counsel took the first two grounds together and they were the only ones that were seriously argued.

As a result of the arguments put forward, and in view of the wording of art. XIX of the Letters Patent of the Governor and Commander-in-Chief the court, in exercise of its powers under the Appeals from Magistrates Ordinance (*cap.* 14), s.17, decided to call further evidence and the instrument dated February 3rd, 1949 appointing Mr. Stoddart as the Governor's Deputy was produced. That document, as far as it is material to this case, reads: "[A]nd in that capacity to exercise, perform and execute . . . all powers and authorities . . . vested in the Governor."

This evidence forced learned counsel to adopt the somewhat attractive, but to my mind quite fallacious, argument that the powers conferred by the instrument were so wide and general that they did not comply with art. XIX of the Letters Patent, which requires that the powers and authorities to be exercised by the Governor's Deputy shall be such "as shall in and by such instrument be specified and limited, but no others." In my opinion all the grounds of appeal fail and the appeal must stand dismissed.

Appeal dismissed.

BASMA *v.* WEEKES and THREE OTHERS

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Simonds, Lord MacDermott, Lord Reid, Sir John Beaumont and Sir Lionel Leach): May 3rd, 1950
(P.C. App. No. 45/1948)

[1] **Agency—duties and liabilities of agent—liability in contract—agent contracting in own name liable even if existence of principal disclosed:** An agent who contracts in his own name does not cease to be contractually bound because it is proved that the other party knew when the contract was made that he was acting as agent for another; but in such a case the other party is entitled to sue either the agent or the principal at his election (page 42, lines 7–11; page 44, lines 8–19).

[2] **Agency—duties and liabilities of agent—liability in contract—evidence admissible to show party signing memorandum contracted as agent if memorandum not contradicted:** Evidence is admissible to show that a party named in an agreement or memorandum of sale was acting as agent for an unnamed party, and this is so whether or not the agreement is one required to be evidenced in writing by the

Statute of Frauds, 1677; but if that party appears on the face of the instrument to be contracting in a personal capacity only, such evidence is not admissible to contradict the agreement (page 41, line 6—page 42, line 11).

[3] **Agency—duties and liabilities of principal—liability in contract—other contracting party may elect to sue either agent or disclosed principal:** See [1] above.

[4] **Agency—rights of principal—rights against third party—when disclosed principal may sue third party—principal may sue on contract though not named in memorandum in writing if agency relationship known by third party:** To statisfy the Statute of Frauds, 1677, a memorandum of sale must name or identify two parties who are contractually bound to eaçh other, and the Statute does not cease to be satisfied if it is proved that one of them was known by the other when the contract was made to be acting as agent for a party unnamed in the memorandum (page 43, line 32—page 44, line 8).

[5] **Contract—form—note or memorandum in writing—identification of parties—Statute of Frauds, 1677 satisfied if one party named known by other to be contracting as agent:** See [4] above.

[6] **Contract—form—note or memorandum in writing—signature—evidence admissible to show party signing memorandum contracted as agent if memorandum not contradicted:** See [2] above.

[7] **Contract—specific performance—availability of decree—contract for sale of land by several vendors—specific performance available against vendors with enforceable interests—proportionate abatement in purchase price in respect of vendor without interest:** Where property is sold by more than one vendor, one of whom has no enforceable interest in the property, in the absence of any special circumstances to prevent it a court may order specific performance of the conveyance of the interests of the vendors with enforceable interests in the property and a proportionate abatement in the purchase price in respect of the vendor without one (page 44, line 32—page 45, line 30).

[8] **Documents—interpretation—admission of extrinsic evidence—admissible if not inconsistent with written terms—may show party signing memorandum contracted as agent if memorandum not contradicted:** See [2] above.

[9] **Land Law—conveyancing—contract for sale of land by several vendors—specific performance available against vendors with enforceable interests—proportionate abatement in purchase price in respect of vendor without interest:** See [7] above.

