He will have judgment for $12,000.00 and $3,110.00 special damages, against the first and second defendants. He will also have an order for costs against them. The third defendant has succeeded and will have judgment entered in his favour. He will have an order for costs against the plaintiff.

McCOLLIN *v.* CARTER

[SUPREME COURT – HIGH COURT – CIVIL SUIT NO. 316 of 1973
(Douglas, C.J.), June 17, 1974]

Land – Acquiescence by owner in another's expending money for improvements on land – Knowledge by owner that no enforceable agreement was in existence – Person expending money on improving land to have an equitable charge or lien for amount expended.

Land – Sale of Land – Order for specific performance being sought – No memorandum – Reliance on part performance – Entry on land and execution of works not referable to contract between the parties.

Facts: The plaintiff claimed that the defendant was a tenant of a house spot in St. George under a contract of tenancy subject to the provisions of the *Security of Tenure of Small Holdings Act*, 1955, No. 39. He further claimed that the tenancy had been duly determined by notice and that the defendant had refused or neglected to deliver up possession of the land. He sought an order for possession, arrears of rent and mesne profits. The defendant's case was that he was not the plaintiff's tenant, that he had entered into possession of the land in pursuance of an oral agreement under which the land was to be sold to him and he was given possession pending completion of the contract for sale. He counterclaimed for an order for specific performance and in the alternative for damages for breach of contract. The plaintiff denied the existence of any agreement to sell the land to the defendant and pleaded that there was no memorandum in writing of the alleged contract sufficient to satisfy the *Statute of Frauds*. The learned trial judge found that there was a clear intention on the part of the plaintiff to benefit M.C., the defendant's daughter, and that he had held himself out as being willing to make her a gift of an area of land next to his house. He also found that the plaintiff had never contracted to sell the land to the defendant for a reasonable or any other price, and that the entry into possession by the defendant was on the footing that the plaintiff permitted M.C.'s father to place his house on a portion of land which he, the plaintiff, intended to give M.C. sometime in the future.

Held: (i) the plea for specific performance failed in any case because it could not be said that the defendant's entry into possession and execution of works on the land was "unequivocably referable to some contract between the parties."

(ii) however it was clear that the plaintiff, with full knowledge that there was no enforceable agreement between the defendant and himself acquiesced in the defendant expending money on improvement works on the land. On the principle laid down in *Chalmers* v. *Pardoe*, there would be a declaration that if and when the defendant gives up possession of the land, he would be entitled to be repaid by the plaintiff the amount which he expended, with interest.

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Cases referred to:

(1) *Wakeham* v. *MacKenzie* [1968] 1 W.L.R. 1175.
(2) *Kingswood Estate Co. Ltd.* v. *Anderson* [1962] 3 W.L.R. 1102.
(3) *Chalmers* v. *Pardoe* [1963] 3 All E.R. 552.
(4) *Steadman* v. *Steadman* [1973] 3 All E.R. 977.
(5) *Booker* v. *Palmer* [1942] 2 All E.R. 674.
(6) *Errington* v. *Errington* [1952] 1 All E.R. 149.

Statutes referred to:

(1) *Security of Tenure of Small Holdings Act*, 1955 (1955–39).
(2) *Statute of Frauds Act*, Cap. 211.
(3) *Town and Country Planning Act*, 1965 (1965–60).

Mr. J. Connell with *Messrs. Yearwood & Boyce* for the plaintiff.
Mr. L. Tull for the defendant.

DOUGLAS, C.J.: The plaintiff in these proceedings claims that the defendant is a tenant of a house spot comprising approximately 2,400 square feet of land at Charles Rowe Bridge in the parish of Saint George under a contract of tenancy under the provisions of the *Security of Tenure of Small Holdings Act* 1955, No. 39. He further claims that the tenancy was determined by notice dated January 12, 1973 to quit the said parcel of land on June 30, 1973 and that the defendant has refused or neglected to deliver up possession of the land. The plaintiff seeks relief by way of an order for possession, for the payment of arrears of rent from December 26, 1972 to June 30, 1973 at the rate of fifty cents per week and for mesne profits from July 1, 1973 until delivery up of possession.

