

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H-228 OF 1987

BETWEEN VALDA HYMAN
DOROTHY LAWRENCE PLAINTIFFS

A N D KAREN FREDERICKA JUNE HYMAN-CLARKE
(Administratrix of the Estate of
Frederick Roy Linton Hyman, dec'd.) DEFENDANT

SUIT NO. C.L. C-092 OF 1988

BETWEEN KAREN FREDERICKA JUNE HYMAN-CLARKE
(Administratrix of the Estate of
Frederick Roy Linton Hyman, dec'd.) PLAINTIFF

A N D VALDA HYMAN
DOROTHY LAWRENCE DEFENDANTS

Mr. H. Edwards, Q.C. instructed by Dr. W. McCalla for the plaintiffs -
Valda Hyman and Dorothy Lawrence.

Mr. D. Muirhead, Q.C. instructed by Mr. Charles Piper for the defendant -
Karen Fredericka June Hyman-Clarke.

HEARD: OCTOBER 3-7, 1988, FEBRUARY 23-24, 1989
NOVEMBER 5-8, 1990 AND OCTOBER 25, 1991

THEOBALDS, J.

This action commenced by Writ of Summons filed on the 9th day of December, 1987. The Writ was followed by a Statement of Claim dated 22nd day of December, 1987. Defence and Counter-claim were filed. The defendant to the first suit subsequently on the 15th April, 1988 filed a Writ and Statement of Claim against the plaintiffs. As both suits involved premises No. 187 Mountain View Avenue at Summons for Directions stage the usual order to consolidate was made. This was done on the 22nd June, 1988. The matter first came up for trial on 14th July, 1988 when it was not reached. It appears, however, that the defendant Karen Hyman-Clarke was not then ready for trial for leave was then sought and granted to Amend the Defence and Counter-claim with consequential leave to the plaintiffs to amend their Reply. There followed a series of amendments to the Pleadings. These amendments continued even during the course of the trial. For convenience, the Pleadings at commencement of the trial are set out below seriatim.

AMENDED STATEMENT OF CLAIM

SUIT NO. C.L. R 288 OF 1987

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN

VALDA HYMAN
AND
DOROTHY LAWRENCE

PLAINTIFFS

A N D

(KAREN FREDERICKA JUNE HYMAN-CLARKE
Administratrix of the estate of
FREDERICK ROY LINTON-HYMAN, deceased)

DEFENDANT

AMENDMENT TO STATEMENT OF CLAIM PURSUANT TO LEASE GRANTED BY THE
HONOURABLE COURT ON 2ND OCTOBER, 1988

1. The Plaintiffs reside at 187 Mountain View Avenue, Kingston 6, in Parish of Saint Andrew, but now temporarily residing at 164 East 28th Street, Brooklyn, New York, N.Y. 11226, United States of America.
2. The first named Plaintiff is a Retired School Teacher and also a Retired Nurse, and the second named Plaintiff is a Nurses' Aide.
3. The Defendant is an Attorney-at-Law and the duly qualified Administratrix of the estate of Frederick Roy Linton Hyman, deceased.
4. That the said Frederick Roy Linton Hyman, deceased, was the brother of the Plaintiffs herein.
4. (a) That on the death of Fredericka Hyman it was agreed initially by Valda Hyman, Dorothy Lawrence, Louise Wilmot and Frederick Hyman that a house should be purchased by them as a family home.
4. (b) That the premises that were selected by Frederick Hyman and Winston Hyman as a family home were premises at 187 Mountain View Avenue.
4. (c) That after discussion between Valda Hyman, Frederick Hyman, Louise Wilmot and Dorothy Lawrence it was agreed between Valda Hyman, Frederick Hyman and Dorothy Lawrence they would jointly purchase a family home which family home was namely 187 Mountain View Avenue. It was further agreed that Winston Hyman would assist in financing the deposit required to purchase a home. This home was at 187 Mountain View Avenue.
5. That during the lifetime of the said Frederick Roy Linton Hyman, he entered into an Agreement to purchase property known as 187 Mountain View Avenue, in the parish of Saint Andrew in or about the year 1968.
6. That a Transfer of the said property was carried out on the 31st day of December, 1968 and the same was endorsed on the Certificate of Title registered at Volume 366 Folio 63 of the Register Book of Titles in the name of the said Frederick Roy Linton Hyman.

