

defendants intimate an intention to abandon and altogether refuse performance of their part of the contract?" No such difficulty arises here. The defendants expressly refused to do that which they had promised to do; in such a case the law seems to be clear. "Whenever one of the parties to a special contract not under seal has in an unqualified manner refused to perform his side of the contract . . . the other party has thereupon a right to elect to treat it as rescinded, and may, on so electing, immediately sue on a quantum meruit for anything which he has done under it before the rescission." Sm. L.C., vol. 2, p. 19. And that the refusal to pay money as agreed is such a refusal is shewn by many cases. It will be necessary to refer only to the judgment of Lord Blackburn in *Mersey Steel and Iron Co. v. Naylor*, 9 App. Cas. at p. 442.

The plaintiff is entitled to the amount of money paid or to be paid by him, and also to a reasonable sum for services rendered. The amount paid and to be paid is \$3,231.22, and, deducting the amount paid by defendants, \$1,000, the balance is \$2,231.22. A reasonable sum by way of quantum meruit for services rendered would be \$500, in all \$2,731.22, for which sum and interest judgment will be directed to be entered with costs. The counterclaim will be dismissed with costs. It is not a case for a stay.

If it be considered that the plaintiff is entitled to the amount of profit he would have made, the amount would be much larger than \$500.

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