C. McCrea, for the plaintiff.
R. McKay, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B.:—Plaintiff sues on an agreement in writing, dated 24th October, 1910, whereby the defendant agreed to lease to plaintiff certain hotel premises known as the Clifton House, in the town of Massey, and to sell the stock-in-trade and contents of said hotel premises on the terms and conditions in the agreement set forth. Defendant refused to perform said agreement, or to give up possession of the premises. The defendant manifestly rued his bargain and about a fortnight after the execution of the agreement pretended that there was an oversight in the agreement, in the omission of provision for a price for the license, business, and goodwill. This, I find, had no foundation in fact, but was a dishonest subterfuge devised by the defendant in order to get out of his bargain. He set up in pleading this and other matters, charging false representations on the part of the plaintiff, none of which he attempted to prove—in fact he did not venture to go into the witness-box at all. His counsel relies on certain technical objections, amongst others the sixth clause of the agreement, which provides that "these presents shall only come into force and effect provided the party of the second part obtains from the License Department a substantial assurance that he will obtain a license for the said premises." This was a matter which under the Liquor License Act it was impossible for the plaintiff to do. It is not, however, at all on the same plane as the old illustration, "Provided J.S. and I shall ride to Dover," when J. S. refuses to ride, for one reason, amongst others, that the defendant's conduct precluded the plaintiff from doing anything in the matter. In Hotham v. East India Company, 1 T.R. 638, it is said that "it is unnecessary to say whether the clause relative to the certificate be a condition precedent or not; for granting it to be a condition precedent, yet the plaintiffs having taken all proper steps to obtain the certificate, and it being rendered impossible to be performed by the neglect and default of the Company's agents, which the jury have found to be the case, it is equal to performance."

See also Chitty on Contracts, 15th ed., pp. 712-717; Pollock on Contract, 7th ed., p. 259.

Plaintiff has proved his contract and his willingness to perform. He has proved breach of contract by the defendant, preventing the plaintiff from completing it. There are some difficulties in the way of granting a decree of specific performance.