The defendant's case is that he was never a tenant but entered into possession of the land in pursuance of an oral agreement for the plaintiff to sell him the land and for him to enter into possession pending completion of the contract of sale. He counter-claims therefore for an order for specific performance and in the alternative for damages for breach of contract.

As to the counterclaim the plaintiff denies the existence of any agreement to sell the land to the defendant and pleads that there is no memorandum in writing of the alleged contract sufficient to satisfy the *Statute of Frauds*.

The parties used to be good friends. As the defendant puts it: "Mr. McCollin at one stage practically lived at me. My children practically lived at him." When the plaintiff's wife was ill in hospital the defendant's daughter, Marva, would go to the plaintiff's house to help out with chores like washing the ware and feeding the stock. Marva in 1969 was fourteen years of age and it is clear that the McCollins, husband and wife, were particularly well disposed towards her and wished to make her the object of their bounty.

According to the plaintiff, the defendant discussed the renting of the land in October 1969 and it was agreed that he should pay fifty cents a week. Thereafter the plaintiff says he received rent on three occasions. He says he got 1970's rent in 1971 and also received rent in 1972. According to the plaintiff he gave no receipts and the defendant called for none.

It is not in dispute that in order to get access to the land, the defendant cut a gap to it and employed Herbert Puckering and Clarence Brewster in the work. This work was carried out in October 1969 prior to the defendant taking possession. The plaintiff was well aware of the work being carried out by the defendant and admits

to giving him permission to 'dig a hole for waste water'. The hole in question was in fact a well used for the defendant's toilet and bath and the defendant maintains that the plaintiff gave prior permission for its construction.

The plaintiff's wife, in regard to the receipt of rent says:

> 'Mr. Carter sent the rent by Marva each year. Two years $25 and one year we took rent from him for January to September. We told her to carry back $6. My husband told Marva to take the $19 for what she had done for him and take back the $6 to her father.'

This latter part of his wife's evidence is nowhere supported and having regard to the discrepancies between the evidence by the plaintiff and his wife on this point, I have come to the conclusion that there was never any tenancy agreement nor was rent ever paid.

The defendant's testimony is that in July 1969 the plaintiff came to him and told him that Marva had said that he was looking for a spot to buy. According to the defendant, the plaintiff said it was his intention to give Marva this spot of land because of what she had done for his wife, for him and his stock. The defendant's answer to this was that he was not interested in a gift nor was it Marva's policy to look for rewards for service, but that he would purchase the spot. The defendant's evidence as to what followed is in these terms:

> 'Mr. McCollin said all right, I agree to that.
> I asked Mr. McCollin how soon he would be ready.
> He said it would take a little time because he owed a little money on the land. He said he was not certain when he could clear the debt.
> He said that when he cleared the debt myself and he would get together and I could purchase the land at a reasonable price.
> I said it would take too long.
> He said I could go ahead and take possession. I did so.'

In dealing with this aspect of the case it must always be borne in mind that there is complete disparity between the intelligence and outlook of the parties. The plaintiff is a simple, old man who is quite illiterate and rather dull-witted. The defendant, on the other hand, is a younger man, a supervisor for a painting service firm and a man of intelligence with experience in the conduct of business transactions.

One of the witnesses giving evidence for the defendant in regard to the cutting of the road states that the plaintiff told him that he was giving the land to the defendant's daughter because she had been good to his wife during her sickness. The other witness for the defendant speaks of the plaintiff asserting that he was delivering the land to the defendant and his daughter and saying that he wanted the daughter near, so that if his wife took in sick, the girl would be available to help.

The facts in regard to the works carried out by the defendant are not strongly contested and the amounts expended by him for the road, the groundsel and the well are $700, $600 and $200 respectively.