The appellant brought an action against the respondents in the Supreme Court for specific performance of an agreement of sale. The first three respondents, one of whom was a woman married

in Sierra Leone prior to the passing of the Imperial Statutes (Law of Property) Adoption Ordinance, 1932, agreed to sell two houses to an agent known by the respondents to be acting on the appellant's behalf. The agreed purchase price was duly paid by the appellant's agent. An agreement of sale was drawn up and signed by the first three respondents which referred only to the appellant's agent and not to the appellant himself. The first three respondents subsequently sold the houses to the fourth respondent, who took with notice of the agreement with the appellant, and the appellant was refunded the agreed purchase price by the first three respondents. The appellant instituted the present proceedings for specific performance of the agreement of sale.

The Supreme Court (Wright, Ag.J.), having found that the respondents had knowledge of the fact that the purchaser was acting as agent of the appellant, and that therefore the agreement of sale was a sufficient memorandum under the Statute of Frauds, 1677, gave judgment for the appellant to the extent of the interests of the second and third respondents with an abatement of one-third of the purchase price in respect of the first respondent, who as a married woman had no power to enter into the agreement of sale.

The appeal by the second, third and fourth respondents was allowed by the West African Court of Appeal on the ground that the agreement of sale was not a sufficient memorandum within s.4 of the Statute of Frauds.

On further appeal, the Judicial Committee of the Privy Council also considered whether the agreement of sale was a sufficient memorandum, and whether the appellant was entitled to have specific performance of only a part of his contract.

Cases referred to:

(1) *Att.-Gen.* v. *Day* (1849), Ves. Sen. 219; 27 E.R. 992, followed.

(2) *Calder* v. *Dobell* (1871), L.R. 6 C.P. 486; 25 L.T. 129, *dictum* of Kelly, C.B. applied.

(3) *Filby* v. *Hounsell*, [1896] 2 Ch. 737; (1896), 75 L.T. 270, explained.

(4) *Hexter* v. *Pearce*, [1900] 1 Ch. 341; (1899), 82 L.T. 109, *dictum* of Farwell, J. applied.

(5) *Higgins* v. *Senior* (1841), 8 M. & W. 834; 151 E.R. 1278, *dicta* of Parke, B. applied.

(6) *Horrocks* v. *Rigby* (1878), 9 Ch.D. 180; 38 L.T. 782, followed.

(7) *Lovesy* v. *Palmer,* [1916] 2 Ch. 233; (1916), 114 L.T. 1033, approved.

(8) *Lumley* v. *Ravenscroft,* [1895] 1 Q.B. 683; (1895), 72 L.T. 382, not followed.

(9) *Price* v. *Griffith* (1851), 1 De G.M. & G. 81; 42 E.R. 482, distinguished.

(10) *Smith-Bird* v. *Blower,* [1939] 2 All E.R. 406, doubted.

(11) *Thomas* v. *Dering* (1837), Keen 730; 48 E.R. 488, distinguished.

Legislation construed:

Statute of Frauds, 1677 (29 Car. II, c.3), s.4:

> ". . . [N]o action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate or whereby to charge the defendant upon any special promise to answer for the debt default or miscarriages of another person or to charge any person upon any agreement made . . . upon any contract or sale of lands tenements or hereditaments . . . or upon any agreement that is not to be performed within the space of one year from the making thereof unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith . . . ."

R.O. Wilberforce (of the English bar) for the appellant;
O'Connor (of the English bar) for the respondents.

LORD REID, delivering the opinion of the Board:

This is an appeal from a judgment of the West African Court of appeal dated April 8th, 1948, which set aside a judgment of Wright, Ag.J., in the Supreme Court of Sierra Leone dated May 24th, 1947. The appellant, who was the plaintiff in the action, alleged that by an agreement dated November 29th, 1946, the first, second and third respondents agreed to sell to him two houses in Freetown for £1,900, and that thereupon the sum of £633. 6s. 8d. was paid to each of these respondents in full satisfaction of the purchase price. The appellant further alleged that, by deed of conveyance dated December 2nd, 1946, these respondents purported to convey the two houses to the fourth respondent. The appellant's claim was to have specific performance of his agreement with the first three respondents. The defence was a denial of this agreement. At the opening of the trial the respondents were allowed without objection to amend their defence by adding the words "If at all there was such an agreement,

which is not admitted, the alleged agreement does not comply with the requirements of the Statute of Frauds." Evidence was then led and the appellant's case closed. At that stage the respondents' counsel, after having made an unsuccessful submission that there was no evidence of the alleged agreement, sought to amend the defence further by adding: "The defendant Gladys Muriel Weekes and the defendant Ettie Spaine are married women." Objection was taken but the amendment was allowed and the respondents' evidence was then led.

