Judgment against the defendant executor for the amount claimed, on the basis of 6 per cent. interest, and against the surety for the amount due on a new computation at 5 per cent. interest.

SUTHERLAND, J.   JUNE 28TH, 1917.

KEELEY v. REAUME.

Landlord and Tenant—Lease—Inability of Lessors to Give Possession of Demised Premises—Validity of Contract—Former Tenant Refusing to Give up Possession—Action by Lessee for Specific Performance—Declaration—Reversion—Right to Receive Rent of Premises—Damages—Cancellation of Lease.

Action for specific performance of a lease and damages for the detention of the premises.

The action was tried without a jury at Sandwich.
O. E. Fleming, K.C., for the plaintiff.
J. H. Rodd, for the defendants.

SUTHERLAND, J., in a written judgment, after setting out the facts, said that the lease to the plaintiff was a definite and complete contract. It was not, nor was it intended to be, a conditional lease, contingent upon one Ingram, the tenant in possession when the lease was executed, vacating the premises by the 1st December. The lease was under the Act respecting Short Forms of Leases, and contained the usual covenant for possession and quiet enjoyment. The difficulty was not so much a defect in title as an alleged inability to give possession at the date contemplated. Apart from the fact that Ingram was in possession, and possibly could not be ejected by the lessors, the defendants, the plaintiff was entitled to specific performance of the lease: Mortlock v. Buller (1804), 10 Ves. 292, 315; Castle v. Wilkinson (1870), L.R. 5 Ch. 534, 537; Cato v. Thompson (1882), 9 Q.B.D. 616, 618; Rudd v. Lascelles, [1900] 1 Ch. 815, 819.

The plaintiff had a right to rely upon his contract and bring his action upon it. Reference to Foa's Relationship of Landlord and Tenant, 4th ed. (1907), p. 20.

Judgment declaring that the plaintiff became by the lease entitled and is now entitled to the reversion for the unexpired portion, if any, of Ingram's term, and to all rents accruing under