and who had, as he thought, a chance to make money in a mining scheme. The uncle and nephew went into a speculation together, the uncle putting up the money, the nephew the experience and skill—but there was no thought of the nephew becoming personally liable to the uncle for any part of the uncle's disbursements.

A joint stock company was formed, and each of the original adventurers received some stock. On the 26th June, 1911, the uncle and nephew made an agreement: "Referring to claim by J. O. Konkle"—the plaintiff—"against J. W. Konkle junior for moneys advanced for prospecting and payment for Eldorado properties, it is hereby agreed between us that A. J. Barr & Co. shall sell 100,000 shares to net us 8 cents per share; the proceeds to be divided pro rata, less the sum of $3,385 to be paid to the said J. O. Konkle."

J. W. Konkle died in April, 1916, and letters of administration were taken out by the defendant. The plaintiff claimed $1,500 against the estate, and judgment was given for $760 and costs, from which the defendant appealed.

The rights of the parties depended upon the agreement quoted. It had been taken for granted that the nephew and uncle were each to contribute 50,000 shares to the 100,000 to be sold by Barr; and that, after the payment of $3,385 to the uncle, the remainder would be equally divided. It was not so stipulated, but it was not unfair or unreasonable so to interpret it.

The right of action of the plaintiff at the best was for damages for non-performance of the contract by J. W. Konkle; and it must be proved that the contract was broken. There was no evidence to shew that J. W. Konkle did not carry out his contract —not one word to shew that Barr did not sell 100,000 shares on this account. Literally, the only evidence which was offered to shew breach of contract was the fact that the administratrix, the defendant, could find only 40,500 share-certificates. For all that appeared, the nephew might have had far more at the time of his death—the plaintiff did not take the pains to find out from the transfer company how the stock stood; and, even if the nephew had, at the time of his death, only 40,500 shares, sufficient might have been placed in Barr's hands to answer the contract.

The plaintiff never called upon his nephew to place the shares in Barr's hands—and the plaintiff himself had never done so nor expressed his willingness to do so.

Even supposing the contract broken, what were the damages? There was not a word of evidence to shew or to suggest that,