

had been kept, but no such memoranda were taken as to enable the preparation of an entirely satisfactory statement.

The course of dealing between the parties was that the defendant sent statements of moneys received, at intervals, and at the end of the month the plaintiffs sent a summation of all items known to them on which they claimed commission; the defendant then supplementing this by adding other sums, namely, moneys received upon promissory notes, of which the plaintiffs had no record. These additional items were no trifles, but in many instances exceeded the amount of the plaintiffs' statement and also in some instances exceeded the plaintiffs' items in number.

When the disruption took place, the defendant declined to pay anything further unless specified itemised demands were made by the plaintiffs. The plaintiffs, on the other hand, took the position that they were entitled to receive the commission upon all money which the defendant received, and that it was incumbent upon the defendant to formulate the accounts. The plaintiffs also probably went beyond what they were entitled to when they desired some of the statements asked in the correspondence.

After the action was brought and before the defence had been filed, the sensible course was adopted of sending the plaintiffs' bookkeeper to Philadelphia, where in a few days she ascertained the amount of the outstanding accounts upon which the plaintiffs' firm was entitled to commission, and satisfied herself of the entire accuracy of the defendant's bookkeeping. One would have expected that this would have ended the dispute; but the action proceeded, and, after it had been entered for trial, the defendant paid into Court the amount due for commission up to the date of payment, amounting to a little over \$5,000. There was no tender of this amount; there is no plea of tender; the amount is not paid into Court as an admission of liability, but as the price of peace; and this is inadequate to afford any protection to the defendant.

Subject to one item of controversy which I shall mention, there is not and never has been any dispute whatever as to the amount coming to the plaintiffs. The defendant is a large concern, and there never was any real unwillingness on its part to pay the plaintiffs. The whole trouble is well exemplified by the attitude of the witnesses at the trial; its officers thought there was no obligation to pay until a proper demand had been made, and determined to bring matters to an issue upon the question.

In the view taken, I think that the defendant was wrong, and