Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY
SUIT NO. E126/1986

BETWEEN HOPETON SMITH PLAINTIFF

AND

FRANKLYN HALL DEFENDANT
ADMINISTRATOR FOR
ESTATE OF EDWARD HALL

Heard on September 27, 28, 29, 30 1999 and 16th January 2001

Miss Sandra Johnson instructed by Messrs. Robinson, Phillips and Whitehorne for the Plaintiff
Mr. Hugh Faulkner instructed by Mr. Leroy Equiano of Kingston Legal Aid Clinic for the Defendant.

GLORIA SMITH, J.

The Plaintiff, Hopeton Smith brought action against the administrator of the estate of Edward Hall, Franklyn Hall, the defendant in this matter for :

1. Specific performance of a contract for the sale of lands by virtue of an option to purchase clause in a lease agreement between himself and the deceased Edward Hall.
2. Further or alternatively damages for breach of contract
3. Production of the two duplicate certificate of titles registered at volume 577 folio 66 and volume 580, folio 59 of the Register book of Titles
4. The Registrar of the Supreme Court be entitled to sign any document which would give effect to the transfer of the titles in this matter to the plaintiff, if the personal representative of the estate of Edward Hall refuses to do so
5. Costs
6. Further or other relief.

In his Statement of claim the Plaintiff alleges that he and the deceased Edward Hall made a lease agreement dated June 16, 1976 for a period of five years with effect from the 1st of August 1975, at a net yearly rent of five hundred dollars. That on the 1st day of May 1980, he exercised the option pursuant to provisions of the lease agreement, to purchase the properties in dispute known as lots 74 and 78, Higgin Town, part of Content in the parish of St. Ann, being the lands registered at volume 577, folio 66 and volume 580 and folio 59 respectively of the Registered Book of Titles. Further, that Edward Hall died on the 2nd of August 1976, leaving a Will, naming one Harry Green as

Executor, to whom the plaintiff gave notice in writing [i.e. in a letter dated 1st of May 1980, of his intention to purchase the lands. It was further stated that the Will of Edward Hall (deceased) having been laid for Probate was rejected by the Registrar of the Supreme Court and the deceased was treated as having died intestate.

The defendant in his Defence and Counterclaim alleges that the deceased, Edward Hall was admitted to the Cancer Hospital at Hope on June 18, 1976 and denies that the deceased was able to execute the lease agreement alleged by the plaintiff. Further, he alleged that the Will of Edward Hall was torn and in such a poor condition that it was declared null and void at probate. He further denied the existence of any agreement for sale and states that he is unwilling to sell to the Plaintiff. And the defendant claims the sum of three thousand dollars mesne profits for six years at five hundred dollars per year, being sum due for the Plaintiff's occupation of the premises which has not been paid since the death of the deceased.

The Plaintiff gave evidence to the effect that he is sixty-eight years old and a carpenter who farms informally. He met the deceased through one Mr. Harvey who usually killed cows on the properties the issue of this suit. He described the properties as being of 10 ½ acres and 1 ½ acres divided by a river and registered as lots 74 and 78 of Higgin Town part of Content being lots registered at volume 577, folio 66 and volume 580, folio 59 respectively of the Registered Book of Titles. The parties went to Edward M Hall's attorney, Mr. Scott to make the arrangements. There were two agreements. The first was for twenty thousand dollars. This agreement was discarded and a new one drafted after the plaintiff and the deceased had gone to the deceased's bank and were informed that the sum was too exorbitant for the properties. The second agreement was for fifteen thousand dollars and this was accepted by the bank, which was identified as being the Jamaica Development Bank in Claremont, St. Ann. The plaintiff had gone to the bank to seek a loan to pay for the properties. The second agreement was taken to Edward Hall by the plaintiff and Edward Hall's wife, Ada Hall at the Chest Hospital. The agreement was signed by the parties and a Justice of the Peace, Mr. James who was from the parish of St. Andrew. The agreement was returned to Mr. Scott and the plaintiff was given a copy. The agreement was identified by the witness and admitted as Exhibit 1.

