

upon getting the additional 40 ft. After telephone conversations and conferences between solicitors, the defendants on the 25th February wrote appointing the following Thursday to close. Plaintiff was not ready to close, did not recede from his contention that he should get the 140 ft. on eastern limit so the plaintiff's solicitors on 27th February wrote cancelling the agreement. After all the negotiations and delay and plaintiff's continued refusal to accept the case is not one for specific performance of the contract as defendants interpreted it. The plaintiff was unwilling to carry out, and resisted carrying out the real contract, until his reply to the statement of defence. The position taken by plaintiff is, that he was right in his interpretation of the contract—that he was right in refusing to complete purchase when defendants ready, but that now, if he fails in his contention he is willing to accept defendants' interpretation as there will be a profit to him in so doing. If a profit to him, there will be a corresponding loss to the *cestui que trustent*. As between the parties, the defendants are entitled now to consider the agreement at an end. The plaintiff's case is built upon *Preston v. Luck*, 27 Ch. D. 497. The present case goes much further in standing for, and asserting, an alleged contract not proved. The negotiations between the respective solicitors for the parties were exceptionally full and protracted. The plaintiff took his stand upon a contract the existence of which defendants denied. The plaintiff took his chance to get more than the defendants intended to sell, and he should not now complain if the defendants called off the whole agreement.

I find that the plaintiff did repudiate the contract, and that the defendants did not refuse to carry out the sale until after such repudiation.

I am of opinion that the defendants did all that was necessary to cancel the contract, and that the notice of such, to the plaintiff, was sufficient as to form and substance, and that the notice in point of time was reasonably sufficient under the circumstances.

The defendants, by the letter of their solicitors of the 25th February, 1913, stated that they would return to the plaintiff the check for \$1,000 deposit. Counsel for defendants, at the trial, said he did not ask to have that deposit forfeited to the defendants.