

question that the description of the land should give to the plaintiff a depth of 140 feet on the eastern limit. The defendants did not consent to this, and negotiations as to other details continued. The conveyance was executed, and, on the 21st February, the plaintiff's solicitors wrote stating that the conveyance must be amended so as to make the description conform to the plaintiff's contention. They said that Mr. Walker insisted 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. The plaintiff was not ready to close, and did not recede from his contention that he should get the 140 ft. on the eastern limit; so the plaintiff's solicitors, on the 27th February, wrote cancelling the agreement.

After all the negotiations and delay and the plaintiff's continued refusal to accept, the case is not one for specific performance of the contract as the 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 the plaintiff is, that he was right in his interpretation of the contract, that he was right in refusing to complete the purchase when the defendants were ready, but that now, if he fails in his contention, he is willing to accept the 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 *cestuis que trust*. 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 evidence of which the 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.