

pend upon the ability of the proprietor to select artists and plays or representations which shall be pleasing to the public, we have the fact that the plaintiff by actual attendance at several representations during the last days of November, had an opportunity of estimating the achalandage of the theatre under the management of the defendant, and in the second place, he had five days in the first part of December agreed upon before he signed the contract, in order to test what the theatre would produce under his own management, and in the third place, he ran the theatre after that for three months without making any complaint whatever. These facts seem to me absolutely inconsistent with the supposition that the plaintiff bought this business upon the faith of a warranty that it was capable of producing \$400 a week.

I think the conduct of the plaintiff absolutely cuts him out of any solid foundation for his action.

There is however another point which is dealt upon in the judgment, namely, after the plaintiff had taken his action, he notified not only the defendant but the *mis en cause* his landlord, that he intended on a given day, which was some ten days after the action was instituted, relying upon the result of the action, to abandon the property and the sale of the effects to him, to abandon his contract with the defendant. Thereupon the *mis en cause*, the landlord, sued the plaintiff for his rent and they came to an agreement upon the judgment to be rendered, and that agreement provided that the *mis en cause* released the plaintiff from all his obligations concerning the rent due and to become due, and the plaintiff abandoned to the *mis en cause* all his rights under the contract between the plaintiff and the defendant, and there-