

## IN EQUITY.

(Before Mr. Justice Harvey.)

SUIT TO RESCIND CONTRACT.

Harris v Kivovitch.

Reserved judgment was delivered in the suit instituted by Richard Bowden Harris, of Helena-street, Randwick, against Jur Kivovitch, of 9 Hamilton-street, Sydney, in which the plaintiff asked, among other things, that a contract under which he covenanted to purchase from the defendant premises known as 312, 314, and 316 Military-road, Neutral Bay, be rescinded, and the deposit of £700 paid by him refunded with interest: and an inquiry as to the loss and damage he had sustained by reason of the defendant's alleged misrepresentations.

Plaintiff claimed that on February 2 last, he agreed to purchase from the defendant the shop premises, Nos. 312, 314, and 316 Military-road, for £4600, in respect of which he paid a deposit of £700. A specific term of the agreement was that, notwithstanding anything contained in the contract to the contrary, the properties were sold subject to the existing lease respecting No. 316, and leases for one year at a rental of £3/15/ a week in respect of Nos. 312 and 314. He alleged that he was induced to enter into the agreement on the strength of the representation regarding the leases. Plaintiff alleged that he had ascertained that one C. S. Stone had a lease of No. 316 for three years, and had recently vacated the premises; and that the other shops were occupied under weekly tenancies, with options for a lease. He further alleged that the tenants of Nos. 312 and 314 had refused to remain unless the rent was substantially reduced. Plaintiff claimed that, in the circumstances, he was entitled to rescind the agreement, and to a refund of the deposit money.

The defendant denied that there were no leases on foot at the date of the contract in respect of Nos. 312 and 314, or that they were occupied under weekly tenancies. He asserted that if any of the tenants had refused to take a lease, they had done so at plaintiff's request. He alleged that the plaintiff had failed to execute certain mortgages, and otherwise perform his part of the agreement. Prior to the date of the agreement, he told the plaintiff that shops Nos. 312 and 314

ment. Prior to the date of the agreement, he told the plaintiff that shops Nos. 312 and 314 were let for 12 months at £3/15/ a week, but as the lease for No. 314 had not been executed, he agreed to be responsible for the rent until a lease was obtained. Subsequently No. 314 was let for three months at £3/15/ a week, with an option of a three years' lease, and shortly after the agreement had been entered into, he was authorised by plaintiff's representative to tell the tenant of No. 312 that he could have a three years' lease at £3/15/ a week, the defendant to collect the rent until a lease was executed, and deduct the amount due to him under the contract. Plaintiff took possession of the premises on March 3 last, and it was not until June 11 last that he claimed the right to rescind the contract, or that there had been any misrepresentation by him in respect of the properties.

His Honor, after reviewing the facts of the case, said he held that the plaintiff was entitled to rescind the contract and to recover his deposit; but, in view of the case made by his pleadings, viz., that the defendant had agreed with Stone, the butcher, to terminate the lease of No. 316, and that there were no leases for Nos. 312 and 314, in his opinion, there should be no order as to the costs of the suit.

Mr. S. A. Thompson (instructed by Mr. H. E. McIntosh) appeared for the plaintiff; and Mr. J. A. Browne (instructed by Messrs. C. A. Coghlan and Co.) represented the defendant.