1913.

Present : Pereira J. and Ennis J.

FERNANDO *et al. v.* HADJIAR.

144—D. C. Kalutara, 4,868.

Damages—Breach of agreement.

In an agreement between plaintiffs and defendant for digging plumbago, the latter undertook to fix up adequate machinery at the plumbago pit and pump out the water therein to enable the palintiffs to dig out the plumbago therein. Defendant committed default, and thereupon plaintiffs sued him for the expenses incurred by them in getting together workmen and otherwise preparing to dig out plumbago in the pit and holding themselves in readiness to do so.

Held, that such expenses were recoverable as damage sustained by plaintiffs, and it was not necessary that the prospective loss and gain should be estimated.

The promises in an agreement may be so interdependent, and the terms of the agreement generally may be such, that the breach of one of the terms of the agreement by one party may induce a discharge of the whole contract.

[1] *(1913) 16 N. L. R. 337.*

THE facts appear from the judgment.

A. St. V. Jayewardene, for the defendant, appellant.—The real test for assessing damage in this case is to find out the difference between what the plaintiffs would have got out of the pit had there been no breach, and what they did actually get out of the pit. It is not reasonable to give plaintiffs all the expenses they might have incurred. Counsel cited *Encyclopædia of Laws, vol. IV., p. 97.*

H. J. C. Pereira (with him *E. T. de Silva*), for the plaintiffs, respondents.—All the expenses incurred by plaintiffs have become useless owing to the default of the defendant. The compensation awarded was a fair sum for the injury and inconvenience resulting from a breach of the contract. Courts have a considerable latitude in assessing damages of this kind. *Addison on Contracts, p. 358 (7th edition).*

A. St. V. Jayewardene, in reply.

Cur. adv. vult.

July 15, 1913. PERERA J.—

In this case the principal question argued was whether the plaintiffs had proved the damages awarded to them. Clearly, the defendant committed a breach of the agreement entered into by him with the plaintiffs when he failed to fix up adequate machinery at the plumbago pit mentioned in the agreement, and pump out the water therein. The damage claimed by the plaintiffs is mainly the expenses incurred by them in getting together workmen and otherwise preparing to dig out the plumbago in the pit, and holding themselves in readiness to do so. These expenses were, of course, lost to the plaintiffs by reason of the defendant's default. It was argued by the appellant's counsel that the damage sustained by the plaintiffs is the difference between their share of the plumbago that might have been dug out had the defendant committed no default, and their share of the plumbago actually dug out by them in spite of the defendant's default. That may well be so. The plaintiffs were quite entitled to claim such damage; and had they done so, naturally the assessment would have been the result of a great deal of speculation. But the plaintiffs have not claimed that damage. The damage that they have claimed is the expenses of the arrangements that turned out nugatory owing to the defendant's default. Clearly, they were entitled to claim this damage. The defendant's counsel contended, on the authority of the *Encyclopædia of Laws, vol. IV., p. 97 (1st edition)*, that in actions for breach of contract it was the duty of the jury to assess as accurately as they could the difference between the financial position in which the plaintiff found himself with the contract broken, and that in

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which he would have found himself if the contract had been duly performed. According to the *Encyclopædia* itself this rule has undergone some variation, but applying it to the present case, the question is whether, if the contract, had not been broken, the plaintiffs would not have had to their credit the sum now claimed as damage, namely, the expenses incurred by them in preparing to dig for plumbago and in holding themselves in readiness to do so. The plaintiffs are content to claim no more than the expenses incurred by them. The position that they take up is this, " Our expenses amount to Rs. 4,000, and there was in the pit plumbago of which our share would have been sufficient to at least cover our expenses. " The basis of decision in the case, therefore, is no other than the rule which the defendant's counsel contends should be the criterion. Whether, therefore, we apply the rule contended for by the defendant's counsel or the rule (more generally observed) laid down by Parks B. in *Robinson v. Harman*,[1] namely, that, " so far as money can do it, the plaintiff is to be placed in the same situation as if the contract had been performed," it is clear that, in view of the fact that the plaintiffs in the present case limit their claim to the expenses incurred, they are entitled to succeed, provided they have proved that they had actually incurred the expenditure claimed, and that plumbago was available as mentioned above. As to the latter condition, the evidence must naturally be of a more or less speculative character. The plaintiffs, of course, could do no more than place before the Court such evidence as is, in the nature of things, possible to be placed before it in a case of this kind, and I think that there is sufficient evidence in the case from which a fair and reasonable inference can be drawn that plumbago of which the plaintiffs' share would have been sufficient to cover the expenses might have been taken from the pit. As regards the expenditure, a portion of it was due to the conduct of the defendant in raising false hopes, and he is, therefore, in any event, solely liable for it; but as regards the amount of damage generally, this is not, in my opinion, a case in which this Court should too narrowly scrutinize the finding of the Judge of first instance. The District Judge declares the agreement to be cancelled, meaning apparently that he holds that it is discharged. Clearly, in the present case, the promises of the two parties are so interdependent, and the terms of the agreement generally are such, that the breach of the agreement by one party induces a discharge of the whole contract.

For the reasons given above I would affirm the judgment appealed from with costs.

ENNIS J.—I agree.

Affirmed.

[1] *Ex. Rep. 855.*