J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 3 of 1973

BEFORE: The Hon. Mr. Justice Luckhoo, Ag. P.
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Swaby, J.A.

CARIBBEAN ASBESTOS PRODUCTS LIMITED - PLAINTIFF/ APPELLANT

v.

ANDRE LEOPOLD LOPEZ)
CARLOS ANTONIO LOPEZ)
MARCIA ROSE ZITA BROWN) - DEFENDANTS/ RESPONDENTS
YVONNE THERESA ELIZABETH LINDO)

R.H. Williams, Q.C. and R.N.A. Henriques for the appellant.

Emil George, Q.C. and D. Goffe for the respondents.

June 4, 5, 6; July 19, 1974

LUCKHOO, Ag. P.:

On June 17, 1969, a document intituled "Lease under the Registration of Titles Law" was executed by the defendants, the beneficial owners of premises known as No. 96½ Old Hope Road, as lessors and the plaintiff company as lessees whereby those premises were leased for a term expressed in the lease to be for one year from June 10, 1969 at a rental of £1,500 payable in advance by equal monthly payments of £125 and upon the terms, conditions and stipulations contained therein. Two of the provisions appearing in that document as clauses 5 and 6 are as follows -

"5. For the consideration aforesaid the Lessors hereby agree that if the Lessees shall desire to continue the term hereby created for a further period of one year from the expiration of the term hereby created and shall on or before the 10th day of April One thousand nine hundred and seventy notify the Lessors in writing of such desire, then and in such case the Lessors will on the expiration of the said term PROVIDED ALWAYS that there shall not be any existing breach or non-performance of any of the covenants conditions and stipulations on the part of the Lessees) lease the leased premises to the Lessees for a further period of one year as aforesaid at the yearly rental ONE THOUSAND EIGHT HUNDRED POUNDS payable monthly at the rate of ONE HUNDRED AND FIFTY POUNDS per month in advance on the first day of each month but subject otherwise to the same terms conditions and stipulations as are herein contained save and except this present clause for renewal."

"6. For a further consideration of FIVE HUNDRED POUNDS which shall be paid on the signing hereof the Lessors hereby grant unto the Lessees an option to purchase the leased premises free of encumbrances for a price of TWENTY THOUSAND POUNDS, such option to be exercised within the term hereby created by the Lessees giving the Lessor one month's notice in writing of their intention to exercise the said option, such notice to expire at the end of a calender month. It is agreed that in the event of the Lessees exercising the option hereby given the amount of FIVE HUNDRED POUNDS aforesaid will be credited on account of purchase moneys and the following provisions will apply:-

....."

The plaintiff was permitted by the defendants to remain in occupation of the demised premises paying the increased rent stipulated for in clause 5 of the lease whereby it was not disputed that the plaintiff was entitled to be regarded as having exercised the option given by that clause. On March 29, 1971, the plaintiff, on the basis that the lease by the defendants for the further

period of one year contemplated by clause 5 - which might conveniently be referred to herewith as "the further lease" - included a clause identical in terms with clause 6 of the lease executed on June 17, 1969 (hereinafter referred to as "the original lease") purported to exercise the option contained therein to purchase the demised premises whereupon the defendants asserted that the further lease did not include such a clause.

The plaintiff thereafter made application by way of originating summons to the Supreme Court for a determination of the following questions -

> "(1) Whether upon the proper construction of the said lease (the original lease) and in particular clause 6 thereof the lessee was entitled to exercise the option to purchase therein during the continuation of the term thereby created referred to in clause 5 thereof or only during the original term thereby created.
>
> (2) Whether there has been in fact a valid exercise of the option to purchase therein contained."

On that application coming before Master McCarthy it was contended on the part of the plaintiff that by the express words contained in clause 5 of the original lease a renewal of the lease was to be on the same terms, conditions and stipulations as contained in the original lease save as to the amount of rental and the renewal clause and that therefore the further lease would necessarily include the provisions contained in clause 6 of the original lease. It was further contended for the plaintiff that notice of exercise of the option to purchase was duly given by the plaintiff and that the defendants were obliged to transfer the demised premises to the plaintiff.

It was contended on the part of the defendants that no new lease was contemplated by the provisions of clause 5 of the original lease but rather there was contemplated an extension of the term of the original lease; that the option to purchase given by

clause 6 of the original lease would not go with the extension unless clause 5 expressly or impliedly indicated that this was the intention of the parties; that there was no such indication in this case and the purported exercise of the option by the plaintiff was of no effect.

