

with the work; and, having allowed it to proceed without doing so, they can not now be heard to make the claim.

The plaintiffs, in reply to the counterclaim, alleged that the tender for the Earls court school-building was put in as part of the tender for the Brown school-building, and that by reason of the defendants' course of dealing with the Brown school tender (which was said to have been unfair to the plaintiffs) they were relieved from any liability with respect to the Earls court school tender. As to this, the tenders were not combined, but separate; and I refuse to give effect to the plaintiffs' contention in this regard.

Another contention of the plaintiffs in regard to the counterclaim was, that the tender accepted by the defendants for the Earls court building, after the plaintiffs had refused to sign the contract, was not the lowest tender, and that there was improper conduct and irregularity on the part of the property committee of the defendants in giving the contract to Hewitt & Son. As to this I am unable to find, upon the evidence, that the members of the property committee were guilty of any actual impropriety. But, after the plaintiffs refused to execute the contract, the defendants had made up their minds to endeavour to hold the plaintiffs good for any loss sustained, and it was the duty of the defendants to treat the matter with proper care and consideration; and, after new tenders were asked and received, and when they saw fit to reject two of them, each lower than the plaintiffs' original tender, it would have been only fair, before accepting that of Hewitt & Son, which was \$1.161 higher than the plaintiffs', to advertise again; and upon this ground the defendants' counterclaim fails.

The plaintiffs also contended that their tender was never accepted by the defendants under seal, as it should have been to make it binding. This was an executory contract, and the acceptance of the tender was not under seal, nor was the contract tendered to the plaintiffs for execution executed by the defendants under their corporate seal.

The plaintiffs declined to execute the contract so tendered, and thus in effect withdrew their tender before any binding acceptance. There was no contract which the defendants could enforce or in respect of which they could seek to recover damages either by way of counterclaim or of deduction from moneys due by them to the plaintiffs upon another contract. Reference to Halsbury's Laws of Eng-