

the property, etc. On Jan. 14, 1907, M. signed a written offer, binding for 3 months from the date, to sell the same land to the defendant at a larger price. On the following day, but after the defendant had express notice of the agreement with the plaintiff, M. executed a formal written agreement to sell the land to the defendant; and the defendant, two days later, paid part of the consideration named, and received from M. a conveyance of the land. The plaintiff's agreement or option and the defendant's agreement of Jan. 15, were both registered on Jan. 15, and the defendant's deed on Jan. 17. On April 22, 1907, M. conveyed the same land to the plaintiff, and received a payment on account from the plaintiff, this conveyance was registered on April 24, 1907. In an action to set aside the defendant's agreement of the Jan. 15, and the deed registered Jan. 17, as being void, and to remove the same as a cloud upon the plaintiff's title.

Held, that the writing of Jan. 2, was not a mere option but a contract with the plaintiff to give him a binding option for 30 days after notice of desire to sell, and, being under seal, there was no need for a consideration; that the defendant took his agreement and conveyance subject to the rights of the plaintiff; but that these instruments were not tainted with fraud, and could not be declared void, as the defendants had full notice of the agreement of Jan. 2, he was thereafter in the same position quoad the plaintiff as M. had previously been, and was bound to do the same acts as M. in respect of the land, and, while the plaintiff's action as framed failed, his remedy lay in a claim for specific performance against the defendant and M., and he was allowed to amend, upon terms, by adding M. as a party and seeking the remedy suggested.

Judgment of TRETZEL, J., reversed.

F. E. Hodgins, K.C., for defendant. *R. F. Sutherland*, K.C., for plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Longley, J.]

EVILLE v. SMITH.

[July 24.]

Will—Words "leave no issue him surviving"—Construction.

The last will and testament of B.S. devised all the rest and residue of his estate to be kept invested until the death of one