

rescinded. The particulars of sale stated that the tenancy of the land in question would expire at Michaelmas, 1919, when vacant possession might be had. One of the conditions of sale provided that if the purchaser should insist on any objection to title which the vendor should be unable, or on the ground of expense, be unwilling to remove, the vendor might, by notice in writing, rescind the sale. Prior to the sale the vendor had had communication with the tenant in possession, whereby he was led to suppose that his tenancy would in fact expire at Michaelmas, 1919. After the sale the tenant claimed that as no notice to quit had been given, he was entitled to retain possession until Michaelmas, 1921. The purchaser having objected to the title, on the ground that possession could not be given in accordance with the particulars, the vendor gave notice of rescission. The plaintiff claimed specific performance, or alternatively damages for breach of contract. Lawrence, J., who tried the action, held that the representation as to possession, though erroneous, had been innocently made, and in the circumstances the vendor could not be adjudged guilty of recklessness in making it, and was therefore entitled to rescind, but as before the plaintiff had attempted to deal with the property he had expressly asked the defendants' solicitor as to whether vacant possession would be given on September 29, 1919, and they, without further inquiry, had assured him that it would, and on the faith of this statement the plaintiff had made arrangements for a resale, although he dismissed the action he gave the defendant no costs.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—MUTUAL MISTAKE IN DESCRIPTION OF LAND—WRITTEN AGREEMENT.

*Forgiac v. Lewis* (1920) 2 Ch. 326. This was an action by a purchaser for specific performance of a contract for the sale of a house. The house was described in the contract as No. 232, whereas the house both parties understood was being sold and purchased was really No. 233. Before the abstract was delivered the vendors' solicitors wrote to the purchaser's solicitor stating "the correct number of the premises purchased by your client is No. 233." The defendant did not plead the Statute of Frauds, but on his behalf it was contended that the plaintiff could not obtain specific performance of a written contract with a parol variation. There was, however, no dispute as to the fact of the mistake; a contract to sell No. 233 was pleaded, and a common mistake in the reduction of the contract to writing was alleged and not denied, and Eve, J., held that the mistake did not prevent the enforcement of the contract of which he decreed specific performance.