A scheme was worked out whereby the plaintiff would pay the rent to Mrs. Richards the secretary of the Jamaica Development Bank and no one else. The plaintiff said that he paid the rent when and how he had the money. Mr. Scott wrote the plaintiff after the death of Edward Hall to the effect that he should quit the premises because he was not paying the lease.

Plaintiff further stated that he wrote to Harry Green the Executor of Edward Hall's estate three months before the expiry of the lease to exercise the option to purchase but he received no response from Mr. Green. He later saw Mr. Green and spoke to him and as a result of that conversation he did nothing else and did not return to see Mr. Scott. He spoke to his attorneys at the time, (Murray and Tucker) relaying the conversation with Green but nothing resulted from this. He met Franklyn Hall, the defendant in the

matter at Mr. Scott's office, when he went there to show him receipts in response to a notice to quit. They did not speak at that time, but he saw Franklyn Hall again when he went to his home at Hayes, Cornpiece in the parish of Clarendon , to seek a settlement in respect of the lands. He was turned away by Franklyn Hall. He stated that he had met Franklyn Hall before in 1986 when he had sought to serve a summons on him to attend the Supreme Court. At that particular time, Albert Hall, the son of Franklyn Hall had moved into the house on the leased premises, the issue of this matter. He attempted to reap crops on the property claiming that the property was his grandfather's. He was arrested for the theft of a vanload of coconuts. This situation lasted for about two years. Albert Hall was sued for trespassing and given eight days by a judge to leave the premises, which he did. He stated that the criminal aspect of that matter was discontinued.

The plaintiff stated that since the death of Edward Hall the relationship between himself and the family of the deceased was very bad, except for Mrs. Ada Hall with whom he claims to have had a good relationship until she died. He states that he never stopped making his rental payments, as later he made the payments through his attorneys Robinson, Phillips and Whitehorne. Plaintiff claims to be presently in the position to pay for the land.

Upon cross-examination he stated that as far as he knew Edward Hall had eight children, but at the time of his death there were seven. He denied cutting down any trees on the land. However he did clear the land for planting. In clearing the land, he denied cutting down any economic trees (including cedar trees), only guava trees. The lease, he stated, prevented the cutting down of trees, but he claims to have received verbal consent from the deceased to cut down the guava trees. He denied that there were any banana or coffee trees on the property when he got it, and further claims that all that is there was as a result of his planting them.

He gave evidence that he knew that Edward Hall could not read, but that he could sign his name. He agreed that the lease was for a five-year period, which would have elapsed on the 31st of July 1980. That there was a clause that he should complete the unfinished house on the property by the 31st of July 1980, which he failed to complete and was given one months grace. He further agreed that the lease contained a renewal clause to the effect that any requests would have to be made three months prior to the expiration of the lease. Renewal however, would be on the basis that the plaintiff honoured the terms, that is the covenants and agreements. He was more interested in the purchase of the land, especially because as he claims the children of the deceased were mad at him. In respect of rental to be paid if the lease was renewed, he understood that there would be an increase. He gave evidence that in 1975, he was paying five hundred dollars for the lease and in 1999, twenty four years later he submitted five hundred dollars per annum as lease for the property, which worked out to be about forty dollars per acre rental of the land. He claims that 95% of the property is stone, rock and steep hills.

There was no re-examination, but Miss Johnson by permission of the Court asked the plaintiff if any attempt was made by the personal representative of Edward Hall's estate to increase the rent payable on the lease agreement, to which he responded, no. The Court then asked whether the document that the plaintiff took to the Chest Hospital to Edward Hall to be signed was read over to him (that is to Edward Hall) by anyone, to which the response was, yes by the Justice of the Peace.

