

W. L. Scott, for the appellants.

I. F. Hellmuth, K.C., and M. G. Powell, for the defendants, respondents.

MULOCK, C.J. Ex., reading the judgment of the Court, said, after setting out the facts and the correspondence between the parties, that parties may be bound by correspondence although intending to sign a formal document. If, however, the correspondence shews the intention of the parties to be that their mutual assent to terms is conditional on those terms being embodied in a formal document to be executed by the parties, then, in the absence of such a document, there is no contract.

Reference to *Chinnock v. Marchioness of Ely* (1865), 4 DeG. J. & S. 638, 646; *May v. Thomson* (1882), 20 Ch. D. 705, 716; *Williams v. Brisco* (1882), 22 Ch. D. 441, 448.

Where parties conduct negotiations by correspondence, if the correspondence shews a common understanding that terms, if reached, are to be embodied in a formal written agreement, the inference is that such negotiations were not in themselves intended to create a contract, but that assent to such terms was a qualified one only, namely, conditional on the contemplated formal written agreement being entered into: *Chinnock v. Marchioness of Ely*, *supra*.

From the correspondence in this case it appeared that until the plaintiffs' letter of the 1st November assenting to the changes suggested by the defendants' letter of the 30th October, no common agreement as to terms had been reached. Evidently the plaintiffs were not then of opinion that the correspondence created a contract; for in their letter of the 1st November they in effect assured the defendants that the written agreement executed by the plaintiffs and then in the defendants' hands for execution was valid and binding, and requested the defendants to execute and transmit it to them, when they would affix their corporate seal thereto, and thus beyond all question become bound. They were not taking the ground that a contract had been reached, but pressing for the written contract, indicating their view that the parties were not then bound by the correspondence; and their later letters were to the same effect.

At the commencement of the negotiations the plaintiffs prepared and executed a proposed contract, and on the 11th October sent it to the defendants for execution. The defendants did not execute it, but had another prepared, which they did execute, and which on the 25th October they sent to the plaintiffs. The latter, however, did not execute it, but again prepared and executed another "contract," and on the 28th October sent it to the defendants for execution. On its receipt, the defendants made certain