

The defendant and the manager of the plaintiffs' firm appeared both to be persons of respectability and probity. They did not agree as to what passed between them at the time of the purchase. It is defendant's misfortune if he has not any writing, nor indeed any circumstance of corroboration, to turn the scale in his favour. Plaintiffs' firm are not manufacturers; they deal not only in cement but in other commodities, e.g., wood and coal. The particular brand of cement which was attacked is spoken of by persons of many years' experience, like Michael A. Piggott, as being a brand which had a good reputation before others now in the market were discovered or developed; that it is to be relied upon, and that fact is known amongst contractors; and that it can be offered confidently to architects and engineers. So that upon this branch of the case I must hold that there was no warranty, express or implied.

But if I were to hold otherwise on the first branch of the case, it would be impossible for me, upon the evidence before me, to hold that the defendant had satisfied the onus of establishing that the trouble which arose in the construction of the building was due to defects in the quality of the cement. There were other causes which might satisfactorily account for the imperfections besides the theory—for after all it was only a theory—of the experts called by the defendant. There was palpable neglect and want of ordinary business care in the conduct of the defendant and those placed by him in charge of the construction. There was no inspection of the gravel at the pit by any person of skill. Teamsters appear to have brought it as they chose. Material was thrown together in a haphazard fashion without any proper proportions being regarded, and it was handled and used in construction by mere workmen without any knowledge of or skill in so delicate a process. I should say that this course of dealing supplies a more obvious and probable cause for the difficulties that ensued than does any alleged defect in the cement.

The result is that the plaintiffs are entitled to judgment for the full amount, less the sum paid into Court, with costs. The counterclaim is dismissed with costs.