Franklyn Hall then gave his evidence, citing his occupation as being a handyman. He stated that he knew the plaintiff and the deceased his father. He stated that he does not know of any Executor of his father's estate. Further that he is the Administrator of his father's estate, Letters of Administration having been granted to him by the Supreme Court on January 4, 1984 which application was gazzetted. He alleged that as Administrator the plaintiff never approached him with any written requests in respect of renewing the lease, or to purchase the property. He gave evidence that he employed a lawyer who wrote to the plaintiff' s attorney and informed him of his wishes for the plaintiff to give up possession of the premises. As a result of this he gave about four notices to the plaintiff for him o quit the premises, which he did not do. He stated that a matter initiated in the St. Ann's Bay Resident's Magistrate's Court was postponed as the hounorable judge in the matter pointed out that the plaintiff had a matter pending in the Supreme Court and therefore he could not continue with the matter. He gave evidence in respect of his father's literacy, stating that the deceased could not read and that any necessary reading was done by the children. Further that he has never seen his father write and that where this was necessary his Aunt Gertie (his father's sister) would do so for him. He also gave evidence that his father was ill for a short period of time before his death about 3 to 4 months, during which time he received medical attention at the St. Ann's Bay hospital and the National Chest hospital. He stated that he did not know what steps the doctors took in treating his father. He gave evidence that before his father's death he viewed the property occupied by the plaintiff and observed coffee, chocolate, young bananas and plantain. In the months of his father's illness, he visited the property and saw breadfruit trees, cedar trees, mango trees and a good plantation of pimento trees, as well as guava trees, but not a large quantity of the latter. He claims to have visited the property regularly since his father's death, on a six-monthly or yearly basis and that he has never stopped visiting. He gave evidence that since his father's death he has observed changes to the property on subsequent visits, including the absence of two cedar trees, more of the land cleared upon which the banana plantation had been expanded. In respect of the house on the property he gave evidence that the zinc on top had been damaged and some parts of the ceiling torn out, the house being half finished. On his last visit (two years prior to this matter) he observed that nothing further had been done to the house.

He gave evidence that his father had eight children of which seven survived him. At the time of this matter, six were alive. The ages of the children ranged from 69 years to

approximately 50 years. He claims that where the bananas have been expanded that he had not received any money in relation to them. He claims that he did not know of any contract to sell the land other than the lease agreement.

In cross-examination he claimed a good relationship with the deceased. That he had left his father's home at Top Hill, Runaway Bay Saint Ann at age eighteen, returning at his father's death. At the time of his father's illness he was living in Kingston but visited his father from time to time. He admitted that he knew both Harry Green and Frank Love, but was unaware of whether they were the Executors of his father's will. He said that the very month his father died he went to Mr. Scott about his father's affairs. He took the Will to the lawyer who advised him that it had to be probated but was later informed that the Will as null and void. He claimed to have become aware of Mr. Smith's occupation of the properties since his father's death on August2, 1976. Although he claimed that two cedar tress were missing, he could not say how many were on the land before. He gave evidence that the deceased's other property at Top Hill consisted of seven acres, but had done nothing in respect of the property, except allowing the helper, a young man, who had assisted his father while he was alive, to remain on the property. He claimed that this was because he and his siblings all had their families and could only visit occasionally. He admitted that he knew that his father had borrowed money from the Jamaica Development Bank, in Claremont, St. Ann and had used the properties in issue as collateral. These titles he claimed were now in the possession of his attorney. He further claimed that he was unaware that Mr. Smith was making payments to that bank, but that after a "break", Mr. Smith had begun to make payments to the Kingston Legal Aid Clinic, his attorneys. He also gave evidence that there was never any discussion between him and Mr. Smith to resolve this matter out of Court, or for him to sell the properties to Mr. Smith.

ALLEGATIONS OF FRAUD

Defense counsel suggested that the circumstances surrounding the drafting of the lease agreement raised doubt as to its propriety, as the purported transaction was done by an illiterate man, ailing in hospital, shortly before his death. He argues that the circumstances raised doubts as to even the authenticity of the document. He pointed out that in regards to a Will, where the Testator cannot read, a clause is added that the instrument was read over to the maker and this was not done, considering the particular circumstances of this case.

The court ruled that this argument cannot be pursued as it raises the legal issue of fraud, which had not been pleaded specifically.

NOTICES TO QUIT AND BREACHES OF THE LEASE AGREEMENT

The defendant admitted to having been the sender of at least one of the Notices to quit sent to the plaintiff. The first Notice, from the evidence led would seem to have

been sent almost immediately after Edward Hall's death and indicated that Franklyn Hall wanted Mr. Smith to give up possession of the property. Neither counsel for the plaintiff nor the defendant led evidence in chief or in cross-examination as to the reason for the giving of the Notice. It was during her summing up that counsel for the plaintiff pointed out that the Notice (Exhibit 3) of June 30, 1986, did not stipulate as the reason the non - payment of rent, but gave the reason as being, "owner requires premises for own use." This was in response to the defense's contention that the plaintiff has failed to make the rent payments on time.

