

clearly was not the intention. There is nothing in the correspondence or conduct of the parties to indicate any difference as to the time of payment of commission or how computed on the different kinds of goods.

In the present case there was no insolvency of purchasers, and all the goods have now been paid for—the only difference is that if defendants' contention prevail the action was commenced prematurely.

(2) It seems clear to me that it was not proposed or intended by plaintiff to allow half of his commission on the Krug order, and plaintiff never assented to defendants' proposition that plaintiff should accept only 3 per cent. on this order. There is no evidence of fraud either in representation or concealment on the part of plaintiff in this Krug matter. Plaintiff and defendants were dealing with one another directly, and there was no misunderstanding between them. It is a matter of no importance that Krug did not understand the arrangement as plaintiff and defendants did. This is simply between plaintiff and defendants, and plaintiff's letter of 19th December, 1904, put the thing plainly. Plaintiff, by giving $2\frac{1}{2}$ per cent. off, took the risk of defendants not accepting the order. Defendants so understood it. If they had understood that plaintiff would allow to Krug any part of plaintiff's commission, there would have been an end of the discussion, and defendants would, no doubt, have thanked plaintiff.

The correspondence, so far as material, about the Krug order, begins with plaintiff's letter of 12th September, 1904, enclosing telegram from Krug, and informing defendants that plaintiff had offered 2 per cent. reduction. Defendants refused by cable of 23rd December, and by letter of same date declined to allow this discount. Plaintiff wrote on 15th enclosing further order for 950 plates. Defendants replied to this by letter of 28th December, accepting this order, but confirming cable and letter of 23rd as to any further orders except at net rates. On 31st December defendants received plaintiff's letter of 19th, and then distinctly, contrary to their letter of 23rd, accepted the order, acknowledged it to Krug Brothers, and asked them for specifications for the 2,500 plates, so as to enable defendants to deliver. Then, having accepted the order allowing to Krug Bros. the discount of $2\frac{1}{2}$ per cent. from net rate, defendants asked plaintiff to be content with 3 per cent. commission. Plaintiff declined to