Mr. Tull submits that the defendant's entry in possession and his carrying out the above works constitutes acts of part performance sufficient to support a finding that there was a contract for sale of the land and an order for specific performance of that contract. He relies on *Wakeham* v. *MacKenzie* [1968] 1 W.L.R. 1175 where Stamp J. laid down that the operation of acts of part performance requires only that

the acts in question be such as must be referred to some contract and may be referred to the alleged one: that they prove the existence of some contract and are consistent with the contract alleged. This ruling is in accord with the law as stated in the case of *Kingswood Estate Co. Ltd.* v. *Anderson* [1962] 3 W.L.R. 1102.

Counsel also cites *Chalmers* v. *Pardoe* and refers in particular to the opinion of Sir Terence Donovan in tendering the advice of the Board ([1963] 3 All E.R. at p. 555):

> 'There can be no doubt on the authorities that where an owner of land has invited or expressly encouraged another to expend money on part of his land on the faith of an assurance or promise that that part of the land will be made over to the person so expending his money a court of equity will *prima facie* require the owner by appropriate conveyance to fulfil his obligation; and when, for example for reasons of title, no such conveyance can effectively be made, a court of equity may declare that the person who has expended the money is entitled to an equitable charge or lien for the amount so expended.'

Counsel's submissions on the law are as accurate as they are lucid and succinct. The very real difficulties with which he has had to grapple in this case arise from its rather unusual facts. No effort has been made to comply with the provisions of s 14(1) of the *Town and Country Planning Act* 1965 No. 60 in what, after all, amounts to a subdividing of land, and even on the defendant's own showing, the agreement on which he relies is vague and sketchy. There is neither agreement nor undertaking about the payment off of the debt encumbering the land, nor is the area of the land specified to any degree of certainty, nor the parties proper to the contract, nor the price to be paid.

Mr. Connell submits that the contract contended for by the defendant is lacking in mutuality and is too vague to be specifically performed. He points to the clear, unambiguous terms of the agreements in the Wakeham and the Kingswood Estate Company cases mentioned above.

On this question of specific performance, I am content to adopt the approach of Scarman L.J. in the case of *Steadman* v. *Steadman* where he said ([1973] 3 All E.R. at p. 994):

> '..... part performance, if it is to be sufficient to let in evidence of an oral contract disposing of an interest in land, must be unequivocably referable to some contract between the parties. Once the reference is shown to exist, a party may adduce evidence to show what the contract was, and, if the evidence then shows that it included a term disposing of an interest in land, it is nevertheless enforceable.'

In this case the evidence on all sides shows a clear intention on the part of the plaintiff to benefit Marva Carter. I am satisfied that he held himself out as being willing to make a gift of an area of land next to his house to the said Marva Carter. I further hold that he never contracted to sell the land to Marva's father for a reasonable or any other price. The entry into possession by the defendant was, in my view, on the footing that the plaintiff, intending to transfer a portion of land to Marva at some date in future, permitted Marva's father to place his house on that portion. Thus it cannot be said that the defendant's entry into possession and the execution of works on the land is 'unequivocably referable to some contract

between the parties'. On my view of the evidence those acts were referable to the prospective voluntary transfer of the land at some future date to the defendant's daughter and therefore I hold that the plea for specific performance fails, and the alternative claim for damages for breach of contract also fails for the reason that the defendant has been unable to establish the contract he alleged.

What then is the present legal status of the defendant? In *Booker* v. *Palmer* where an owner gave some evacuees permission to stay in a cottage for the duration of the war, rent free, Lord Greene MR, in holding that the evacuees were not tenants but only licensees said ([1942] 2 All E.R. at p. 677):

> 'There is one golden rule which is of very general application, namely that the law does not impute intention to enter into legal relationships where the circumstances and the conduct of the parties negative any intention of the kind.'

This case was reviewed along with other authorities by Denning L.J. in *Errington* v. *Errington* where he stated ([1952] 1 All E.R. at p. 155):

> 'The result of all these cases is that although a person who is let into exclusive possession is *prima facie*, to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege with no interest in the land, he will be held only to be a licensee.'