The Master after a consideration of these contentions and of the authorities cited to him found that there was no new lease granted the plaintiff but merely the extension of the original lease and that the option to purchase contained in clause 6 did not go along with the extension "there being no express or implied indication that that was the intention of the parties." He also concluded that if the plaintiff's arguments were correct then a further sum of £500 should have been paid at the beginning of the second twelve month period and no such payment was in fact ever made. He answered the questions put in the summons as follows -

> "1. In answer to question (1) there is a declaration that the Lessee was only entitled to exercise the option to purchase during the original term of the lease.
> "2. In answer to question (2) there is a declaration that there has not been in fact a valid exercise of the option to purchase."

The plaintiff now appeals against the decision of the Master. The first question for our determination is whether clause 5 of the original lease contemplated the inclusion of a stipulation in the terms of clause 6 of the original lease in the contract which would be in operation during the second twelve month period. In deciding this question it will be borne in mind that an option to purchase is not a necessary or usual term of a lease. It is a separate and collateral agreement between the parties. Under clause 5 if it is the desire of the lessees to continue the original term for a further period of one year and they communicate that desire in the way stipulated in the clause that desire is to be granted by the lessors. The lessees' desire must be for the continuance of the original term, that is, there must be a desire on the part of the lessees that the relationship of landlord and tenant

should be extended for a further period of one year beyond the original term. The lessors being duly informed of this must (provided certain covenants and stipulations are observed by the lessees) "lease the leased premises to the lessees for a further period of one year" at the specified rental - that is, the lessors must continue the relationship of landlord and tenant at the increased rental. This relationship continued at the specified increased rental is "subject otherwise to the same terms, conditions and stipulations are herein contained save and except this present clause for renewal."

It is the meaning to be given to the words "as are herein contained" that is crucial to the proper determination of the question. Do those words refer merely to the relationship of landlord and tenant or do they refer to the document which effected the demise of the premises? If the former the provisions of clause 6 - the separate and collateral agreement - would not pass. If the latter it would. I have no doubt that those words refer to the document which effected the demise of the premises and that consequently the terms of clause 6 in the original lease formed one of the stipulations to which the continuing relationship of landlord and tenant was subject. A passage in the judgment of Sargant, L.J. in Sherwood v. Tucker (1924) Ch. at p. 449 cited with approval by Morton, L.J. in Hill v. Hill (1947) Ch. at p.243 is appropriate to the provisions of clause 5 of the original lease in the instant case -

> "I think the word "extension" is not really strictly applicable, properly used, with regard to the document. You cannot extend the actual lease. It is a word properly applicable to the extension of the term of years granted by the lease, though I incline to think that a very slight alteration of the terms here might have produced a different result. If the parties had agreed that the house should be taken for a further term of three years upon all the terms upon which it was taken under

this contract the result might very likely have been different."

In the instant case the parties by clause 5 of the original lease agreed that the premises should be rented for a further term of one year upon all the terms, conditions and stipulations contained in the document intituled "Lease under the Registration of Titles Law" save and except the terms relating to the rental and the renewal.

I would hold that the Master was in error in giving as his answer to the first question - that the Lessee was only entitled to exercise the option to purchase during the original terms of the lease - in so far as the answer related to the proper construction to be put upon the provisions of clause 5 of the original lease.

The next question for our determination is whether there was a valid exercise of the option to purchase. The contract under which the relationship of landlord and tenant was to continue to subsist at the end of the first twelve month period contained a stipulation in the terms of clause 6 of the original lease. By that clause the lessors for a further consideration of £500 "which shall be paid on the signing hereof" grant the lessees an option to purchase the demised premises for a specified price, such option to be exercised by the lessees giving the lessors one month's notice in writing of their intention, such notice to expire at the end of a calender month. It is conceded that the lessees are obliged under the terms of clause 6 to pay to the lessors the stated consideration of £500 and that no such payment has ever been made. For the plaintiff it is contended that although the terms of an option must be strictly complied with in respect of the exercise of the option yet in equity time is not of the essence in so far as the creation of an option is concerned and so unless time has been made of the essence which it was not in this case payment of the amount of consideration can be made at any time up to the time specified in clause 6 for the payment of the balance of the purchase price or may be sued for and