The appellant's case was based on a document in the following terms:

"*Nos. 2 and 2A, Kissy Street, Freetown.*

We, the undersigned, the owners of the above premises hereby agree that we have today sold the above premises Nos. 2 and 2A, Kissy Street, Freetown, to Mr. C. B. Rogers-Wright, of 27 Liverpool Street, Freetown, at the price of £1,900, which he has completely paid in three separate sums of £633. 6s. 8d. to each of us. We also hereby agree that we will execute the deed of conveyance to the said premises whenever it is prepared and that in the meantime Mr. Wright shall be in possession of the said premises from the date hereof.

Dated this 29th day of November, 1946.

(Sgd.) *Gladys Weekes.*
(Sgd.) *Henrietta Spaine.*
(Sgd.) *John Kabia Williams.*"

Their Lordships will refer to this document as the agreement of November 29th. The respondents did not deny that they had signed this document. They relied on three different defences: first, that the property had already been sold by the first three respondents to the fourth respondent before November 29th; secondly, that the agreement of November 29th was not a sufficient memorandum to enable the plaintiff to sue on the contract; and thirdly, that the first respondent Mrs. Weekes had no power to enter into the contract and that, as the contract could therefore not be performed in its entirety, there could be no order for specific performance against the other respondents.

The first of these defences is not now maintained. On this matter Wright, Ag.J. did not accept the respondents' evidence: he held that the agreement of November 29th had been made and signed before the first three respondents agreed to sell the property to the fourth respondent and that when this agreemnt was made the

fourth respondent had notice of the earlier agreement to sell to the appellant. These findings have not been challenged.

With regard to the second defence, it appears from the judgment of Wright, Ag.J. that it was argued for the respondents that the only agreement proved was an agreement between Mr. Rogers-Wright and the first three respondents. Wright, Ag.J. rejected this argument holding that oral evidence had sufficiently proved that Mr. Rogers-Wright was acting as agent for the appellant and that there was sufficient proof of a contract with the appellant.

The third defence was founded on the fact that before 1932 the law of Sierra Leone with regard to the capacity of a married woman was the same as the law was in England before the passing of the Married Women's Property Act, 1882, and that the Imperial Statutes (Law of Property) Adoption Ordinance, 1932 preserved any right which a husband had acquired before that date. Wright, Ag.J. found himself unable to deal with this defence because the evidence was insufficient, and he therefore allowed further evidence to be called. In fact no further evidence was called: it is not clear what further submissions were made by the parties at that stage but in his reasons for his final judgment Wright, Ag.J. said:

> "Counsel for the plaintiff having agreed to accept judgment for specific performance, the court therefore declares that the plaintiff is entitled to specific performance of the agreement dated November 29th, 1946 mentioned in the pleadings to the extent of the interests of Mrs. Spaine and John Williams with an abatement of one-third of the purchase price in respect of the interest of Mrs. Weekes."

The argument before their Lordships proceeded on the footing that the respondents, Mrs. Weekes, Mrs. Spaine and John Williams, were tenants in common of the property in question, that Mrs. Weekes who was married in 1931 had no power to enter into the agreement of November 29th, but that Mrs. Spaine who was not married until 1944 was under no such disability. It was admitted that the sums paid to these three respondents by the appellant had been repaid to him, and that if the appellant is to have specific performance of the agreement to the extent of the interests of Mrs. Spaine and John Williams he must pay the sum of £1,266. 13s. 4d. It was not disputed that this sum should in that event be paid to the fourth respondent who has taken a conveyance of the property from the first three respondents with the concurrence of Mrs. Weekes' husband and has paid to them the price of the property.

