failure to recall her was not surprising; at all events it was not enough to induce the Chief Justice to give credence to the defendant's improbable tale.

It was not contended by the plaintiff that the defendant should not be permitted to rely upon his defence that the transaction was not a real one; but the point was suggested in the argument. The learned Chief Justice could see nothing in it. Though the rule of the civil law, "No one alleging his own baseness is to be heard" at one time obtained a foothold in the Courts of England (Walton v. Shelley (1786), 1 T.R. 296), it was, more than 100 years ago, renounced, and has ever since been rejected (Jordaine v. Lashbrooke (1798), 7 T.R. 601, and Doe ex dem. Springsted v. Hopkins (1836), 5 U.C.R. (O.S.) 579). The defence is not that the contract alleged was unlawful, but that it never was made—that the writing was not intended to be a contract. Giving evidence of the reason why it was written and signed—i.e., to induce another to purchase—was merely giving evidence for the purpose of shewing why such a defence was not improbable.

The appeal should be allowed, and the usual judgment for specific performance of the agreement should be granted.

RIDDELL, J., was of the same opinion, for reasons stated in writing.

LENNOX, J., agreed that the appeal should be allowed and judgment entered for specific performance in the usual terms.

ROSE, J., also concurred.

Appeal allowed.

SECOND DIVISIONAL COURT. DECEMBER 21ST, 1917.

GENEREUX v. KITCHEN.

Trespass—Sale of House—Agreement of Purchaser to Remove from Land—Similar Agreement between Purchaser and Occupant of House—Forfeiture on Default—Non-enforcement of —Ownership of House—Evidence—Appeal—New Trial.

Appeal by the plaintiff from the judgment of Denton, Jun. Co. C.J., dismissing with costs an action for trespass brought in the County Court of the County of York. The trespass was