The plaintiff gave evidence that from the outset of the agreement with Edward Hall; he did not pay the rent at a set date of say the first of every month but paid the monies when he had it. He also led evidence that he paid the rent, first only to the secretary of the Jamaica Development Bank, Mrs. Richards (who was not called to give evidence on this point) and later, after Edward Hall's death, he made the payments through his Attorneys at the time. He had a few receipts to prove his point. Not much was said by the defendant as to whether or not Mr. Scott, the deceased's attorney and the alleged draftsman of the lease agreement, knew or was in any way involved in the payments of rent by the plaintiff. There were a lot of gaps in the evidence in this respect. What is apparent however is that Franklyn Hall wanted the properties in question and from the outset indicated a lack of conciliation. He gave evidence that as soon as his father died he hired attorneys to address his father's affairs. The next step was to give instructions that Mr. Smith be served with Notice to quit. There would seem to have been some level of harassment, in that Franklyn Hall gave evidence that he visited the property regularly from the time of his father's death to recent years and he has given vivid descriptions of the changes to the property. The purpose of these visits was not indicated to the Court, but if they were in compliance with clause 7 of the Lease[12] Agreement this is unclear. Clause 7 of the Lease states:

> "*To permit the Lessor or his agent with or without workmen at all reasonable time upon giving seven days previous notice in writing to enter upon and examine the condition of the demised premises and thereupon the Lessor may serve upon the Lessee notice in writing to effect such repairs (if any) as the Lessee is liable to do under the covenant in that behalf hereinbefore mentioned and if the Lessee shall not within ten days after the service of such notice proceed diligently with the execution of such repairs then to permit the Lessor to enter upon the premises and execute such repairs and the cost thereof shall be a debt due from the Lessee to the Lessor and be forthwith recoverable by Law.*"

If this was the case, did he also act in accordance with the requirements there and give Mr. Smith seven days previous notice in writing? Should not Franklyn Hall then have taken advantage of this clause and instructed Mr. Smith to address whatever repairs he deemed as being necessary in regards to the spirit of the Lease? Based on

the evidence led of both Franklyn Hall and Hopeton Smith, it is apparent that Franklyn Hall just wanted his father's property and would not have entertained any discussions on the matter. As plaintiff counsel asserts, Mr. Smith's efforts to exercise the option were frustrated from the outset.

It is contended by the defense that Mr. Smith breached Clause 4[3] of the lease and he gave evidence that the roof and ceiling were in disrepair. Clause 4 states:

> *"Clause 4 " the Lessee shall complete the unfinished house and any extension thereto for which the Lessee shall be compensated and shall insure and keep insured the said house against the risk of fire, earthquake, windstorm and fire arising therefrom:"*

Yet his counsel argues that Mr. Smith had failed to effect repairs and had even misrepresented this to the court as Mr. Smith had stated that he had not completed the repairs in time but had obtained one month's grace to do so. From whom he received this permission we do not know. Franklyn Hall did not state in what condition the house was at the time the lease was drafted, so any comparison to be made will be difficult. However, the description given by Franklyn Hall suggests that the house was indeed complete but required some repairs. The words "unfinished house" in their pure and unambiguous sense connotes a picture of half built walls, no roof over parts of the structure.

Defense counsel argued that Mr. Smith had not used the property properly, that he had cut down trees and cleared away the land, which Mr. Smith had described as being hilly, full of rocks and stones. The defendant had not described the property except to say what Mr. Smith was cultivating on it and how he had extended the bananas planted there. From the evidence of both parties, it would seem that Mr. Smith adhered if not to the letter of the agreement then to the spirit of clauses 5 [4]and 6.[5]

> *"Clause 5: To farm, cultivate the premises in good and husbandlike manner according to the most approved methods of husbandry and to keep the said lands clear and free from weeds.*
> *Clause 6: To keep in good condition all pimento, breadfruit trees coconut and other fruit tree and not to cut or destroy any such trees or other valuable trees without the written consent of the Lessor."*

Mr. Smith denied cutting down cedar trees, but admitted cutting down guava trees. Franklyn Hall's evidence supports this, as he said that there were not that many guava trees.

