

although the result is the same gave a different account on a former occasion, from the one given at the trial of how the sum of \$4,300, was arrived at. The plaintiff estimated defendant's profit at \$18,000. If he got half of that, and Smith and the plaintiff each quarter, plaintiff thought that would be fair. Plaintiff asked \$4,500—but consented to take \$4,300—Smith stated that plaintiff claimed that he should get 15% on Gladman's \$5,000\$ 750 00

15% on Smith's \$5,000 750 00
and 7% on \$40,000 2,800 00

\$4,300 00

Mr. Smith's position was apparently about the same as plaintiff's—and was entitled to something, if plaintiff was, but Smith has not so far as appears insisted upon any payment by defendant. In dealing with the alleged agreement of 15th January, 1910, it is a strong point in defendant's favour that there had in fact been the agreement of 15th November, 1909, which purported to cover everything between plaintiff and defendant—although Gladman thought there was something unsettled which he Gladman wished cleared up. Lastly there was the long silence of plaintiff in regard to this money although the plaintiff was paying money to defendant—and was losing dividends on stocks to which he according to his contention, was entitled. Against the defendant is the fact—not denied by defendant, of his conduct when plaintiff made the demand for payment of the \$4,300. Defendant did not then as vigorously deny the agreement as he did in Court. He said he did not remember. He did not see how it could be so large—he would look into his books, etc. I would suppose that such a demand, if no agreement made, would have been met by a prompt denial. All the conduct of each may be consistent with contract or no contract—and contract or not is the question for determination.

The onus of establishing this contract is upon the plaintiff. If there is any reasonable doubt—that doubt must be resolved in favour of defendant. I am not free from doubt. No doubt the defendant made a very large amount of money out of these transactions and the plaintiff assisted the defendant to make. It may be that the defendant promised to pay out of these profits something that would be fair. It might be that plaintiff was lulled into security and silence by something defendant said—in the way of promising to do