

It is contended for the defendants that their story of the real agreement should be accepted—but I am unable to give credence to the evidence, and I am satisfied that the agreement was as set out by the witnesses for the plaintiff, coming to this conclusion largely upon the demeanour of the witnesses.

Then it is said that this is an entire contract, and that if the plaintiff failed to procure the insertion of the advertisement in even one newspaper, he must fail, citing *Appleby v. Myers*, L. R. 2 C. P. 651, and *King v. Low*, 3 O. L. R. 234. I do not think that the contract was that the plaintiff was necessarily to procure the insertion of the advertisement in all the papers named; but I think that he had fulfilled all his part of the contract when he had done all that was reasonably possible, in the usual course of business, toward having the advertisements so inserted. Any other construction would be, in my view, quite contrary to what the parties intended, and would be absurd from a business point of view.

Then it is said that the refusal by Campbell to pay as agreed was not such an act as to authorize the plaintiff to put an end to the contract. *Mersey Steel and Iron Co. v. Naylor*, 9 App. Cas. 434, and *Midland R. W. Co. v. Ontario Rolling Mills*, 10 A. R. 677, were relied upon. These were cases in which a purchaser had refused to pay for an instalment of goods, and, as is pointed out in *Midland R. W. Co. v. Ontario Rolling Mills*, at p. 685: "The rule of law is stated by Lord Coleridge in his judgment in *Freeth v. Burr*, L. R. 9 C. P. 208. 'In cases of this sort,' he said, 'when the question is, whether the one party is set free by the action of the other, the real matter for consideration is, whether the acts or conduct of the one do or do not amount to an intimation of an intention to abandon and altogether to refuse the performance of the contract.' This statement of the law has been expressly adopted as correct by the Court of Appeal in *Mersey Steel and Iron Co. v. Naylor*, 9 Q. B. D. 648, and by the House of Lords in the same case, 9 App. Cas. 434, while both of those appellate Courts differed from Lord Coleridge, before whom the action had been tried, in the application of the rule to the facts." The whole difficulty is in determining whether the acts amount to an intimation of an intention to abandon the contract, or, as it is put by Patterson, J.A., at p. 686: "Did the de-