7. That the Plaintiffs assisted Frederick Roy Linton Hyman financially and otherwise to purchase the said property on the clear understanding and verbal agreement that the said Frederick Roy Linton Hyman and the Plaintiff's names would be endorsed on the said Certificate of Title as Owners.
8. That in breach of paragraph 7 hereof Frederick Roy Linton Hyman went ahead and had the Certificate of Title endorsed in his name alone during the Plaintiff's absence from Jamaica at the time, and without their knowledge or consent.
9. That the amount paid by the Plaintiffs towards the deposit on the purchase price was \$500.00 and the said Roy Frederick Linton Hyman was able to obtain a Mortgage for whatever balance was owing on the said purchase price.
10. That the Plaintiffs have contributed substantially to the Mortgage payments, repairs to the house, payment of taxes, water rates, insurance and otherwise, totalling approximately \$22,000.00.
11. That several requests and demands were made by the Plaintiffs on Frederick Roy Linton Hyman to have their names, in addition to his, endorsed on the said Certificate of Title, but this was never done either through neglect, omission or otherwise.
12. The plaintiffs therefore claim:-
 - (a) A declaration that they and the Defendant are the owners of the beneficial interest in the premises known as 187 Mountain View Avenue in the parish of Saint Andrew, and being all the lands registered at Volume 366 Folio 63 of the Register Book of Titles.
 - (b) A declaration that the Plaintiffs and the Defendant as Administratrix of the estate of the said Frederick Roy Linton Hyman and personal representative are the Owners of the beneficial interest in the property hereinbefore described in equal shares.
 - (c) An order that the said property be sold either by Public Auction or by private treaty and that the net proceeds from sale be distributed between the Plaintiffs and that Defendant equally or in such portions as this Honourable Court seems just and reasonable.
 - (d) Alternatively that the property be vested in the names of the Plaintiffs and the Defendant as Administratrix in equal shares or in such other proportions as this Honourable Court may deem just and reasonable.
 - (e) An injunction restraining the Defendant, her servants and/or agents or representatives from registering any Transmission and Transfer on the Certificate of Title until the final hearing of this action when the issues will be determined by the Court.

- (f) Damages for Breach of Contract of paragraph 7 hereof.
- (g) Such further or other relief as seems just.
- (h) Costs.

DATED the 22nd day of December, 1987.

(Sgd.) WINSTON McCALLA
ATTORNEY-AT-LAW FOR THE PLAINTIFFS

FILED by WINSTON MCCALLA of No. 22-24 Duke Street, Kingston.

TO THIS STATEMENT OF CLAIM THE DEFENDANT KAREN FREDERICKA JUNE HYMAN-CLARKE
FILED THE FOLLOWING AMENDED DEFENCE AND COUNTERCLAIM ON THE DAY OF 1988.

AMENDED

DEFENCE AND COUNTERCLAIM

SUIT NO. C.L. H-228 of 1987

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN	VALDA HYMAN DOROTHY LAWRENCE	PLAINTIFFS
A N D	KAREN FREDERICKA JUNE HYMAN-CLARKE (Administratrix of the Estate of Frederick Roy Linton Hyman, dec'd)	DEFENDANT

1. The Plaintiffs' claim is barred by virtue of the Limitation of Actions Act and further their right and/or title, if any, to the said land, which is denied, have been extinguished by virtue of the said Act. The Defendant denies the existence of any implied resulting or constructive Trust in favour of the plaintiffs or one or any of them
2. Paragraph 1 of the Statement of Claim is denied. The defendant states that the Plaintiff VALDA HYMAN has not resided at the said premises from or since December 1984 and further DOROTHY LAWRENCE the Second Plaintiff has never resided at the said premises.
3. Paragraphs 2, 3, 4, 5 and 6 are admitted.
4. Paragraph 7 is denied. The defendant states that at the time of the purchase and transfer of the premises the said VALDA HYMAN was residing and working in the Parish of Saint Elizabeth and the said DOROTHY LAWRENCE was residing in the United States of America.

5. That the said Frederick Roy Linton Hyman, deceased (hereinafter called "the deceased") and Myra Hyman, father and mother of the Defendant agreed to purchase the premises known as 187 Mountain View Avenue, Kingston 6 in the Parish of Saint Andrew for the purchase price of EIGHT THOUSAND THREE HUNDRED POUNDS (£8,300) and that there was no understanding or verbal agreement or otherwise between the deceased and the Plaintiffs. The agreement for purchase and transfer were in the sole name of the deceased.

6. Paragraph 8 is denied.

7. Paragraph 9 is denied and the Defendant further states that in fact the plaintiffs contributed to the expenses of the purchase in the amount of TWO POUNDS FIFTEEN SHILLINGS AND TEN PENCE (£2.15.10.) and TWO HUNDRED AND TWENTY-SIX POUNDS EIGHTEEN SHILLINGS AND THREE PENCE (£226.18.3.) respectively.

8. The deceased obtained a loan in England from the Jamaica Mutual Life Assurance Society which loan was secured on premises owned by the deceased in England and same was employed by the deceased in whole or in part for the purchase together with a vendor's mortgage. That on or about the 14th June, 1978 a loan was obtained by the deceased from Dunn, Cox & Orrett Investments Limited in the amount of NINETEEN THOUSAND DOLLARS (\$19,000.00) which was used in part to discharge the liability in Jamaica to Jamaica Mutual Life Assurance Society.

