lease to contain all the usual clauses, provisoes, and conditions, including a power of re-entry upon non-payment of rent for one calendar month after the same becomes due, and a covenant by the lessee to pay all taxes and other outgoings and to insure the buildings in their full insurable value in the names of the lessor and lessee, and also a covenant to keep the buildings on the said lands in good and substantial repair, and a proviso that in default the lessors may pay the same taxes and insurance and do repairs; and the said lease shall also contain a covenant and proviso on the part of the lessors that the lessee may at any time during the said term exercise his right of pre-emption of the said premises . . . at the fixfied price of," etc., "and that thereupon the lessors will convey the same respectively to him in fee simple free from incumbrances, and also a proviso that after the first three years the lessors may sell the said premises free from the said lease, on giving one calendar month's notice in writing of their intention so to do, but that the lessee shall have the option of becoming the purchaser at the price and terms agreed to be paid by the proposed purchaser, on signifying his intention so to do in writing before the expiration of the said month and on proceeding without delay to complete his purchase."

The defendants become purchasers of the said lands sold under the Bergin mortgage, and on the 30th November, 1908, obtained from the mortgagee a conveyance thereof. Thereupon it became the duty of the parties, in pursuance of the agreement between them, to enter into a written lease of the lands, but they did not do so. When the agreement of the 27th October, 1908, was entered into, the plaintiff was in possession, and so remained until March, 1909, when he abandoned possession, refused to pay rent, and the defendants took possession and leased the property to a third party.

It must be assumed that the plaintiff was in possession by virtue of the agreement, that is, as lessee. The rights of the parties must be determined as if a formal written lease, within the meaning of the agreement, had been actually entered into; and under such a lease the conduct of the plaintiff would have operated as a forfeiture; so that, as a matter of law, the term provided for by the agreement came to an end in March, 1909.

The question then is, whether the plaintiff's option to purchase the lands also then ceased?

The plaintiff contends that, nothwithstanding the determination of the lease, his right of pre-emption continues throughout the period of five years from the time when the defendants