of good financial standing and answerable in damages is true, but good faith and solvency are not equivalent to the performance of acts necessary to bring into play the provisions of the contract and required to be complied with before it can effectually be executed. The agreement is not that, if a contract is made under which orders may be, but are not, given, then the appellants will pay commissions upon the orders intended to be given, nor is it to pay commission upon damages for default in not carrying out the agreement. It is to pay on orders given and accepted.

If the Buntin Reid Co., being satisfied with the mode in which the orders they gave were being complied with, desisted from sending in for any more, or if they, for other reasons, ceased to require further shipments, then a question might arise as to whether they or the appellants were liable *inter se* for non-performance of the contract existing between them.

But I am unable to persuade myself that the respondent can treat default in the same way as performance and require payment on orders not given and not accepted unless he has specially provided for that contingency in his contract. In the case cited of *Lockwood* v. *Levick* (1860), 8 C. B. N. S. 603, the recovery is expressly put by Erle, C.J., on the ground that the defendant had the option of delivering the goods and so making a profit, and having accepted an order—in this case for a specified amount of web—which he should have performed, he could not contend that he was not liable to pay a commission as upon the "goods bought." If the orders had in this case been given by the Buntin Reid Co., and after their acceptance the appellant had refused or neglected to fill them, the respondent might be entitled to recover.

The question of responsibility as between the appellants and the Buntin Reid Co. is one thing, and the rights of the respondent against the appellants is quite another.

The respondent has failed to shew that there were any orders given which were accepted, and on which commission has not been paid.

The Buntin Reid Co. contract establishes a relationship which, if acted upon, would have benefited the respondent, and is in that respect very similar to the agreement in *Field* v. *Manlove* (1889), 5 T. L. R. 614, in which it was held that the plaintiff could not recover commission upon the full market price of the 27 engines which were not taken by