

occupation of this land, and leased the same to the defendant Hamilton.

The defence is by the landlord Longley, and he sets up an agreement between the plaintiffs and one Robert J. Bunting, dated 21st October, 1904, for the sale to Bunting of this land, and an agreement in May, 1908, between plaintiffs and defendant Longley, by which defendant Longley was to be allowed to pay arrears of Bunting on the agreement at the rate of \$50 a month, and, upon all arrears being paid, and upon the defendant purchasing from Bunting and procuring a conveyance from Bunting of his interest, the defendant Longley was to stand in Bunting's place in the matter of this agreement for sale. The defendant says further that in pursuance of his agreement with the plaintiffs he paid the first instalment of \$50 on the arrears, and purchased and obtained a conveyance of Bunting's interest in the land, and proceeded to make repairs to the building on the lot, to the amount of \$280. The defendant Longley paid to Bunting \$35, and he tendered to plaintiffs the next month's instalment of \$50, on arrears, and he is willing now to pay all arrears on the Bunting agreement, and asks to be allowed to stand instead of Bunting, to have the agreement continued in force, and, upon payment in full, to have a conveyance of the land.

In the alternative the defendant Longley asks to have the amount expended by him paid by the plaintiffs.

The plaintiffs in reply deny the alleged agreement between them and the defendant Longley, and they allege cancellation on the 25th May, 1908, of the Bunting agreement for purchase.

The facts are as follows:—

The plaintiffs, by the agreement of 21st October, 1904, agreed to sell to R. J. Bunting the land in question for \$1,200. This was to be paid by paying \$47.04 on or before 15th January, 1905, and the balance in 176 equal monthly instalments of principal and interest, of \$11.76 each, interest being calculated at the rate of $8\frac{1}{2}$ per cent. per annum.

The agreement is a very full one, but the only clauses that, in my view of the case, need now be referred to are:—

(1) "Provided that the purchaser may occupy and enjoy the said premises until default shall be made in the payment of the said monthly instalments or any part thereof in the manner above set forth, subject nevertheless to impeachment for voluntary or permissive waste."