

ing the month, and the main advantage to be derived from them will come later, than the cost of advertisements would be, for the same reasons.

(3) The same reasoning applies to repairs and alterations, as well as fixtures. These are all to help the business, and they are none the less expenses that their full advantage is not realised immediately; while any profit made by the sale of the fixtures was not made till after the death of Washburn.

Some discussion took place on the hearing as to allowing interest to the defendant before the net profits should be ascertained; of course this would be improper in the absence of some special stipulation to that effect: *Rushton v. Grissell* (1868), L.R. 5 Eq. 326, at p. 331, per Page Wood, V.-C.; but, as no interest has been charged, no further attention need be paid to that question.

(4) An objection which seems not to have been made at the trial (at all events it is not mentioned by the trial Judge) is that a small amount, \$31.60 in all, being the losses in January and August, 1912, was deducted from the profits in other months, and thereby Washburn's share was improperly diminished by \$15.80. This may well be. It would seem that each month's business must stand by itself, and only net profits for the month taken into consideration, the defendant being obliged to stand all the losses.

But, suppose the defendant was wrong in this or in any other respect, there is absolutely no evidence of fraud. Fraud is not mistake, error, in interpreting a contract; fraud is "something dishonest and morally wrong, and much mischief is . . . done as well as much pain inflicted by its use where 'illegality' and 'illegal' are the really appropriate expressions:" Ex p. *Watson*, 21 Q.B.D. 301, per Wills, J.

The finding at the trial, of fraud, cannot stand.

The statement is said by the learned Judge not to be a statement under the statute because of what he considers to be errors in charging expenses, etc., and not crediting money received for goodwill, etc. These objections have been dealt with, and I can see no reason why the statement is not "a statement . . . by the employer of the net profits of the . . . business . . . on which he declares and appropriates the share of profits payable . . ." and this, by the statute, sec. 3(2), is unimpeachable except for fraud, which does not here exist.

Much was attempted to be made of the alleged fact that the defendant had no need actually to "pay his own money," but