

the statute:" Fry on Specific Performance, 5th ed., p. 281; Wood v. Midgley, 5 De G. M. & G. 41, 46.

In this case the defendant in his letter does not repudiate the plaintiffs' statement that he had made the offer in question, nor that its full and clear terms as set out in the plaintiffs' letter are in any way inaccurate, nor does he state that he has withdrawn it. He admits that he made the offer which the plaintiffs were accepting by the letter of the 4th August. After doing so, however, he seeks in his letter to excuse himself from completing it, not on the ground that he has not made it or has withdrawn it before its acceptance, but that in the meantime he was not "in the same position" as he was at the time he made the offer, but "since going to Winnipeg" had "invested so heavily" that he was not now in a position to do anything further. I would be inclined to think that such a letter, when written and signed in reply to the letter of the plaintiffs, would, under ordinary circumstances, bind the defendant. It is true that at the end of the letter of the 15th August he uses this language, "Thanking you for your offer," as though he were treating the matter then rather as an offer from the plaintiffs, which he could accept, than a letter written by him in reply to one in which the plaintiffs were stating that they accepted the offer previously made by him.

I believe the defendant's story that on the 30th July he had declared his offer and the negotiations off, but, in that view, his letter of the 15th August was certainly a careless and badly expressed letter if he intended it, as I have no doubt he did, to be a repudiation of the offer made by him rather than an acquiescence therein.

His conduct later, also, was careless in connection with sending the telegram already referred to. This telegram was, of course, more in the nature of an inquiry than anything else, and is in that sense more consistent with the view that he thought the previous negotiations were at an end. The plaintiffs, of course, contend that the telegram was sent and the visit of Costello and Gormeley made at the instance of the defendant, and with the view to disentangle him, if possible, from the effects of his carelessly written letter. While the telegram, immediately followed up by the visit of Costello and Gormeley to the west, would almost lend colour to that contention, these two men and the defendant all deny such to have been the fact. I credit their testimony.

But, whether the letter in question would constitute a contract between the parties or not, this case, I think, should be decided from another point of view. It seems to me clear that the