Ill., 354 Ill. 102, 187 N.E. 823 (1933); *People v. Motorists' Assn. of Ill.*, 354 Ill. 595, 188 N.E. 827 (1934)), by invoking the inherent jurisdiction of the judiciary over admission to the bar, in the face of an express statute permitting such non-pecuniary corporate practice (Cahill's Ill. Rev. Stat. 1933, c. 32, § 228), indicate that Illinois is hardly likely to distinguish between corporations organized by professional men and those by laymen.

Damages—Carriers—Extent of Liability in Tort and Contract—[England].—The plaintiff owner sued the defendant carrier in alternate counts in conversion and breach of contract for non-delivery of forty-seven tons of high-grade wheat which the defendant had contracted to deliver in England. Five months before time for delivery, the plaintiff had contracted for resale and, because at the time of non-delivery there was no market in which he could buy to meet his sub-contract, he demanded the resale price. In this five-month interval, there was a substantial decrease in the market price of similar wheat. *Held*, (Scrutton, L. J., dissenting) the plaintiff was not entitled to the loss of profits on this sub-contract but only to the value of the goods at the time of the breach. This was determined not by the resale price but by reference to the decline in wheat prices on the market. *The Arpad*, 152 L. T. Rep. 521 (1934).

Generally, damages in contract are limited to those losses which are foreseeable at the time of the making of the contract, while in tort damages are limited only by the rule that they must be the natural result of the defendant's act. 3 Williston, Contracts § 1344 (1920). That different rules should apply is inherent in the distinction between the two: in tort, the duty is a compulsory one incidental to membership in society, while the duty in contract is assumed voluntarily and limited because of the social policy in favor of encouraging commerce. 1 Sedgwick, Damages § 141 (9th ed. 1912)). More particularly, then, damages in contract should be the equivalent in money of that which the contract entitled the plaintiff to receive, e.g., in a carrier's contract, the value of the goods; whereas damages in tort should be equivalent to the plaintiff's actual loss, i.e., the actual value to him. Corbin, Quasi-Contractual Obligations, 21 Yale L. J. 533, 550 (1912); 3 Sedgwick, Damages § 844 (9th ed. 1912). What, then, is the distinction between the value of the goods and the actual value to the plaintiff? Where there is a market for the goods at the time for delivery, the value of the goods for a carrier's contract is the market price at the destination or, in the absence of one there, at the nearest market plus the freight necessary to transport the goods from there. 1 Sedgwick, Damages § 246 (9th ed. 1912); *Grand Tower v. Phillips*, 90 U.S. 471 (1874); *Eddy v. Lafayette*, 49 Fed. 807 (C.C.A. 8th 1892); 8 R.C.L. 489 (1915); see 57 L.R.A. 197 (1903). Resale contracts are considered as "mere accidental circumstances" in such situations. *Rodocanachi v. Milburn*, 56 L. T. Rep. 594 (1886). The resale price is unavailable to contradict the market price as the standard of value. 1 Sedgwick, Damages § 244 (9th ed. 1912). Nor can recovery ordinarily be had for loss of profits unless it can be shown that defendant had notice of the sub-contract. *Hadley v. Baxendale*, 9 Ex. Rep. 341 (1854); *Griffin v. Colver*, 16 N.Y. 489 (1858); 3 Williston, Contracts § 1356 (1920); see *Globe Refining Co. v. Landa Cotton Oil Co.*, 190 U.S. 540 (1903). But if the goods have no market of their own, other standards must be applied and the use of the general range of wheat prices in the instant case affords one satis-

factory means. The resale price is another available criterion if it can be shown that this price was fair at the time the contract was made and if there has been no material change in the market prices of similar goods since that time. On the other hand, the actual value to the plaintiff is not necessarily their value as determined by the preceding rules; rather, the emphasis is on the plaintiff's actual loss, including loss of profits, business, etc. *Mentzer v. Western Union Teleg. Co.*, 93 Iowa 752, 62 N.W. 1 (1895); *Preble v. Hanna*, 117 Ore. 306, 244 Pac. 75 (1926); *Lyman v. James*, 87 Vt. 486, 89 Atl. 932 (1914); 3 Williston, Contracts § 1344 (1920). Although it would seem that, in England, no direct damage is too remote to be recovered, as a result of *In Re Polemis and Furness, Withy Co. Ltd.*, [1921] 3 K.B. 560, most American jurisdictions do apply a rule of remoteness but differ as to its extent. The majority holds the defendant liable for the natural and proximate consequences of his act and usually includes loss of profits on a specific contract of resale (*Wadsworth v. Western U. Teleg. Co.*, 86 Tenn. 695, 8 S.W. 574 (1888); *Mentzer v. Western U. Teleg. Co.*, 93 Iowa 752, 62 N.W. 1 (1895); see 48 A.L.R. 318 (1927)), while the minority applies the contract rule of requiring either notice or contemplation of such contracts. *Braun v. Craven*, 175 Ill. 401, 51 N.E. 657 (1898); *Sohl v. Sohl*, 114 Neb. 353, 207 N.W. 669 (1926); see 48 A.L.R. 325 (1927).

Thus it would seem that, in the instant case, the majority is wrong in requiring any sort of notice for damages in tort, while in contract such limitation would be required. *Hadley v. Baxendale*, 9 Ex. Rep. 341 (1854). On the facts, this may be explained on the ground that there was no true conversion, since mere non-delivery by a carrier is not a conversion. 4 Halsbury, Laws of England 95 (2d ed. 1932); *Manley Bros. v. Boston and Maine Ry.*, 90 Vt. 218, 97 Atl. 674 (1916); Angell, Carriers § 433 (5th ed. 1877). But inasmuch as the court assumes a conversion, the question of whether the tort or contract rule ought to apply remains unsettled. See the conflict suggested by Winfield, Law of Tort 41 (1931) and by Pollock, Torts 37 (13th ed. 1929). Conversion is ordinarily considered a tort of intent. Salmond, Torts 374 (6th ed. 1924); 2 Cooley, Torts § 331 (4th ed. 1932), and therefore the rule of foreseeability should not apply. See 1 Sedgwick, Damages §§ 141–43 (9th ed. 1912). But the court distinguishes between "conversions with aggravated damages" and those technical conversions which are really based on breach of contract, applying the contract rule to the latter. No further elaboration is given and so the authority of the case seems doubtful. If, however, the court meant to distinguish between those misdealings which are wholly deliberate and those which involve an element of error or negligence in fulfilling some preexisting obligation as to the goods, e.g., misdelivery by a carrier, the distinction seems sound and in accord with the weight of American authority. *Rogers v. Casting Co.*, 16 Ohio App. 474, 485 (1922); *G. F. & A. Ry. v. Blish Co.*, 241 U.S. 190 (1916); see Pollock, Torts 583 (13th ed. 1929); 1 Sedgwick, Damages § 143 (9th ed. 1912). But if this case is considered as authority for the proposition that wherever there is both a tort and a breach of contract, the contract rule is to prevail, the application of the contract rule to deliberate refusals to deliver would be unsound. *France v. Gaudet*, L.R. 6 Q.B. Cases 199 (1871). Finally, it should be noted that Scrutton's attempt to limit damages in conversion to the value of the goods where there is a market is inconsistent with his suggested award of the actual value to the plaintiff where there is no market. Surely it would be unfair to hold the defendant liable for increased damages because of the purely accidental circumstance of absence of a market.