This statement of the law in my view admirably covers the facts of the instant case and I have no doubt that as regards the land in question the defendant is a mere licensee.

Mr. Tull urges in argument that if the defendant is unsuccessful on the issue of specific performance, then he is entitled to an equitable charge or lien on the land in the amount he expended on the improvements he made with the knowledge and consent of the plaintiff.

There is no pleading in support of the order asked for but having regard to the way the case has been conducted on behalf of both parties, I feel constrained to deal with this aspect of the matter. There is no doubt but that the plaintiff with full knowledge that there was no enforceable agreement between the defendant and himself acquiesced in the defendant expending money in the execution of improvement works on the land. The amounts I find to have been expended are $700 for the road, $200 for the well and $600 for the groundsel.

On the claim there will be a judgment for the defendant, on the counterclaim there will be a judgment for the plaintiff. There will be a declaration on the principle laid down in *Chalmers* v. *Pardoe* [1963] 3 All E.R. 552 that if and when the defendant gives up possession of the land he will be entitled to payment to him by the plaintiff of the sum of $1,500 with interest at 6% from the delivery up of possession until payment. In all the circumstances of the case, there will be no order as to costs.

Judgment for the defendant on the claim and for the plaintiff on the counterclaim.

PILGRIM v. SMALL

[SUPREME COURT – HIGH COURT – CIVIL SUIT NO. 518 OF 1973

(Williams, J.), June 7, 1974]

Damages – Personal injuries including fracture of tibia and fibula – Quantum.

Facts: The plaintiff Elliott Pilgrim, aged 78, was injured when he was struck by a motor cycle driven by the defendant James Small. Pilgrim was crossing the road in front of his home at Duncans, St. Philip to reach a bus stop opposite. He sued Small in negligence and liability was apportioned 75% to Small and 25% to Pilgrim. Pilgrim suffered a fracture of the lower third of the right tibia and fibula. The fracture was reduced and immobilised and healed satisfactorily. He also received a laceration in the scalp and had been unconscious for a short period after the accident. Pilgrim complained of stiffness in the ankle and having to walk with a stick. At the trial the limb was swollen and slightly deformed. He had lost some of his mobility. General damages were assessed at $5,000.

No cases referred to.

No statutes referred to.

Mr. J. M. Adams for the plaintiff.

Mr. C. W. Chenery for the defendant.

WILLIAMS, J: On the morning of June 26, 1972 the plaintiff then aged 78 left his home at Duncans, St. Philip, to catch a bus for town. There was a bus stop opposite his home and he had to cross the road to catch the bus. On his way from his home to the bus he was struck by a motor cycle driven by the defendant. He received injuries for which he had to be detained in hospital for about 2 weeks.

On the matter of liability, I have had to analyse the evidence very carefully to determine the facts. It was not an easy exercise.

Taking the defendant's witness George Maynard first I found that his account of the incident made me doubtful about whether he was really on the scene. He related how he had been behind the bus for about ten minutes on his bicycle, with his daughter on the bar. This seems highly unlikely. He spoke of the bus stopping at the pole opposite the plaintiff's house and of his stopping behind the bus. There was nothing to indicate why he stopped behind the bus. At one point in his evidence he told of the plaintiff being in the trench at the side of the road when he and the cycle collided – which would lend support to the evidence and case of the plaintiff. Assuming that he may have misunderstood the question to which his last reply was given, that he may have made an innocently wrong estimate of the time he was cycling behind the bus and that there may have been some good reason for his having stopped behind the bus, I am still unable to understand his evidence about the plaintiff and his daughter both running across the path of the motor cycle and the daughter's narrow escape. This evidence of his is out of consonance with all the other evidence in the case. Even the defendant gave no indication that the daughter was even in any danger of being struck by his cycle and I cannot envisage that, had this happened, he would have been minded to keep silent about it.

In all the circumstances I find the testimony of George Maynard as lacking authenticity and cannot place reliance on it.