9. As to paragraph 10 the Defendant states that such payments made by the Plaintiffs over a period were as they knew, for the use and occupation of VALDA HYMAN and/or the three children of the Plaintiff DOROTHY LAWRENCE, and/or the child of a deceased sister, and/or the Plaintiffs' mother Miriam Hyman and/or Miss Belie Malcolm. The said mother Miriam Hyman died on or about April, 1977.

9a. The Defendant states that the deceased continually forwarded funds to the said Miriam Hyman in Jamaica to meet the obligation and expenses of the Mortgage secured on the premises known as 187 Mountain View Avenue, Kingston 6.

9b. After the death of the said Miriam Hyman, the deceased Frederick Roy Linton Hyman during his life time forwarded funds to the Plaintiff VALDA HYMAN and/or to the current account held in their joint names at the Bank of Nova Scotia, Liguanea Branch and that if any Mortgage payments were paid by the Plaintiff VALDA HYMAN as alleged, which is denied, such payments together with insurance, expenses and repairs relating to the said premises were paid out of such funds provided by the deceased during his life time.

10. Paragraph 11 is denied. No requests were made of the deceased. That the deceased was frequent visitor to Jamaica on which occasions he carried out repairs at his own cost on the premises. The last visit being for a five month period from November, 1985 to April, 1986 prior to his intended return to

Jamaica on his retirement. The deceased did the following repairs, the particulars of which appear hereunder.

PARTICULARS

1982	-	1983	
Replacing Fence Post Barb Wire North Boundary			\$ 1,500.00
Building a Wall and Fence to the West and South Boundaries respectively			8,000.00
Repairs and Replacing Zinc to Roof			4,500.00
New Pair Mahogany Doors			1,800.00
Spraying of Trees			600.00
Tree Limb Cutting			850.00
Laying Pipes to carry Waste water to Plants			2,000.00
Replanting Garden and laying Water Pipes and Taps			2,850.00
Repairs to garage; Rebuilding Wall of same and rendering area			3,500.00
Purchasing pipes and digging foundation to lay same underground at Bathroom; Resetting Toilet and Bath; Replacing Water pipes in wall of Bathroom and Kitchen			5,000.00
Treatment for Infestation of Termites			1,500.00
Treatment for Infestation of Rodents			1,500.00
Repairs of Windows on Verandah, locks			800.00
Bushing Grounds (one acre)			500.00
Repainting Bedroom to Rear Verandah			1,800.00
1985	-	1986	
Replacing carpentry at windows at Kitchen and replacing water pipes and outlet			1,200.00
Escavating the Pit and removing tree root from same; concreting and rendering same			3,500.00
Recutting keys			50.00
Replacing lock on Front Door			120.00
Repairs to Fridge			530.00
Repairs to back Bedroom and replacing louvres, cementing and rendering walls			4,850.00
General Repainting			5,000.00
Repairs to Toilets, etc.			1,000.00
Replanting Garden			2,450.00
Electrical Repairs			550.00
Emptying Cesspit			50.00
			<u>\$56,000.00</u>

as his legal representative and agent in his business affairs in Jamaica and the Defendant states that no request or demand was made by the Plaintiffs on the deceased or the Defendant as to ownership of the premises.

12. The Defendant discharged the mortgage outstanding on the said premises to Dunn, Cox and Orrett Investments Limited and paid the sum of TEN THOUSAND SIX HUNDRED AND NINETY-EIGHT DOLLARS AND THIRTY-FIVE CENTS (\$10,698.35) on or about February, 1985.

13. The Defendant denies that the Plaintiffs are entitled to the reliefs claimed in paragraph 12 or to any one of them.

14. The Defendant states that she first became aware of a claim after the death of the deceased who died on the 23rd day of January, 1987.

15. As to the claim for an Injunction the defendant states that the plaintiffs' claim, which is denied are such that damages would be a proper and adequate remedy and that the defendant possesses the means to pay same.

16. Further, the defendant states that she is entitled in Law to be registered by transmission or otherwise on the Register Book of Titles as Administratrix of the Estate of the deceased.

17. Save as in hereinbefore expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if same were separately set out and traversed seriatim.

COUNTERCLAIM

18. The defendant repeats paragraphs 1 to 16 of the Defence herein.

19. The Defendant claims as Administratrix of the Estate of Frederick Roy Linton Hyman that by permission and licence given during the lifetime of the said deceased the plaintiffs and/or the children of DOROTHY LAWRENCE and/or the child of a deceased sister and/or the Plaintiffs' mother Miriam Hyman and/or Miss Belle Malcolm used and occupied the premises known as 137 Mountain View Avenue, Kingston 6 in the Parish of Saint Andrew.

