

The argument upon which this view proceeds is, to my mind, wholly unsatisfactory, and at all events does not, I think, apply to the facts in the present case.

Here was a binding contract made so by admitting the purchaser into possession, where he resided for some sixteen months, and made payments upon the principal of the purchase money, and was so credited by the defendant in a book kept by himself. The transaction was repeatedly confirmed by these payments, and the defendant did not deny in the box that it was an absolute sale by him, and it was merely an accident that the plaintiff did not sign the documents which were prepared. He subsequently found an opportunity to re-sell the property at an advance and actually offered to the plaintiff \$100 for his loss. I cannot understand upon what principle the man should be relieved from the effect of his contract, which is binding upon him, simply because by his own wrong he places himself in a position where he cannot carry it out. Since the Judicature Act, there was a binding contract in law as well as in equity. There is a breach of that contract by refusal to complete, and I am of opinion that the plaintiff is entitled to recover damages for the breach as well as a return of the purchase-money paid by him, with interest from the dates of payment.

The *Lavery Case* was decided apparently having exclusive reference to Lord Cairns' Act, which corresponds to our Judicature Act, sec. 58, sub-sec. 10, but the Judicature Act vested in the High Court all the jurisdiction which prior to the 22nd of August, 1881, was vested in the common law Courts and the Court of Chancery. While Mr. Justice Chitty in the *Lavery Case*, incidentally refers to the Judicature Act, he does not point out the effect of the added jurisdiction to the High Court to that possessed formerly by the Court of Chancery. The effect of this enlarged jurisdiction is clearly set forth in the case of *Elmore v. Pirrie*, 57 L. T. R. 333. It was there held that under the Judicature Act of 1873, the Court had complete jurisdiction, both in law and in equity, so that whether the Court could in a particular case, grant specific performance or not, it could give damages for breach of the agreement. This case does not appear to have been referred to in the *Lavery Case*, although decided the year before.

Kay, J., in the *Elmore Case* points out that Lord Cairn's Act, somewhat enlarged the jurisdiction of the Chancery