The only other justification he could have would be that the house was his own property. He claimed it as his own. Whether or not his claim was valid might depend upon the effect of a letter which was not produced. In April, 1917, the defendant received a letter, dated the 21st April, from the agent for Mrs. Crawford, on receipt of which he saw the plaintiff and had a colloquy with him, which could apparently have taken place only if the defendant had or believed he had the ownership of the building. This letter was not produced. It should have been produced by the defendant; but, equally, the plaintiff should have contradicted the evidence of the defendant that he (the defendant) owned the building. The agent for Mrs. Crawford was called as a witness: he was asked specifically whether the plaintiff had any rights in this property, but was not asked anything about the rights of the defendant; and, when he was asked whether he still looked to the defendant to remove the house, he was not pressed to answer, and did not answer. It appeared, too, that at least as late as July or August, 1917, the defendant was dickering with another agent of Mrs. Crawford.

The case had not been satisfactorily tried, and the learned County Court Judge had not passed upon the real points in issue, so far as the record disclosed.

There should be a new trial.

MEREDITH, C.J.C.P., also read a judgment. He said (after a discussion of the facts and evidence) that the Court had reached the conclusion that there should be a new trial—the evidence taken at the former trial to stand and to be added to as the parties might be advised. The evidence at the former trial was not well-aimed at the vital points of the case.

The plaintiff being in possession, the defendant could justify the acts complained of in one of two or in both of two ways only: (1) as owner of the house under his purchase of it from the landowner; or (2) acting under or with the authority of the landowner.

There should be no costs of this appeal; the costs in the County Court should be costs in the action, and so in the discretion of the trial Judge in the trial to be had.

LENNOX and ROSE, JJ., concurred.

New trial directed.