20. That it was expressed term of the permission and/or licence granted that the Plaintiffs would pay the outgoings maintenance and related expenses of the premises for such use and occupation.

21. The defendant again here repeats paragraph 10 of the Defence and the particulars thereof and states that the Plaintiffs are both liable to the Defendant for FIFTY-SIX THOUSAND DOLLARS (\$56,000.00) being the cost

to put the premises in the condition in which it should have been maintained by the Plaintiffs over the period prior to 1982 to April, 1986.

22. The defendant as Administratrix of the Estate further claims against the Plaintiff VALDA HYMAN the sum of TWENTY-SIX THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$26,160.00) being rental of rooms at the said premises which accrued and was collected by the Plaintiff VALDA HYMAN for the period 1980 to 1986 the particulars of which appear hereunder.

PARTICULARS

Rental of front double bedroom from 1980 to 1983 at \$160.00 per month 160 x 12 x 4	\$ 7,680.00
From 1983 to 1986 at \$180.00 per month 180 x 12 x 3	6,480.00
Rental of rear bedroom off verandah from 1984 to 1986 at \$120.00 per month 120 x 12 x 2	4,320.00
Rental of bedroom with own entrance from 1980 to 1983 at \$160 x 12 x 4	7,680.00
	<u>\$26,160.00</u>

23. The Plaintiff VALDA HYMAN has failed and/or neglected to pay over the said sum to the deceased or the Defendant and/or holds the same to the benefit of the Defendant.

24. The Defendant further claims as Administratrix of the Estate the sum of ONE THOUSAND POUNDS STERLING (£1,000.00) from the Plaintiff DOROTHY LAWRENCE being money payable by the Plaintiff to the Defendant for money lent by the said deceased during his lifetime in or about the year 1983, and which sum remains due and owing particulars of which appear hereunder.

PARTICULARS

1983

£1,000 loan for landscaping of grounds of house in Florida £1,000.00 at current exchange rate of J\$10.00 to £1.00	<u>\$10,000.00</u>
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25. The Defendant claims by way of set-off and/or counterclaim.

- (1) (a) A Declaration that the Defendant is entitled to be registered as Administratrix and as sole beneficial owner of the said property under the Registration of Titles Act.

- (b) Alternatively, a Declaration that the Defendant be empowered to purchase such interest, if any, as the Honourable Court may declare in favour of the Plaintiffs or any of them.
- (c) The sum of NINETY-TWO THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$92,160.00) from the Plaintiffs as appears hereunder:-
- | | |
|--|--------------------|
| (a) as against the Plaintiff or either of them | \$56,000.00 |
| (b) as against the Plaintiff VALDA HYMAN | 26,160.00 |
| (c) as against the Plaintiff DOROTHY LAWRENCE | |
| <u>£1,000 Sterling (present exchange)</u> | <u>10,000.00</u> |
| | <u>\$92,160.00</u> |

- (2) Damages
- (3) Costs
- (4) Interest at such percent as to this Honourable Court seems just.
- (5) Such further or other relief.

Dated the day of 1988

CLOUGH, LONG & CO.

DEFENDANT'S ATTORNEYS-AT-LAW

FILED by Clough, Long & Co. of No. 81 Harbour Street, Kingston, Attorneys-at-Law for and on behalf of the Defendant herein."

THE PLAINTIFFS VALDA HYMAN AND DOROTHY LAWRENCE ON THE 3RD DAY OF OCTOBER, 1988 FILED THE FOLLOWING:

AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

SUIT NO. C.L. H. 288 OF 1987

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN

VALDA HYMAN AND
DOROTHY LAWRENCE

PLAINTIFFS

A N D

KAREN FREDERICKA JUNE HYMAN-CLARKE
(Administratrix of the estate of
Frederick Roy Linton Hyman -
deceased)

REPLY

1. Paragraph 1 of the Defence is denied.
2. The Plaintiffs contributed to the purchase price of the premises and also made regular and substantial contributions to the mortgage payments for the premises and also made payments for the upkeep from 1968 to 1986. The Plaintiffs claim for an interest in the premises is based both on the contributions to purchase price and further and or in addition in regard to all other contributions made up to 1986.

