

the expiration of two years and many hundred sets since, all of which sets were supplied by Butterworth & Co. at the price per volume mentioned in the correspondence. The contract was treated by both parties as a contract for the agency of a copyrighted publication.

Would a Court of Equity now hear the defendants say, "There is no memorandum"? Having regard to the portions of the correspondence already set forth, the mass of correspondence following during the next five years, the circumstances of the case and the conduct of the parties, who at all times acted during the whole five years as though there were an enforceable contract, I think I must find there was a contract.

It is true Mr. Cromarty did not see the letter of June 14th, 1907, nor its accompanying "overleaf" until the spring of 1912. But, had he seen those writings when they arrived, and if they contained a variation, could he have sat quietly by and now be heard to say that any variation therein expressed did not become a part of the contract. Surely after five years, if any variation were set forth in a way a reasonable man should understand, he could not now say, such is not a part of the contract. Is he in any better position because he did not see those writings? I do not think so. It was through no fault of Butterworth & Co. that Mr. Cromarty did not see either this letter or the "overleaf." I think that now the plaintiff may not be heard to deny that the variations, if any, mentioned in the "overleaf" became a part of the contract, and that the plaintiff must, by its conduct, be precluded from denying that it accepted any variation therein expressed.

It is not shewn on what date the first volume was published. Mr. Bond said some time in November, 1907. In the defence it is stated as November 14, 1907. As against the defendants, I think this may be taken as correct.

It appears that the sets supplied at 7s. 6d. per volume were unbound and printed on thick paper. Butterworth & Co. had issued an apparently limited number of sets printed on India paper. These sets were more attractive. The plaintiff kept