

ROSE, J.

FEBRUARY 9TH, 1921.

*SMITH v. GURNETT.

Vendor and Purchaser—Lease of Land Containing Option of Purchase at Price Mentioned—Written Acceptance of Option before Expiry of Lease—Tender of Money before Expiry Unnecessary—Action by Purchaser for Specific Performance of Contract Formed by Option and Acceptance—Lease of 50 Acres with Reservation of Quarter-acre—Reservation Construed as Exception—Option to Purchase “said Lot”—Uncertainty as to Meaning—Purchaser Requiring Conveyance of Whole 50 Acres—Refusal of Specific Performance—Costs.

A purchaser's action for specific performance, tried without a jury at Sarnia.

F. W. Willson, for the plaintiff.

J. R. Logan, for the defendant.

ROSE, J., in a written judgment, said that by a lease under seal, dated the 28th August, 1919, the defendant leased to the plaintiff for one year commencing on the 15th October, 1919, and ending on the 15th October, 1920, “the north-east quarter of lot 32 in the 2nd concession of the township of Dawn, containing 50 acres more or less.” At the end of the lease was the following: “The lessor reserves the house and about one quarter of an acre around the house. Also the privilege of using water from the well and using the lane for getting wood from the bush. The lessee shall have the option of buying said lot at the expiration of this lease for the sum of \$2,100 plus such improvements put on place since this date in cash outlay.”

On the 13th October, 1920, the plaintiff's solicitor wrote the defendant a letter in which he said that the plaintiff had decided to accept the option and asked the defendant to let the writer know “how you wish the sale to be completed.” This was received by the defendant on the 14th October. No tender of any money was made until after the 15th October.

It was argued that the option was not validly exercised because the money was not tendered on or before the 15th October. The learned Judge did not agree with this argument. The option did not purport to make the payment of the money a condition. There was a valid acceptance of the offer to sell or a valid exercise of the option to purchase, whichever way it was expressed: *Mills v. Haywood* (1877), 6 Ch. D. 196.