3. In the premises set out in paragraph 2 hereof the Limitation of Actions Act affords no defence as alleged in paragraph 1 of the Defence or at all.
4. Save that it is admitted that the premises were purchased for 8,300 pounds (Eight Thousand Three Hundred Pounds) paragraph 5 of the Defence is denied.
5. Save that it is admitted that there were mortgages on the premises no admission is made to paragraph 8 of the Defence. The Plaintiffs further state that they made regular mortgage payments in respect of the mortgages referred to in paragraph 8 of the Defence.
6. Paragraph 9B of the Amended Defence is denied and in further reply to paragraph 9B of the Amended Defence and Counter-Claim the First Plaintiff asserts that the account mentioned therein was (and has always been) her personal account to which the name of the deceased was added for purposes of accommodation and security accomodation to facilitate the Deceased in drawing on funds locally should he desire to do so in Jamaica or for any particular reason the security reason was to have someone who could operate the account in the event of the First Plaintiff's illness or incapacity.
8. Paragraph 9a of the Amended Defence and Counterclaim is denied.
9. Paragraph 13 of the Defence is denied.
10. Paragraph 14 of the Defence is denied.
11. Save as in hereinbefore expressly admitted the plaintiffs deny each and every allegations contained in the Defence as if the same were separately set out and traversed seriatim.

DEFENCE AN TO COUNTERCLAIM

12. The Plaintiffs repeat paragraphs 1 to 12 of the Statement of Claim and paragraphs 1 to 8 of the Reply.
13. Paragraphs 19 and 20 of the Counterclaim are denied.
14. Paragraph 21 of the Counterclaim is denied.
15. Paragraphs 22, 23, 24 and 25 of the Counterclaim are denied.
16. Save as in hereinbefore expressly admitted the Plaintiffs deny each and every allegation contained in the Defence as if the same were separately set out and traversed seriatim.

DATED THE 3RD DAY OF OCTOBER 1988.

H. Edwards

PLAINTIFF'S ATTORNEY-AT-LAW

From this veritable plethora of pleadings and from the evidence, the following primary facts emerge.

The parties are all related. The plaintiffs in the first suit are the aunts of the Defendant. The defendant's father was the brother of these plaintiffs. He had emigrated to the United Kingdom in the 1960's. He appears to have done well there. He came to Jamaica frequently on holiday with his wife and daughters. The defendant Karen Hyman is one of his daughters. During one of his visits, the premises 187 Mountain View Avenue was acquired and title in due course was issued in his name. It is a live issue in the case as to whether or not there was an oral agreement that his two sisters' names should have been endorsed on the Title. The two sisters so claim and his daughter, the defendant, strongly denies the existence of any such agreement. It was her contention that her father purchased the premises as a home for his widowed mother and for the ultimate use of his immediate family upon his retirement. The two sisters were then living for certain short periods each year, along with other relatives, in rented premises on 11 Derrymore Road occupied by the deceased mother. Valda was away at Hampton School in St. Elizabeth for three terms each year. Dorothy worked and resided in New York and only paid short visits to Jamaica on an irregular basis. She, however, had three children who resided permanently with their grandmother at Derrymore Road. It is significant that neither one of these two sisters were responsible for the rent at Derrymore Road. That rent was being paid by a third sister Hyacinth who has been described as the main breadwinner. A finding of fact as to the existence or otherwise of any oral agreement as advanced by the plaintiffs is crucial to their claim. I will deal now with the evidence in relation to this issue.

The burden of proof does rest squarely on the shoulders of Valda Hyman and Dorothy Lawrence. In discharge of this burden, the first witness the plaintiffs call is their brother Winston. We hear from him that it was his suggestion that he contribute \$1,000.00 towards the deposit. Although an amendment to the Statement of Claim to deal with Winston's contribution was sought and granted after the trial commenced, no mention whatever was made therein of any actual cash contribution by Winston. Certain letters read into evidence as written by him and others coupled with his demeanour in the witness

box failed to impress. I formed the impression that he was a witness of convenience called to prove that there was a family discussion on the subject of acquisition of a family home followed by an oral agreement. Discussion there was, I find as a fact. Agreement for placing of his sisters names on title there was not.

Next witness, the Plaintiff Valda Hyman was not a witness of truth. She did irreparable damage to her credibility when she admitted a previous written inconsistent statement sworn to by herself relative to an application for a caveat against any dealing with the property the subject of this suit. I refer to the statement that "Roy went ahead and had the Common Law Title endorsed into (sic) his name during our absence from Jamaica and without our knowledge". At the trial she swore that "it was no surprise to me that Roy's name alone was on the title". Both statements are irreconcilable. Ludicrous, if not mischevious was her statement that she paid £1 something towards the deposit on an £ 8,300 pounds transaction. A statement dated 4th February, 1969 (page 145 in the agreed Court of Appeal Bundle) does show a closing payment of £2.15.10 as having been paid by Miss Valda Hyman. There is also an amount of £226.18.3. paid by Mrs. Lawrence. Indeed these payments are admitted by the defendant in paragraph 7 of the Defence albeit the defendant alleges that there were payments towards "the expenses of the purchase." These are the only payments made by the Plaintiffs which are proved or confirmed by any independent written evidence. Normally Proof of Payment of money is effected by the production of a receipt. The Plaintiffs' case rest on their joint claim that pursuant to an oral agreement they both kept their side of the said agreement by making payments towards the mortgages, taxes, insurance, water and telephone rates, repairs and other outgoings on the property which they occupied rent free as a family home. The premises were acquired in 1968 and in December of that year, transfer in the name of the deceased alone was endorsed on the relevant Certificate of Title. Between December 1968 and January 1987 when Frederick Hyman died, it is the plaintiffs' case that he paid several visits to Jamaica. It is their case that several demands were made by them on him to keep his side of the Agreement, but through "neglect, omission or otherwise" he failed to do so. So that for nearly nineteen years the two plaintiffs did nothing to enforce their rights. During nearly nine years of this period, their mother Miriam

