

The plaintiff received this letter on the afternoon of Tuesday, 28th March, and on that day about five o'clock, he replied by letter: "I am in receipt of your letter of yesterday explaining your telegram of yesterday morning and your action in not filling my order. I must say from your telegram I was prepared for something a good deal more tangible as a reason for not filling my order than the mere general unfavourable impressions described in your letter. \* \* If there has been any decided advance I think I am justified in expecting you to make me good in the matter. I gave you a positive order to buy. \* \* Of course in giving this order, I knew that with such an important decline the air would be full of all kinds of rumours and uncertainty, but having faith in the ultimate result was willing to risk my money. When your telegram arrived on Monday a.m., I of course supposed something a good deal more tangible than mere conjecture had caused it, and therefore waited for your letter. \* \* Have just telegraphed you to know how the market closed to-day." The telegram referred to is as follows: "Letter received. Don't think justified in not buying. How did market close to-day?"

The defendants' telegram of Monday morning, the 27th March, was not otherwise replied to.

On the morning of the 29th (Wednesday) the defendants telegraphed plaintiff: "Last sale yesterday 120. Market still very uncertain."

The stock could have been obtained at any time on Monday at 114; on Tuesday at 118; on Wednesday at 120, and on Thursday at 122.

It was not suggested that the defendants had not acted in good faith, or to the best of their judgment.

The plaintiff's contention was, that they had accepted a positive order to buy, and had no discretion in the matter.

The learned judge left it to the jury to say whether the plaintiff, by not answering the defendants' telegram of Monday morning, and directing them to go on and buy the stock,