

quality demanded, then the liability would be the other way. Clearly something further was to be done before the appellants became in default. This illustrates the course of dealing that might naturally arise under the agreement sued on, and as the respondent took part in the consummation of the Buntin Reid contract, it is not unreasonable to consider it as throwing light upon the construction of his contract. It is an example of a state of affairs which might occur and with regard to which his contention may well be tested.

Dealing first with the main agreement, the words "accepted orders" imply that all orders may not be accepted and that there was a right in the appellants to accept or reject. Under clause 2, shipment is to fix the time of payment, and the customer's default in payment is to absolve the appellants from liability for the commission on the particular shipment, and entitles them to charge it back to the respondent.

Under clause 4 the order may be sent by the respondent or by the customer. Weekly statements of commissions on orders received were to be sent by the appellants as well as a copy of the invoice sent each customer.

It is obvious that the provisions of clauses 2 and 4 contemplate a definite requisition for certain kinds of papers from customers, procured either by the respondents' direct intervention or originating in his territory without it, and shipment pursuant to direction, to ascertain points as well as payment by such customer.

These provisions fit in well with the course of dealing intended by the Buntin Reid Co. contract and are inapplicable if that contract is to be deemed an "accepted order" because there can be no shipment and no copy of an invoice unless and until directions are received as to the former, and specifications are forwarded as to the exact paper required.

The judgment in appeal minimizes these preliminaries which in my opinion are essential, on the ground that as the shipments might be either immediate or future, the appellants could not free themselves from liability to pay commission by breach of contract. But there could be no breach of contract until the appellants were put in default by neglecting or refusing to fill the order, which they could not do till they knew what was required.

The fact that the parties contemplated that both would perform their obligations and that the Buntin Reid Co. were