Hyman was alive. By tradition in our culture, a mother is perhaps the most useful mediator or umpire to have in matters involving family differences. This would have been particular apt in this case because the undisputed primary intention was always to provide a home for the deceased's mother. Indeed if there was any agreement involving placing of the two sisters' names on the Title then it would be reasonable to infer and logical to assume that any renegeing on that agreement would have been brought to her attention. Additionally, these two plaintiffs are knowledgeable and experienced senior citizens; one a matron and music teacher, the other a nurses aide who once owned her own home on Fairbourne Road, Springfield on sea. It is against this factual background that a court is asked to accept that nineteen years were allowed to run by without even so much as a letter of demand from an attorney to the alleged recalcitrant brother. Indeed from the cartload of agreed exhibits (literally thrown before the Court and very time consuming to peruse) one can only find letters which would tend to prove that the family (including these two plaintiffs) were "grateful to the Lord for what Roy did for all of us". Roy was indeed the benefactor for the entire family including these two plaintiffs. Within months of his death, a caveat is lodged against his daughter by the former beneficiaries of his bounty. Like Mark Anthony of Julius Caesar "ingratitude more strong than traitor's arms, quite vanguished him; then burst his mighty heart". Mighty because of his undisputed generosity to his sisters - the plaintiffs in this suit. Certain facts as set out as grounding the application for this Caveat are directly contradictory of the evidence given before this Court and have the effect of weakening the credibility of both plaintiffs in the first suit. Particular patience was exercised in listening to the evidence of both these ladies as they appeared not to be exactly young persons. Perhaps this would explain in part why the trial lasted for such a long time. Were I to attempt to catalogue all the areas of the evidence for the plaintiffs against which a question sign could with justification be placed this judgment would go on and on. However, a few examples would demonstrate:-

(a) Winston's version of the original agreement was that both plaintiffs were to contribute to the deposit which was somewhere in the region of £500.00.

Valda's version was that herself and Dorothy were to put "what we have." Valda's own evidence was that she "paid a portion £1 something". I have already commented

unfavourably on this.

(b) Valda's evidence as to her opening a Current Account in names of the deceased and herself for his convenience because "when he came out he is short of cash and I may not be in Kingston so if he needed cash he could go and help himself through my Current Account". Later in her evidence she said Roy's name was put for my convenience. Was the use of "my" in this context just a slip of the tongue? Bear in mind that the defence case was that Roy from time to time sent out money for the payment of the mortgage and expenses and from Valda herself we heard evidence that Roy said it was better to pay by cheque and discontinue payments by cash. This being Roy's wish it would seem more probable that he having opened and maintained a current account, would direct how payments towards his mortgage indebtedness and outgoings should be paid. It could also be borne in mind that receipts for payments were needed by him for his Income Tax returns in the United Kingdom.

The last two witnesses for the plaintiffs (Gloria Green and Olive Henry) do nothing to strengthen the case for the plaintiffs. The latter only gave self-serving evidence as to what she claimed the deceased had told her about his sisters' names to be put on the title. Under cross-examination, however, she stated quite clearly that she did not "know how 187 was purchased or the insurance or any business." The general helper Olive Henry, who claims to have made mortgage payments on behalf of Valda is not able to say from what source the money for these payments came. Since there is clear evidence, which is accepted, that the deceased Roy did carry out repairs on the premises during his visits, her statement that all Roy did was "go beach with his family ... he never did any repairs nor was he ever present when repairs were being done" is demonstrative of her lack of impartiality. It may appear insignificant but her statement that the U.S. money came from Mrs. Lawrence at 257 Street, Brooklyn, New York merits comment for two reasons: firstly, she would not be in any position to know whether this money from Dorothy Lawrence was for payment towards any mortgage on the property or, as is far more probable, was money for the maintenance and support of her three children who lived at 187 Mountain View Avenue for many years while their mother resided in New York. This was the defendant's case. In reply to my question this witness stated that it was over a month prior to her testifying that she was asked to give evidence yet she was able to state the U.S. address of

Mrs. Lawrence in precise terms although her employment at 187 Mountain View Avenue had ceased many years before and none of Mrs. Lawrence's letters were addressed to the witness. It was my view that she had been "coached" shortly before this trial to say what she did say and introduced this unimportant detail as to Mrs. Lawrence's U.S. address in a misguided attempt to impress the Court. ^{indeed} The Court was/impressed but not in any way favourable to the Plaintiffs. The plaintiffs in the first action closed their case without a vestige of evidence which it could be said proved their claim on a balance of probability or at all.