Unreasonable delay

Defense counsel pointed out that the law recognizes that dealings may be necessary before granting letters of administration to facilitate transactions involving the deceased's estate. The plaintiff in his own evidence had lawyers during the period and had taken no steps to address the legal requirements. He noted that the deceased died August 2, 1976 and therefore there was ample time within which the plaintiff could have taken proper steps.

Both parties gave evidence to the effect that Franklyn Hall had sought legal advice from the date of his father's death and the first order of business was to serve the plaintiff with a notice to quit. There seems to have been attempts by Mr. Smith to negotiate with Franklyn Hall, the meeting in Mr. Scott's office, going to his home in Hayes, Cornpiece, Clarendon, all fruitless efforts. Franklyn Hall received the letters of administration in 1984, and therefore Mr. Smith could not have brought an action until someone had been put in charge of Edward Hall's estate. Mr. Smith could not have brought any action before 1984.

THE OPTION TO PURCHASE

An option to purchase is defined in Halsbury's Laws of England 4th ed. Vol.44 para 25 as being *"in effect, an offer to sell, irrevocable for a stated period or until a stated event, made by the grantor of the option to the grantee, which the grantee is entitled to convert into a concluded contract of purchase on giving the prescribed notice and otherwise complying with the conditions on which the option is made exercisable in any particular case."* In Clause 4 of this Lease Agreement which states :

> "If the Lessee Mr. Hopeton Smith desire to purchase the reversion in fee simple in the premises hereby demised and Mr. Hopeton Smith before the expiration of the term give to the Landlord three months notice in writing of such desire then the Landlord hereby covenants that he will upon the expiration of such notice and upon Payment of the sum of SEVENTEEN THOUSAND DOLLARS ($17,000.00) together with all arrears of rent (if any) up to the expiration of the term hereby created and interest on the said sum of $17,000.00 at the rate of nine and one-half (9½) per centum per annum from the expiration of the notice until actual payment thereof convey the demised premises to the Lessee in fee simple free from encumbrances but until the said sum of SEVENTEEN THOUSAND DOLLARS ($17,000.00) together with interest as aforesaid and the arrears of rent have actually been paid this Lease shall continue in full force and the Lessee Mr. Hopeton Smith not be released of any of his obligations hereunder:-
>
> PROVIDED ALWAYS IT IS HEREBY AGREED as follows:-
>
> 1. If the rent hereby reserved or any part thereof be unpaid for thirty days after becoming payable (whether formally demanded or not) or if any

> covenants of the Lessee's part therein contained not be performed or observed or if the Lessee enter into any composition with his creditors or suffer distress or execution to be levied on his goods then in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-enter the demised premises or any part thereof in the name of the whole and thereupon this Lease shall be absolutely determined but without the right of the action of the Lessor in respect of any breach of the Lessee's covenanted herein contained. " (See Exhibit 1 paragraph 4.)

The relevant aspect of the lease agreement clause 4 indicates that there is a stated event, that is before the expiration of the five year lease period, with the lessee giving three months notice of his intention and paying a specified sum. The grantor died before these requirements could have been met.

The defence argued citing, **Mountford v. Scott [1975] 1 H 258**, that the plaintiff had failed to fulfill the requirements for exercising the option to purchase that is:

a) Giving notice to the landlord in accordance with the lease agreement of his intention to purchase
b) Pay the purchase price

In Mountford case the defendant granted to the plaintiff a six months option to purchase his house for £10,000 at the consideration of £1. In January 1972, the defendant attempted to withdraw the offer. In March 1972, the plaintiff exercised the option. Brightman J. at first instance, (affirmed by the Court of appeal), held that an option agreement gave the plaintiff an equitable interest in the defendant's house and following the exercise of the option and the payment of the purchase price, the Court should enforce by specific performance. He further stated that the lessee must show that he had performed the requirements or been willing and ready to perform them. The plaintiff in this matter has indicated that he is willing and ready to perform the requirements. He has attempted to give evidence to the effect that he has given the requisite notice of his intentions. However, the Court has to decide this matter using the civil standard, as there is not much tangible evidence in this respect.

