, but although all conditions had been performed, &c., and the plaintiff was ready and willing to receive, yet the defendants did not, in the said month of August, or at any other time, deliver to the plaintiff the residue of the cotton, whereby the plaintiff was incapacitated from performing a sub-contract for the sale of the cotton at a higher price than 1*s.* 4¾*d.*, and the plaintiff lost the profit he would have received from the performance of the said contract.

Pleas—first, in denial of the agreement; secondly, that the plaintiff was not ready and willing to accept the residue as alleged; thirdly, that the defendants did deliver the residue in August; and, fourthly, that the defendants were prevented, by the act of the plaintiff, from delivering the said cotton. Issue thereon.

At the trial, which took place before SHEE, J., at the Liverpool Spring Assizes, 1865, it appeared that on the 1st April 1864 the plaintiff and defendants, who were cotton-brokers at Liverpool, entered into a contract for the sale by the latter to the former of "about 500 piculs of cotton at 1*s.* 4⅝*d.* per pound, to be delivered during the following August." On the 25th May the plaintiff contracted to sell to Messrs. Mayall & Anderson the same quantity and quality of cotton, to be delivered in the month of August, at 1*s.* 7¾*d.* per pound. The defendants delivered to the plaintiff during the month of August, 181 piculs of cotton only, in consequence of which the plaintiff was unable to fulfil the contract with Messrs. Mayall & Anderson, beyond the delivery to them of those 181 piculs. On the 1st September the price of cotton, such as that contracted for, had fallen again, and at that date was worth 1*s.* 6¼*d.* only. It was admitted that it was the universal custom of Liverpool, for purchasers for "forward delivery" to resell, as was here done. Reckoning a picul at 129 lbs., the difference between the 500 piculs contracted for and the 181 piculs actually delivered was 41,276 lbs.; and the plaintiff claimed as damages 515*l.* 19*s.*, being the difference between the amount at which he had bought the cotton from the defendants and that for which he had sold it on the 25th May. The defendants contended that the true measure was the difference only between the contract price and the market price of the cotton on the last day of delivery, *i. e.*, the 31st August, which would be only 257*l.* 19*s.* 6*d.* A verdict was taken for the plaintiff for 515*l.* 19*s.*, with leave to the defendants to move to reduce the verdict to 257*l.* 19*s.* 6*d.*, if the court should be of opinion that the measure of damages was only the difference between the contract price and the market price on the last day of delivery where the contract was broken.

A rule was accordingly obtained; against which,

R. G. Williams showed cause, and contended that, inasmuch as by the universal custom of the cotton trade at Liverpool, these contracts passed from hand to hand, a resale must be considered as a natural consequence of the original purchase, and must be taken to have been in the contemplation of the parties; and the defendants were, therefore, liable in damages to the larger amount. [He cited *Berries* v. *Hutchinson*, 18 C. B. N. S. 445; *Wilson* v. *The Lancashire and Yorkshire Railway Company*, 9 Id. 632; *Gee* v. *The Lancashire and Yorkshire Railway Company*, 6 H. & Norm. 211; *Randall* v. *Raper*, 2 Bl. & El. 84; *Smeed* v. *Ford*, 1 El. & El. 602; and *Dunlop* v. *Higgins*, 1 H. L. C. 381.]

Quain, in support of the rule, was not heard.

CROMPTON, J.—I am of opinion that the rule should be made absolute to reduce the damages to 257*l.* 19*s.* 6*d.* The extra damages claimed by the plaintiff are not recoverable, either on principle or authority. The contract is to deliver cotton within a certain time; but between the date of the contract and the limit for the time fixed for delivery the price rises, so that the buyer is in a position to make an advantageous resale; and he, in fact, makes a contract with a third person for the sale of the cotton at an enhanced price. The price afterwards falls again; and at the time of the breaking of the contract by the non-delivery, the real or market price is higher than the contract price, but lower than that at which the plaintiff agreed to sell. These being the facts, the question is, what is the measure of damages? Generally speaking, the difference between the contract price and the real or market price at the time of the breach; but here the plaintiff contends that the criterion of the market price does not apply, and claims the difference between the two contract prices. I am of opinion that this is not the measure of damages to which he is entitled. He claims it as special damage, and, in effect, says, "I made a contract at a higher price, the benefit of which I have lost by your default, and therefore I have a right to pin you to that price." But this is not within the rule which measures damages by the consequences naturally resulting from the breach, or being within the contemplation of the parties. I entirely agree with what is said in Mayne on Damages (p. 15), where the author, citing *Hadley* v. *Baxendale*, says, "The first, and in fact the only inquiry is, whether the damage complained of is the natural and reasonable result of the defendant's act; it will assume that character if it can be shown to be such a consequence as in the ordinary state of things would flow from the act, or, in cases of contract, if it appears to have been contemplated by both parties." The extra damage here sought to be recovered does not come within either branch of the rule; and all the authorities are in opposition to the claim. *Dunlop* v. *Higgins* was a case under the Scotch law, and all that Lord COTTENHAM says amounts to nothing more than it was not a case in which the court ought to reduce the damages to the English rule. In *Berries* v. *Hutchinson* the Court of Common Pleas must be taken to have considered the sub-contract as contemporaneous, and known to the defendant at the time of his contract. In Mayne on Damages (p. 18), the author, after remarking that *Dunlop* v. *Higgins* is not law in England, proceeds to observe, "It is, however, remarkable for a vigorous onslaught upon the English law by so formidable an opponent as Lord COTTENHAM;" and further on, "The question is not what profit the plaintiff might have made, but what profit he professed to be purchasing. Not what damage he actually suffered, but what the other contemplated and undertook to pay for. It is quite clear that loss of profits by a resale can never be contemplated, unless the resale has taken place at the time, and is communicated to the other party. The reason is, that such a profit is utterly incapable of valuation. It may depend upon a change of weather, a scientific discovery, an outbreak of war, a workman's strike. It will depend upon the energy and sagacity of the person who purchases the goods, and the solvency of the person to whom he sells them again. In short, if the Scotch rule were to be carried out to its fair extent, no one could contract to sell goods which were not actually in his possession, without charging an additional premium commensurate to the profits which the vendee might possibly make, and for which he himself would have to pay if prevented from carrying out his agreement." It is obviously impossible that when a contract is made at a particular period when the price is floating, for delivery at a future time, the seller should contemplate as part of his liability in case of default, some other contract to be made before that time elapses. This is exactly like the case of stock purchased for the account, and in such case no one ever thought that anything but the market price at the time of delivery was contemplated; the reason being, that any other loss to the buyer would not be the natural consequence of the breach of contract (which is, perhaps, a better phrase than "too remote"), and would not be in the contemplation of the parties. The seller contracts upon a speculation of what the price may be at the time of delivery, and not with reference to five or six bargains which the buyer may make in the mean time, about which he knows nothing; and this is very different from the case where parties contract for the supply of material to carry out an actual contract already made and known to both of them. The claim is against reason and authority, and we must hold that the plaintiff has no right to recover more than the difference between the contract price and the market price on the day when the delivery of the goods purchased should have taken place.