I now make brief comments on the cases cited before me:

In Bull v. Bull [1955] 1 Q.B. p. 234 it was held that when a son and his mother jointly purchased a dwelling-house as a home for themselves the mother became an equitable tenant in common with the son and that until the house was sold each of them was entitled, concurrently with the other, to possession of the premises, and that neither of them was entitled to turn the other out. That case is to be distinguished from this in that the judge then found that the mother did contribute a substantial amount to the house and that she did not intend to make a gift of that money to her son. The underlining is mine. This was by a previous arrangement between the parties. I have already discussed my findings on the evidence as to the existence in this case of any prior arrangement. There may have been a discussion relative to the acquisition of a family home, but the proposal for financing by personal contributions was rejected by these plaintiffs and merely living rent free in a relative's house does not thereby confer the rights of an equitable tenant in common.

In Eves v. Eves [1975] 1 W.L.R. page 1339 it was held on the plaintiff's application for a share in the house which had been acquired by the Defendant in his name alone and on which the plaintiff did much work, some of it very heavy, that because the Defendant had led the plaintiff to believe that she was to have an interest in the house and the property had been acquired and maintained by the parties for use for their joint benefit that a trust had been created in favour of the plaintiff. This case must be distinguished for on my finding of fact there was nothing more than a discussion initiated by the deceased and rejected by these plaintiffs and the deceased did nothing which could have led these plaintiffs to believe that they were to have an interest in the house.

Similar views are held on the very old case of Wray v. Steele [1814] 35

English Reports page 366 in which the claimant was found to have actually advanced money towards the purchase price on a property, made payments of interest on the residue, received a pro portion of rent collected during the relevant period, and also produced in evidence a statement of account in the handwriting of the Defendant. On these facts it was held that a resulting trust arose in favour of the party advancing the money although title was actually issued in the name of the purchaser alone. No such circumstances arise in the case before me.

Turning now to a consideration of the evidence adduced for the defence and Counterclaim, let me begin straight away by opining that as far as the counterclaim is concerned, there can be no merit in it. An administrator or executor in an estate can in law be in no better position to advance a claim on behalf of the estate than the deceased could have done had he lived.

A loose domestic arrangement whereby authority is given to members of one's family to occupy one's home rent free cannot subsequently be the foundation of any claim for rent collected by the licensee during that period. Such an arrangement cannot be the basis of a claim for repairs and maintenance on one's own property. There is evidence which I accept, that at the time of purchase, the premises 187 Mountain View Avenue were in excellent condition. If the deceased Frederick Roy Hyman over the years carried out repairs and maintenance on the property, and I so find, I am at a loss to determine on what basis it could be held that his two sisters are responsible for these amounts. True it is that the pleadings aver that there was an oral agreement that in return for use and occupation the plaintiffs were to be responsible for maintenance and repairs, but where is the evidence to support this? It certainly was not demonstrated by any conduct on the part of the deceased during his lifetime from which any such agreement could be inferred. It certainly was not demonstrated by any factual evidence from his daughter who looked after his business in Jamaica from 1983 on. In fact, Karen Hyman Clarke claims to have carried out certain maintenance and repairs herself. She is herself a lawyer by profession and would have been aware of her rights. Yet prior to the filing of Amended Defence and Counterclaim there is not a scintilla of evidence that any attempt was made to recover any such amounts. There is evidence of a claim made on her behalf for amounts for storage of furniture at the premises after non-compliance with

service of the requisite notice to remove same but this is not pursued. The particulars of Counterclaim show that Valda Hyman and Dorothy Lawrence are sued jointly and severally for the substantial sum of \$56,000.00 representing items of maintenance and repairs as varied and diverse as treatment for infestation by termites and rodents to emptying of cesspit. Significantly all these items paid for are listed in round figures and are entirely unsupported by the evidence. So apart from failing to prove the existence of any legally binding contract by which the two sisters could have been held responsible for these sums the Administratrix has failed to quantify the amounts actually expended. It is axiomatic that a claimant must quantify specifically the amounts claimed. Throughout her evidence as to damages the Defendant speaks in terms of "about \$1,500.00 for fence posts and wire nails", "costs of zinc about \$3,500.00", "labour probably in region of \$4,000.00; floorboards costs in region of about \$4,000.00." None of this evidence matches the particulars of her claim and there has been no application to amend. Her claim therefore fails on two grounds: (1) I am not persuaded that there was any legally binding arrangement that these two sisters were to pay for maintenance and repairs and (2) the Counter-claim has not proven with the necessary exactitude the amounts spent either by the deceased or herself on repairs during this period, again, in my view, an indication that there was never anything more than a loose domestic arrangement between members of the same family.