The second, third and fourth respondents appealed to the West African Court of Appeal. That court allowed the appeal on the ground that the agreement of November 29th was not a sufficient memorandum within the Statute of Frauds, 1677. Against that decision the present appeal is taken.

The agreement of November 29th apparently satisfies the requirements of the Statute of Frauds. It names the vendors and the purchaser; it specifies the subjects sold and the price; and it is signed by the vendors, the parties to be charged. Further, it states that Mr. Rogers-Wright, who is named as the purchaser, has paid the price and is entitled to immediate possession. Mr. Rogers-Wright is a solicitor and admittedly it was proved by oral evidence that he was acting in this matter as agent for the appellant. But there is nothing in the document to suggest that Mr. Rogers-Wright was acting otherwise than as principal. The first question in this case is whether it is relevant to enquire whether the vendors when they made the agreement knew that Mr. Rogers-Wright was acting as agent for the appellant, and whether, if such knowledge is proved, the fact that the agreement does not identify the appellant as purchaser makes it insufficient to satisfy the Statute of Frauds. Wright, Ag.J. did not deal with this question—probably the point was not taken before him—but the West African Court of Appeal held that the vendors were aware that Mr. Rogers-Wright was purchasing as agent for the appellant. There is evidence to support this finding and their Lordships will assume that it is correct. After so holding, the judgment of the Court of Appeal proceeds (12 W.A.C.A. at 314–315):

> "It follows therefore that the memorandum to enable the respondent (now the appellant) to sue on it must have contained his name either as a principal or in some other way to identify him. As it clearly fails to do so, we hold that the document . . . was not a sufficient memorandum within the Statute of Frauds."

The authority on which the Court of Appeal rely is the judgment of Luxmoore, L.J. in *Smith-Bird* v. *Blower* (10), and there is in that judgment a passage which is directly applicable to the present case. But before proceeding to examine that judgment their Lordships must refer to certain earlier cases the authority of which has never been doubted but which do not appear to have been cited to Luxmoore, L.J. In *Higgins* v. *Senior* (5), there was an agreement in writing for the sale of goods above the value of £10, which purported on the face of it to be made by the defendant and was subscribed by him; but the defendant sought to avoid liability by proving that he

made the agreement as agent for a third person and that this was known at the time to the plaintiff. It was held that this did not enable the defendant to escape liability. Parke, B., in delivering the judgment of the court, stated the principle as follows (8 M. & W. at 844; 151 E.R. at 1282):

"There is no doubt that where such an agreement is made it is competent to show that one or both of the contracting parties were agents for other persons and acted as such agents in making the contract, so as to give the benefit of the contract on the one hand to and charge with liability on the other the unnamed principals and this whether the agreement be or be not required to be in writing by the Statute of Frauds; and this evidence in no way contradicts the written agreement. It does not deny that it is binding on those whom on the face of it it purports to bind; but shows that it also binds another by reason that the act of the agent in signing the agreement in pursuance of his authority is in law the act of the principal.

But, on the other hand, to allow evidence to be given that the party who appears on the face of the instrument to be personally a contracting party is not such would be to allow parole evidence to contradict the written agreement: which cannot be done. And this view of the law accords with the decisions, not merely as to bills of exchange signed by a person without stating his agency on the face of the bill but as to other written contracts, namely the cases of *Jones* v. *Littledale* and *Magee* v. *Atkinson*. It is true that the case of *Jones* v. *Littledale* might be supported on the ground that the agent really intended to contract as principal: but Lord Denman, in delivering the judgment of the Court, lays down this as a general proposition 'that if the agent contracts in such a form as to make himself personally responsible, he cannot afterwards, whether his principal were or were not known at the time of the contract, relieve himself from that responsibility and this is also laid down in *Story on Agency*, s.269.'"