The plaintiff contends that the option to purchase is a contract within itself. Further it is submitted by counsel for the plaintiff that Mr. Mr. Smith having indicated in writing to Harry Green, the person who at the time had legal conduct of the estate of the deceased, there was no point in going any further as Mr. Green is now dead. Plaintiff contends that the defendant exercised de facto control of the deceased's estate as evidenced by the commencement of Probate proceedings. Further, the

unaccommodating approach of the defendant towards the plaintiff from the outset actually frustrated the efforts of the plaintiff in exercising this option.

Counsel argues that the letter should be treated in law as being the notice as stipulated by the option itself.

The lease was valid for a fixed term of five years. The original Lessor had died one year after making the lease. From all the evidence led by both parties, the defendant had no intentions of even considering honouring the option clause. The first thing he did after the death of his father was to serve a notice to quit citing "owner wants premises for own use" as the reason. It is now in Court that he is citing all these other reasons of:

1. not finishing the house that was to be finished
2. not paying the rent on time
3. removing trees which he should not have
4. the property was not properly kept as it was bushy
5. The matter of the signing of the lease was not done by his father because he could not read or write.

These reasons actually have no bearing on the issue of the exercise of the option to purchase. Only the conditions of clause 4 of the Lease Agreement affected the exercise of the option to purchase. The terms and conditions referred to by the defendant actually related to that of the exercise of the option to renew the lease. The plaintiff from the outset had made it clear that he was more interested in the exercise of the option to purchase.

The matter of option to renew is not an issue in the case, therefore cases including, **Caerphill v Owen (1972) 1 WLR 372, (1972) 1 AER 248**
King Motors Limited v. Lax [1970] 1 WLR 426, which were cited are not applicable in the circumstances.

The Will had been declared null and void at Probate. Mr. Franklyn Hall had been granted letters of administration by the Supreme Court in 1984. It therefore is not an issue in this case what his powers were before the grant of letters of administration. Therefore the decisions of **Ingall v Moran [1944] 1 KB 160**, **Austin v. Hart [1983] 2 AC 640, Mills v Anderson [1984] QB 704** do not apply. To pursue that line of argument would be to indulge in a level of speculation that is unhelpful in the circumstances. The fact remains that the Will of Edward Hall had been declared invalid and whatever evidence it contained as to who were Executors and so on have been denied this court by that decision and by virtue of section 11 of the Records of Deeds, Wills and Letters Patent[6]. This is a court of equity and therefore the facts of the case will be weighed according to the civil standard.

[6] The Record of any will made on or since the first day of January, 1841, proved before the twenty-seventh day of November, 1884, and on which letters testamentary have issued according to the practice of the courts of this island

The suggestions of fraud by the defendant, in my opinion, are misplaced. As it is, the plaintiff gave evidence, not rebutted by the defendant, that the deceased had conducted all matters related to this situation through his Attorney and through his bank, thus refuting any allegations of impropriety or fraud in the drafting and execution of the document in question.

The issues raised in this matter are akin to that of **Kennewell v Dye (1949) 1 CHD 881**, a case involving a tenancy agreement dated April 6, 1923 and included an option to purchase clause. The owner of the property died in June 1947. In November 1947, the tenant purported to exercise the option to purchase by notice to the Landlord's personal representative. The Court found as a fact that the option formed part of the tenancy agreement and was therefore supported by consideration. There was a memorandum of agreement.