The single witness throughout the entire case who impressed me as someone on whom complete reliance could be placed was Myra Hyman. Her credibility was not the least bit shaken in cross-examination. Her evidence as to her deceased husband having initiated a discussion as to the acquisition of a home for her mother-in-law is accepted. This was on the day after the funeral of the bread winner Hyacinth. Her evidence continued:

"husband suggest buying home for his mother in her lifetime.
 We all agreed but when question of money was raised they
 all had various excuses ... Dorothy said, 'I have too many
 commitments' ...
 Valda "I have no money to contribute but will help with
 housekeeping (food)."
 Winston "Would not buy anything with his sisters".

Winston, it may be recalled, was the brother who had been blamed for the loss by Dorothy many years previously of her house at Fairborne Road. Another portion of her evidence which impressed me had to do with the funding of the deposit on 187

Mountain View Avenue. Myra Hyman testified: "When we left on cruise we never contemplate buying house ... £500 deposit paid out of our holiday money. We had to curtail our holiday and take a different boat to Genoa and train and boat to U.K." Those of us not too young to remember the 60s do recall that this was the accepted cheap route to England in those days. The witness is able to recall visibly that a holiday cruise was abandoned because her husband, having made up his mind to provide a home for his mother was at the last moment left to go it alone without the assistance and co-operation of the plaintiffs and other family members who themselves stood to benefit, on the theory that "wherever thou goest I will go". All the deceased gets in return is a recognition in writing at Exhibit at p.139 of the agreed Record of Appeal that the "Lord has used Roy to the benefit of them all". The action brought against Roy's beneficiary is a continuation of this philosophy. In his lifetime he provides and in death he must continue so to do. The mysterious disappearance of the beneficiary's receipt box from the home provided a golden opportunity to found a basis for this action. The plaintiff's witness, the general helper, Olive Henry whose evidence has been discussed elsewhere, stated under cross-examination that "Miriam had a tin case and kept receipts in her room. I knew and everybody knew". I accept and find as a fact that even where the name Valda Hyman appears on cheques, bills and receipts the source of the funds for payment thereof, that is for acquisition of the premises and for the maintenance and repairs and for servicing of the mortgage was the deceased. Valda Hyman's sworn statement given in support of the application for the caveat disposes of her as a witness of truth. This same statement also disposes of the co-plaintiff Dorothy Lawrence as a witness of truth. This is so in spite of her explanation that she just went along with Valda. The making of a false statement under oath with intent that the statement be acted on cannot be excused on the basis that the statement was concocted by someone else. Finally, Exhibit 31, a letter from Dorothy Lawrence to the deceased dated New York May 1984 is the icing on the cake. The pathetic attempt in cross-examination of Karen Hyman to suggest that the word "repairs" as used in that letter applied to "repairs carried out in England" is ridiculous and is rejected.

On my findings above, a clear attempt by the Plaintiff's to continue to benefit from the generosity of their deceased brother is demonstrated. Note the

repeated emphasis and use of the words "intended as a family home" in evidence. Indeed in the final address of counsel he submits "family undertaking is the background". This, in my view, was a clear attempt to equate this case with Eves v. Eves (supra) with which I have already dealt. It was suggested in Cross-examination of Karen that in bringing this counterclaim she was merely acting out of spite. She rejected this suggestion. In the absence of any explanation as to why no attempts were made to collect the amounts set out in the Counterclaim until suit was filed by the Plaintiffs, I would be disposed to accept that there is merit in this suggestion. I hold the view that had a Writ never been issued by these two sisters nothing would have been heard of any claim for maintenance and repairs, or for rent collected or for an alleged "loan" of £1,000 for landscaping of grounds of a house in Florida. The proof as to liability for these items is woefully lacking. Whether motivated by spite or otherwise if the proof were forthcoming she would be entitled to a judgment. In paragraph 25(1)(a) of her Amended Defence and Counter Claim the Defendant seeks a Declaration that she is entitled to be registered as Administrator and as sole beneficial owner of 187 Mountain View Avenue under the Registration of Titles Law. The Court makes this Declaration and awards the Defendant the costs of her Counterclaim to be agreed or taxed. On the Claim, judgment is entered for the Defendant Karen Hyman Clarke. An order is made that Valda Hyman and/or Dorothy Lawrence do forthwith remove their household furniture and effects from premises 187 Mountain View Avenue. As both Claim and Counterclaim involve the same premises, no further Order for costs is made.