

THE MASTER:—Paragraphs 1 and 2 of the statement of claim allege purchase of the shares in question by plaintiff, through defendants as his brokers, and refusal by them to deliver when requested. Paragraph 3 is as follows: "The plaintiff has always been ready and willing to take delivery of the said stock and pay any sum that was legally due by him to the defendants."

For the motion *Bloxam v. Sanders*, 4 B. & C. 941, was relied on. This shews that, admitting the purchase by defendants for plaintiff, this does not give any right to possession until payment or tender of the price.

It is clear that neither of these facts is positively alleged. *Rawson v. Johnson*, 1 East 203, was cited on the other side. That, however, was an action for breach of an agreement to sell and deliver malt. It was there said by Lord Kenyon, C.J.: "The defendant undertook to deliver the malt when he should be requested, and the plaintiffs plead that they made the request to him and were ready and willing to have accepted and paid for it, but that he did not deliver it when requested or at any other time, but refused to do so." This was held in such a case to be a sufficient allegation, though at the trial plaintiffs would have to prove that they were prepared to tender and pay the money if the defendant had been ready to carry out the contract.

Affidavits have been filed by both parties on this motion. From that of plaintiff it would seem that his contention really is that the shares were paid for before they were bought, as defendants had, as he thinks, sufficient of his funds in their hands for that purpose. He also alleges an offer "to pay the balance due on said purchase, if any"—but neither payment nor tender is otherwise set up.

Plaintiff should amend so as to let the defendants know which of these allegations they have to meet. It would almost seem that the question is really one of account between the parties.

Plaintiff should amend, and defendants have full time to plead in answer.

The costs of this motion will be to defendants in the cause.