The issue was whether the option on its true construction was incapable of exercise after the death of the grantor of the option. This is the main issue for us to decide and we are guided by the dicta of Roxburgh who at page 882 said, *'In my judgment, there are only two matters which would prevent the burden of this option from devolving on the personal representative of the grantor. One would be if, as a matter of construction of the document, I should hold that it was not intended so to devolve. I can find nothing in the document, which would induce me, so to hold. The other would be if the contract were personal to the deceased. I can see nothing in this case to make vicarious performance difficult on either side, the obligation on one side is to execute a conveyance, and the obligation on the other side is to pay some money. Accordingly, I can see no ground for holding that the burden of this option did not devolve on the personal representative of the grantor."* Specific performance of the contract was ordered in that case. Prima facie, the position in this case remains the same. Nothing in the lease agreement prevents the burden of the option from devolving on the grantor's [Mr. Edward Hall's] personal representative Mr. Franklyn Hall]. Further the contract was not personal to the deceased as is evident from the Exhibit 3. In short, the obligation is on Mr. Franklyn Hall to execute a conveyance and the obligation on Mr. Hopeton Smith is to pay the sum of seventeen thousand dollars. In respect to the Memorandum of agreement we are guided by Halsbury's Laws of England 4th ed. Vol. 44 para. 32, which states that *"The memorandum is required only as evidence of a contract, and it has been consistently held that no special form of such evidence is required, provided only that it is contained in a document in writing, containing all the essential terms of the contract and signed by the party to be charged...A long line of authority establish that a*

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for the time being, and the probate of any such will granted before such date or thereafter granted, and the record of any such will or probate recorded in the Record office , shall be conclusive evidence of the contents of the said will, and of its due execution, as well in so far as it disposes of or affects real estate and as it disposes or affects personal estate.

written offer orally accepted may be enforced against the offeror, the written offer constituting the memorandum."

The facts of this case indicate that there was a written offer to Mr. Smith to purchase the leased property, this constitutes the written offer. Mr. Smith has consistently maintained that he desired to exercise the option to purchase, even so far as to verbalize this desire to Mr. Franklyn Hall, thus constituting the requirement of oral acceptance. Based on the particular circumstances of the case, the requirements for exercising the option have been met, in some form or fashion and the defendant is obligated to fulfill his obligations in this respect.

We agree with plaintiff counsel's submission that no separate agreement of sale is needed in law in the circumstances of this case.

The court is guided by Lord Denning in the decision of Williams v. Great Rex (1956) 3 AER 705, where the issue of delay or laches was discussed and it was held that even though the matter was brought ten years after the matter complained of occurred. Even though this case was one involving a contract to purchase the principles posited are applicable in the present case. At page 708 (f) of the decision, it was said:

> "It was a contractual license which the vendor could not repudiate at will. It created an equity."

The same principle applies to an option to purchase, in that once the offer has been made it cannot be revoked at the will of the grantor. An equitable interest has therefore been vested in the lessee. Further, weight was given to the purchaser's continued possession of the properties, [page708 (g)]:

> "He still remained in possession of the properties and being in possession under a contractual license, he had an equity to remain there."

Hopeton Smith remains in possession of the properties in issue and therefore has an equitable right to remain there. He is not a tenant at sufferance as the defense counsel has argued but if anything; he is a statutory tenant. We concur with the learned judge in Williams v Great Rex that as there is possession, which had been taken under a lease with an option to purchase clause, there is an equitable right for him to remain thereon. All that needs to be done is for the legal title to be perfected and in such a case laches or delay is not a bar to this action. The antagonistic and obstructive attitude of Mr.Franklyn Hall have also contributed to the delay in this matter being brought and it is quite understandable that Hopeton Mr. Smith did not consider it wise to take legal proceedings at an earlier stage before Letters of Administration were granted. The arguments of the defendant therefore fail on this point.

The Court therefore finds in favour of the Plaintiff.

1. Judgment for the Plaintiff on the claim and counterclaim. Specific performance of a contract for the sale of lands by virtue of an option to purchase clause in a lease agreement between himself and the deceased Edward Hall is hereby ordered to be addressed by the administrator of Edward Hall's estate, the defendant in this matter, Mr. Franklyn Hall.
2. That Mr. Franklyn Hall is hereby ordered to produce the two duplicate certificates of titles registered at volume 577 folio 66 and volume 580, folio 59 of the Register Book of Titles.
3. That the Registrar of the Supreme Court be entitled to sign any document which would give effect to the transfer of the titles in this matter to the plaintiff, if the personal representative of the estate of Edward Hall refuses to do so.
4. Cost is awarded to the plaintiff to be agreed or taxed.