

ately adjoining tenement No. 122 King Street West. This stairway extended from the sidewalk in front to a landing on the story above the ground floor. The other half of this means of access was upon the land of the adjoining owner to the east and the whole was owned and used in common by this owner and his tenants and the plaintiff and his tenants, and was the only means by which access could be had by the plaintiff and his tenants to the upper storey of his building.

*Held*, 1. The description of the interest of the plaintiff as a leasehold interest imports that his interest is that of a lessee under a lease granted by the freeholder, and it is settled that under an agreement to sell such an interest the purchaser is not bound to accept an interest under a sub-lease: *Madeley v. Booth*, 2 DeG. & Sm. 718; *Broom v. Phillips*, 74 L.T. 459, and *Dart on Vendors and Purchasers*, 7th ed. 1086.

2. The defendant, however, was not entitled now to raise this objection, as he was required to make his objection within ten days, but not only made no objection within the ten days, but on June 22, 1907, the plaintiff's solicitor sent to the defendant's solicitors a draft of the assignment of the lease to the defendant, which was returned approved on July 11, following and in this draft assignment it was shewn that the plaintiff held under a sub-lease.

3. As to the objection that there was an easement or right of way, it did not appear that the defendant was aware of the existence of it at the time the contract was entered into, and that he had no knowledge of its existence until a survey was made in July. Nor had anything that had taken place the effect of waiving the right of the defendant to refuse to complete on the ground that the plaintiff was unwilling or unable to procure a release of the easement or right if the existence of it entitled the defendant to refuse to complete.

4. The vendor was not entitled to force a contract against an unwilling purchaser where there was a misdescription upon a point material to the due enjoyment of the property, in this case there being an easement or right of way over it, and the purchaser was not bound to take the land subject to such easement although there would pass with it an easement over a part of the adjoining owners' land equal in area to the part of the plaintiff's land which is subject to the easement. It might be that most purchasers would prefer to have what the plaintiff could convey, but the defendant was within his rights in answer-