

HON. MR. JUSTICE MIDDLETON.

APRIL 4TH, 1914.

BENNETT v. STODGELL.

6 O. W. N. 163.

Vendor and Purchaser—Specific Performance—Subsequent Sale—Subsequent Purchaser not before Court—Damage not Proven—Acceptance of Option in Lease—Consideration Adequate—Statute of Frauds—Identification of Parties—Time Limit—Implied Limit, Life of Lease—Costs.

MIDDLETON, J., *held*, that specific performance of an accepted option to sell certain lands, contained in an informal lease could not be granted a purchaser, where the property had been subsequently sold and the *buyer* was not before the Court.

That the option in question was not without consideration.

Matthewson v. Burns, 24 O. W. R. 834, approved.

Davis v. Shaw, 21 O. L. R. 481, disapproved.

That where a document uses the word "we" and signatures follow, the parties are sufficiently identified to satisfy the requirements of the Statute of Frauds.

White v. Tomalin, 19 O. R. 513, distinguished.

Action by a purchaser of lands for specific performance, tried at Sandwich on the 28th March, 1914.

M. K. Cowan, K.C., and E. S. Wigle, K.C., for plaintiff.

E. D. Armour, K.C., and J. Sale, for defendants.

HON. MR. JUSTICE MIDDLETON:—By an informal lease, not under seal, the defendants leased a house to the plaintiff for three years from the 1st of November, 1910, at a monthly rental of \$40. There followed this clause: "We hereby agree to give to W. M. Bennett an option to purchase the property for \$7,300 cash." It is said this option has been accepted, and the action is brought for specific performance.

Specific performance cannot now be granted, because before action the property was conveyed, and the purchaser is not before the Court. No case is made for damages. The vendor sold the property for the same price, although a false consideration is stated in the conveyance. It is not shewn that the property was worth more than the contract price.

Other questions were argued. It is said that the option was without consideration and revoked. As to this, I would prefer the view of the Chancellor in *Matthewson v. Burns*, 24 O. W. R. 834, to that expressed in *Davis v. Shaw*, 21 O. L. R. 481.