In *Calder* v. *Dobell* (2), Cherry, a broker, contracted in his own name to buy goods from the plaintiffs, having previously disclosed to them that he was acting as agent for the defendant. It was held unanimously by the Court of Common Pleas and in the Exchequer Chamber that the plaintiffs were entitled to sue the defendants on this contract. It was argued for the defendant that there is a distinction between the case where one party is not aware when

making the contract that the other is acting as an agent and the case where he is aware of that fact but nevertheless the contract is made by the agent in his own name and that the principal could be sued in the former case but not in the latter. This argument was rejected. It was held that in this respect there is no distinction between the two cases and the authority of *Higgins* v. *Senior* (5) was fully recognised. Kelly, C.B. said (L.R. 6 C.P. at 499): "The contract was made in the name of Cherry the agent but the case shows that it was made on behalf of a principal who was named at the time. I think the plaintiffs had a right to sue either the agent or the principal at their election." [These words do not appear in the report of the case at 25 L.T. 129.]

The circumstances in *Smith-Bird* v. *Blower* (10) were that the defendant wished to sell two houses, that a certain Mr. Brown who had been authorised by the plaintiffs to buy the houses was introduced to the defendant and after some negotiations agreed to buy the houses for £510, and that the document relied on as a memorandum of this agreement contained nothing to indicate that the plaintiffs were the purchasers or that Mr. Brown was acting otherwise than on his own behalf. Luxmoore, L.J., having held that there was an oral contract to sell the houses, said ([1939] 2 All E.R. at 407–408):

> "The further question arises whether there is a sufficient memorandum of that contract to comply with the requirements of the Statute. In this connection it is necessary to determine whether the defendant was aware that Mr. Brown was acting as agent only, and not as principal, for, if the defendant knew that Mr. Brown was only an agent, the memorandum, in order to comply with the statutory requirements, must either contain the names of the plaintiffs as principals or otherwise identify them, whereas if the defendant was not aware of the fact that Mr. Brown was acting as agent for anyone, but considered that Mr. Brown was contracting on his own behalf, the position is different, and the plaintiffs as undisclosed principals can rely on any sufficient memorandum in which Mr. Brown's name appears as principal, although there is no reference therein to the plaintiffs."

The learned Lord Justice cited as authority for this proposition the cases of *Lovesy* v. *Palmer* (7) and *Filby* v. *Hounsell* (3). In *Lovesy* v. *Palmer*, the plaintiff claimed a declaration that there was a binding contract between the defendants and himself with regard

to the lease of a theatre. One question was whether there was any memorandum of the alleged agreement sufficient to satisfy the Statute of Frauds. The facts were complicated and a number of documents were alleged to form together such a memorandum. In these documents the plaintiff's solicitor was named but he only purported to contract on behalf of unnamed "clients." Younger, J. (as he then was) held that at no time could this solicitor have sued or been sued on the contract. And there was no reference in the documents to the plaintiff as a contracting party. So it was impossible to identify from the documents any person who could sue the defendants or be sued by them on the alleged contract, and Younger, J. held, rightly in their Lordships' judgment, that there was no memorandum sufficient to satisfy the Statute of Frauds. It had been argued for the plaintiff that *Filby* v. *Hounsell* (3) decided that it was enough that the solicitor purported to act on behalf of "clients" and that the "clients" were identified by parole evidence. With regard to this case Younger, J. said ([1916] 2 Ch. at 244; 114 L.T. at 1037):

> "If it was in fact decided in *Filby* v. *Hounsell* that there could within the Statute be a sufficient memorandum of an agreement where the principal was not named and the agent was not bound then I do not think that the decision can stand with the other authorities such as *Rossiter* v. *Miller* and *Jarrett* v. *Hunter* or with the Statute as I read it. But I think, when one looks carefully at the case of *Filby* v. *Hounsell*, that Romer, J., really gave the judgment he did because he assumed that the agent was liable on the contract. I cannot myself see for reasons I have given that the assumption was well founded, but if that was the basis of the learned Judge's decision then the case presents no further difficulty and is in entire harmony with all the authorities."

