

BRITTON, J.:—Plaintiff was for a time agent in Ontario for the sale of goods of defendants, and this action is brought for commission on sales. At the close of the case only 3 things remained in controversy:—

1st. The time when commission became due.

2nd. The right of plaintiff to charge full commission on order from Krug Bros.

3rd. The liability of plaintiff for samples sent out to him by defendants.

(1) I am of the opinion, and so find, that the letter of 7th August, 1903, was not intended to postpone and did not in fact postpone the payment of commission until at or after the receipt by defendants of the price for goods sold. The interpretation put upon this letter by defendants is (1) inconsistent with the part of same letter which provides for payment of commission monthly. That must mean monthly after commission earned. The commission was earned when order was sent in by plaintiff and accepted by defendants. (2) With the dealings between the parties as to commission. Defendants' acted upon and in accordance with plaintiff's contention.

The principal witness for defendants is, I think, in error in stating that the commission was paid before receipt of purchase money, because plaintiff was hard up, and pressing for pay. The correspondence put in does not bear out this statement. Plaintiff did not say money would be acceptable, but it was not put as asking grace—or a favour. Defendants are clearly wrong in supposing, if they do suppose, as Baddeley says, that there would be no commission payable in case of a customer's insolvency, or in any case where the customer did not from any cause pay for the goods sold on order to plaintiff. Non-liability in case of insolvency was not contended for, at the trial. The fair reading of the letter shews that the words "net amount received" were used to determine the amount of plaintiff's commission and not the time when commission became payable. The word received means in that letter "receivable," or "to be received." If defendants' contention that the strict reading of the letter must govern be correct, then it might be argued that 3 per cent. would be payable only when price received for bevelled and silvered plates, and all kinds of glass, and the 5 per cent. on other manufactured goods, would be payable as earned. That