

represented, and told the plaintiff so, and Ross says that he heard of misrepresentations "in early fall," yet they went on with their preparation for building in Brighton for the company which had been incorporated on the 20th May. Mr. Austin, an architect, was in Brighton on the last Saturday in August in connection with plans and specifications for the building. He saw some of the directors of the company, and Brandenburg (the plaintiff's agent) was there. He advertised for tenders, which were opened about the middle of September. They decided then not to build at that time. The defendant Nesbitt said the price of brick was too high, and made the announcement, "Gentlemen, building will not go on under present conditions." There is not a syllable of direct protest or complaint until the writing of the letter of the 29th November, 1913, two days before the payment of the balance was due.

The defendants differ in their evidence as between and among themselves. There are two discrepancies in Ross's evidence as compared with his examination for discovery. He said that he thought it was a mistake in his evidence immediately after the examination, but did not take steps to correct it. He was a very important witness for the defence. He admits that he told Fred. Cory in the autumn that he thought his co-defendant Nesbitt was trying to "queer" the business, and to tell Barker to go on and sue, and he would give evidence for him when the time came. True, he says that this was before he acquired knowledge of the falsity of the alleged representations.

The agreement itself does not favour the defendants' contention. It is not for the bare purchase of a continuing business. It is: (1) a purchase of specific machinery, appliances, etc., for \$15,000; (2) a purchase of goodwill, trade-marks, patents, etc., for \$10,000 to be paid for in or with \$10,000 stock in the company to be formed, with the other provisions as set out above. There is no undertaking or covenant as to volume of business or profit or any matter now complained of. The defendants knew that the plaintiff kept no books.

The defendants fail to satisfy the onus of proof. Crediting all parties with a reasonable desire to tell the truth, the plaintiff has a better reason for remembering exactly what took place than have the defendants, in this, that he was vitally interested in the bargain which he was making, involving the sale of his whole business enterprise; he apparently had faith in it to the extent of taking \$10,000 stock. The primary object of the defendants was not to make money for themselves (although they