Their Lordships agree with this interpretation of the case of *Filby* v. *Hounsell* (3) and they are unable to find either in that case so interpreted or in the case of *Lovesy* v. *Palmer* (7) anything to justify the distinction stated in the passage quoted from the judgment in *Smith-Bird* v. *Blower* (10). Those cases decide that to satisfy the Statute the agreement or memorandum must name or identify two parties who are contractually bound to each other. They do not decide that where two such parties are named or identified the Statute ceases to be satisfied if it is proved that one of them was known by the other when the contract was made to be acting

as agent for a third party. No doubt that result would follow if it were the law that an agent who contracts in his own name is not contractually bound if the other party knew at the time that he was acting as agent. If that were so, the agreement or memorandum would on proof of such knowledge cease to contain the names of two contracting parties and would therefore cease to satisfy the Statute. But it is clear from *Higgins* v. *Senior* (5) and *Calder* v. *Dobell* (2) that that is not the law. An agent who contracts in his own name does not cease to be contractually bound because it is proved that the other party knew when the contract was made that he was acting as agent. So the agreement which is made in his name does not cease in that event to contain the names of contracting parties, and therefore does not cease to satisfy the Statute. Their Lordships are satisfied that in the present case the terms of the agreement of November 29th are such that Mr. Rogers-Wright was contractually bound, and therefore the agreement satisfies the Statute of Frauds. So Mr. Rogers-Wright could have sued on the agreement, and if he could sue so can his principal the appellant.

The other question in this appeal is whether the appellant is entitled to have specific performance of a part of his contract. He agreed to buy two houses which were owned by the first, second and third respondents as tenants in common. He cannot enforce this contract against the first respondent because she had no power to make the contract. Can he enforce it against the second and third respondents so as to require conveyance to him of the two one-third shares which belonged to these respondents? Cases have not infrequently arisen where a single vendor has been unable to give a good title to all that he has contracted to sell. The general rule in such a case has been stated by Lord St. Leonards in *Sugden, Law of Vendors & Purchasers,* 14th ed., at 317 (1862):

> "[A] purchaser generally, although not universally, may take what he can get, with compensation for what he cannot have."

Earlier on, he states (*ibid.*, at 316): "In regard to the limits of the rule that a purchaser may elect to take the part to which a title can be made at a proportionate price, it has not been determined whether under any circumstances of deterioration to the remaining property, the vendor could be exempted from the obligation of conveying that part to which a title could be made; but the proposition is untenable, that if there is a con-

siderable part to which no title could be made, the vendor was therefore exempted from the necessity of conveying any part."

In the present case there are three vendors. One cannot convey her interest but there is nothing to prevent the conveyance of the interests which belonged to the others. This type of case is less common but one example is *Horrocks* v. *Rigby* (6), where two persons agreed to sell a public house and it was found on investigation that one of them had no interest in it but that a moiety belonged to the other. In an action by the purchaser against the latter vendor for specific performance Fry, J. said (9 Ch.D. at 182; 38 L.T. at 784):

"I think that where an agreement is entered into by A and B with C and it afterwards appears that B has no interest in the property A may nevertheless be compelled to convey his interest to C. I should have come to that conclusion upon principle for I do not see why a purchaser is to lose his right against a vendor who can complete because from a circumstance of which the purchaser had no knowledge he has no right against persons who cannot complete. But I am very much fortified in that conclusion in a passage in the judgment of Lord Hardwicke in *Attorney-General* v. *Day* (1)."

This passage which is quoted by Fry, J. is:

"On the other hand, if on the death of one of the tenants in common who contracted for a sale of the estate the purchaser brings a bill against the survivor, desiring to take a moiety of the estate only, the interest in the money being divided by the interest in the estate, I should think (though I give no absolute opinion as to that) in the case of a common person he might have a conveyance of a moiety from the survivor, although the contract cannot be executed against the heir of the other." (Ves. Sen. at 224; 27 E.R. at 996).