Blackburn, J.—I am of the same opinion. The facts appear to be, that on the 1st April 1864 the plaintiff and the defendants entered into a contract, by which the defendants agreed to sell 500 piculs of cotton at 1*s.* 4¾*d.* per pound; delivery to be made in August. They had, therefore, all the month of August to supply a certain quantity of cotton answering the description given, at a certain price. At the end of August the cotton still remained undelivered; and if the matter had stood there the damages would be the difference between the contract price and the market price at the end of August, the latest time for delivery, which was 1*s.* 6¼*d.* The question is, whether the plaintiff is, upon the facts, entitled to further damages. The contract was made at Liverpool, where, it is said, the custom is to buy on speculation; and it was admitted that, in the ordinary course of business, such contracts are to a certain extent the subject of resale; that is to say, the buyer does not resell or transfer the contract like a bill of lading, but contracts with some other person to sell a similar quantity of goods, of a like description to those which he has purchased, looking to his own vendor for the means of carrying out the sub-contract. Cases, no doubt, may exist where, if one party make a contract binding himself to deliver goods, he makes the contract to deliver to others whom the purchaser may name, who rely on the original seller's liability; but that is not the present case. The additional facts here were, that on the 25th May, a time about halfway between the date of the original contract and the time for delivery, the plaintiff made a sub-contract with Messrs. Mayall & Anderson for the sale to them of cotton at 1*s.* 7¾*d.*, of the same quality and quantity, and to be delivered at the same time, as that he had himself contracted to purchase of the defendants. Therefore, if in August the defendants had fulfilled their contract, the plaintiff would have been enabled to supply his vendors, and would have reaped a considerable profit by the transaction. The argument is, that in the Liverpool market it was a natural consequence that a person having made such a contract as the original one in the present case would, upon the strength of it, enter into a similar sub-contract; and, further, that it would be in the contemplation of the parties that the breaking of the first contract would render the fulfilment of the second impossible. No authority was cited for this position; and, in my opinion, it would not be the necessary or natural consequence of the defendants' breach of contract. It does not necessarily follow that the purchaser would look to the delivery of the cotton as the means of enabling him to fulfil his second contract; and if, as the case may oftentimes be, he had reason to suspect the solvency of his vendor, it would be highly imprudent in him to do so. Here, however, the plaintiff did rely on the due delivery by the defendants of the goods purchased, but he is not, therefore, entitled to throw the blame on them, and say that they are liable for all consequent loss. Many analogous cases may be put in support of this view. For instance, announcements are of constant occurrence in the advertising columns of the "Times" newspaper, that "owing to failure of remittances from abroad Messrs. A. & B. are compelled to suspend payment." Could it be for a moment argued that a firm thus compelled to suspend or relinquish business could recover from those by whose default they suffered all the loss consequent upon their suspension of payment? All that could be recovered in such case would be the amount actually due, with interest; and the loss of credit and other inconveniences consequent upon the failure of the remittances could not for a moment be treated as forming the ground of special damage. So in the case of bills of lading, by which goods are made deliverable to the consignee or assigns for the express purpose of making them transferrable on delivery, so that they may be used for the purpose of fresh contracts, if the shipowner fails to deliver, it has never been suggested to include in the damages to be recovered the increased value at which the goods had been sold during the interval of carriage. In like manner, in the case of the sale of shares on the Stock Exchange, the contract is made for the express purpose of enabling the purchasers to pass the contract from hand to hand; yet it has never been contemplated that the original seller would be liable for the highest price obtained between the day of contract and the day of account; and yet, if the plaintiff's argument be sound, it would follow that he would be so liable. There is no case precisely in point, but my Brother CROMPTON has cited from Mayne on Damages what appear to me very cogent reasons why we should not adopt the plaintiff's view; and I am, therefore, of opinion that the rule should be made absolute to reduce the damages to the smaller sum.