

was that the defendant was not ready or able to place the plaintiffs in possession at the date fixed for completion, viz., the 1st May, 1914.

The hotel in question was then occupied by a man called Lipke, lawfully in possession, and with whom no arrangement had been made by the vendor to vacate the premises for the entrance of the purchasers.

I suspect that the whole trouble arose out of the inaction of the vendor and his relying on all the details being attended to by his tenant, Mr. Lucy. The vendor undertook to sell the fee simple, but he had only an agreement to purchase from the registered absolute owner, one O'Neill, under an agreement, the last payments on which were to be made, of \$1,000 on the 1st October, 1914, and \$1,000 on the 1st October, 1915. This kind of title was not accepted by the purchasers, and might have occasioned further trouble had the premises been vacated.

Proctor had leased the place to Lucy on the 4th November, 1913, for three years, with a right to sublet and with the privilege of purchasing for \$3,500. On the next day, Lucy sublet to Lipke (the person now in possession) for the residue of the term. The sublease contained this proviso: "The lessor" (Lucy) "may have the privilege of selling the property at any time upon payment of \$500 to Lipke and on giving him 30 days' notice."

On the 5th March, 1914, the agreement to sell now in controversy was negotiated and made by Lucy and afterwards ratified by Proctor. By private agreement between them, Lucy was to get \$1,000 out of the \$2,000 to be paid on the 1st May, 1914, the day fixed for delivery of possession, and, by further private arrangement, out of this \$1,000 received by Lucy he was to pay \$500 to Lipke.

Accordingly, on the 19th March, 1914, the 30 days' notice was given to Lipke that the place had been sold, and that he was to give up possession and receive the \$500.

Lipke did not like the situation; for, as he said in evidence, he had expended \$500 in permanent repairs; and, to protect himself, he bought out Lucy and obtained an assignment of the Proctor lease, on payment to Lucy of \$400. This was on the 17th April, 1914, but was not made known, apparently, to Proctor, till some time afterwards. But at this point Lucy disappears, and no longer actively intervenes, and the defendant's evidence is that he relied on Lucy and took no steps to deal with the man in possession. When the plaintiffs applied to Lipke, on or before the 1st May, he said that he would not go out of posses-