Their Lordships would have no hesitation in following these authorities but for the judgment of Lindley, L.J. in *Lumley* v. *Ravenscroft* (8). In that case the two defendants who appear to have been tenants in common had agreed through their agent to grant a lease of certain premises to the plaintiff. The plaintiff brought an action for specific performance or alternatively for damages, and applied for an injunction to restrain the defendants until after the trial of the action from leasing the premises to any other person. It appeared that one of the defendants was an infant. Day, J. granted an injunction but an appeal from this

order was allowed. Lindley, L.J., in the leading judgment of the Court of Appeal, said ([1895] 1 Q.B. at 684–685; 72 L.T. at 383):

> "Specific performance is out of the question. You cannot get specific performance against an infant: and upon the evidence before us no case is made out for specific performance against the other defendant either. This case is not within the exemption as to misrepresentation or misconduct stated in *Price* v. *Griffith* and *Thomas* v. *Dering* but comes within the general rule that where a person is jointly interested in an estate with another person and purports to deal with the entirety specific performance will not be granted against him as to his share. The plaintiff's only remedy is by way of damages."

Neither *Horrocks* v. *Rigby* (6) nor *Att-Gen.* v. *Day* (1) was cited to the court; indeed *Price* v. *Griffith* (9) and *Thomas* v. *Dering* (11) appear to have been the only authorities cited in argument, the argument for the plaintiff as reported being very meagre. Both *Price* v. *Griffith* and *Thomas* v. *Dering* were cases of an unusual character. *Price* v. *Griffith* was discussed and explained by Farwell, J. in *Hexter* v. *Pearce* (4). In *Price* v. *Griffith*, two tenants in common were alleged to have agreed to grant a mineral lease. The plaintiff failed to prove any agreement at all with one of them and, as Farwell, J. points out, the case was really decided on the ground that the agreement with the other was void for uncertainty. But Knight Bruce, L.J. said with regard to the claim of the plaintiff to have specific performance against only one of the two tenants in common (1 De G. M. & G. at 85; 42 E.R. at 484):

> "If he (the tenant in common) intended to contract at all he intended to contract for a lease of the whole colliery. Cases may be conceived where a person who has contracted to convey more than it is in his power to convey ought to be decreed to convey what he can either with or without compensation to the vendee for such part of the subject matter of the contract as the vendor is unable to convey. But a lease of an undivided moiety of a colliery is a very different thing from a lease of a whole colliery."

That passage might be read as affording support for the general rule stated by Lindley, L.J., but Farwell, J. read it in a narrower sense. He said ([1900] 1 Ch. at 345; 82 L.T. at 110) with regard to it:

> "In a sense with great deference to the Lord Justice that is a truism: but the meaning I think is that in that case the intention

of the lessor was to grant a lease of the entirety and nothing else. There would have been a certain hardship in compelling him to grant a lease of a moiety only when he did not intend it having regard to the fact that it was a lease of mineral property. I think that is all the Lord Justice meant."

So interpreted, *Price* v. *Griffith* (9) is not an authority for any general rule. In *Thomas* v. *Dering* (11) there was only one vendor and their lordships do not think it helpful to examine the case closely as they have found nothing in it to throw light on the position where there is more than one vendor and one of the vendors cannot complete the contract. Their Lordships have reached the conclusion that the weight which must otherwise be given to a judgment of Lindley, L.J. is in this case seriously diminished by the circumstances to which they have adverted, and that the decision in *Lumley* v. *Ravenscroft* (8) cannot be regarded as having impaired the authority of *Horrocks* v. *Rigby* (6) or of the opinion of Lord Hardwicke in *Att.-Gen.* v. *Day* (1). In the present case there appear to be no special circumstances which would make it wrong to grant specific performance and their Lordships hold that the decision of Wright, Ag.J. was correct in principle. It was not argued that the form of the order made by Wright, Ag.J. should be altered in any way.

Their Lordships will humbly advise His Majesty that this appeal should be allowed and the order of Wright, Ag.J. restored. The respondents, other than the respondent Mrs. Weekes, will pay the costs of this appeal and in the West African Court of Appeal.

Appeal allowed.