recovered in a court of law. That contention is based on the further contention that an option to purchase land gives rise to the creation of an equitable interest in that land in favour of the optionee. Logically the end point of these contentions is that the grant of an option to purchase land is in effect a conditional sale of that land. To see whether these contentions are correct it is necessary to consider the nature of an option for valuable consideration to purchase land. An option when granted for value confers a right or privilege in the optionee to call for the sale to him of the land in accordance with the conditions specified for the exercise of the option and the lessor undertakes that he will not within the time, if any, specified in the option clause, which is indeed a separate contract, deal with the land in any way inconsistent with the right of the optionee to purchase the land together with a binding agreement not to revoke the offer during the time, if any, specified in the option. If the offer is accepted within the time specified a contract of sale is made. See Commissioner of Taxes (Queensland) v. Camphin (1937) 57 C.L.R. 127. If the lessor in breach of his agreement purports to revoke his offer his revocation is ineffectual to prevent the formation of a contract by the acceptance of the offer within the specified time (See Goldsbrough Mort & Co. Ltd. v. Quinn (1910) 10 C.L.R. 674). Where the option contract is one which would be specifically enforced in equity a court of equity attaches to it the consequences that it creates an equitable interest in the property. See London & South Western Railway Co. v. Gomm (1882) 20 Ch. D. 562. But this equitable interest is not that which results in favour of a purchaser under an agreement of sale and purchase of the property. By the grant of an option no land is sold to the optionee. See Commissioner of Taxes v. Camphin (1937) 57 C.L.R. 127. If the optionee does not exercise the option by the time limited for its exercise the equitable interest in the land arising from the grant of the option comes to an end. From this I would conclude that the equitable principle that in contracts for the sale of land time is not of essence unless so specified

therein has no application to options to purchase land. It was observed by Willmer, L.J. in Hare v. Nicholl (1966) 1 All E.R. at p. 289 that an option to purchase being a species of privilege for the benefit of a party upon whom it is conferred must be exercised in strict compliance with the conditions stipulated for its exercise. A fortiori it would be a condition precedent to the exercise of the option that the condition relating to the payment of consideration therefor should be strictly complied with. Therefore when the consideration payable for the option is required by the option contract to be paid on or before a specified date strict compliance must be made with such a term otherwise the option lapses if that date is prior to the time specified by which the option shall be exercised. This conclusion is enough to confirm the Master's answer to the second question. However, the position in the instant case is not one simply where there was failure to pay the consideration on or before a date specified by which the option was to be exercised. Here the payment of the consideration was required to be made on the signing of the contract granting the option. The grant of the option was dependent on the payment of the consideration. They constituted concurrent conditions. Failure to pay the stated consideration at the time of the notional signing of the further lease prevented the formation of the option contract.

I would hold that the answer given by the Master to the second question is right.

GRAHAM-PERKINS

This appeal from the Master arises in the circumstances following. On June 17, 1969 the appellant (hereinafter called "the lessee") and the respondents (hereinafter called "the lessors") entered into a lease of premises 96½ Old Hope Road. The term of this lease was expressed to be for one year from June 10, 1969. By cl. 5 it was provided:

> "For the consideration aforesaid the lessors hereby agree that if the lessees shall desire to continue the term hereby created for a further period of one year from the term hereby created and shall on or before the 10th day of April, 1970 notify the lessors in writing of such desire, then and in such case the lessors will on the expiration of the said term PROVIDED ALWAYS that there shall not be any existing breach or non-performance of any of the covenants conditions and stipulations on the part of the lessees lease the leased premises to the lessees for a further period of one year as aforesaid at the yearly rental of ONE THOUSAND EIGHT HUNDRED POUNDS payable monthly at the rate of ONE HUNDRED AND FIFTY POUNDS per month in advance on the first day of each month but subject otherwise to the same terms conditions and stipulations as are herein contained save and except this present clause for renewal."

Clause 6 so far as is material provided:

> "For a further consideration of FIVE HUNDRED POUNDS which shall be paid on the signing hereof the lessors hereby grant unto the lessees an option to purchase the leased premises ... for a price of TWENTY THOUSAND POUNDS, such option to be exercised within the term hereby created by the lessees giving the lessors one month's notice in writing of their intention to exercise the said option, such notice to expire at the end of a calendar month. It is agreed that in the event of the lessees exercising the

option hereby given the amount of FIVE HUNDRED POUNDS aforesaid will be credited on account of the purchase moneys ..."

In due course the lessee exercised its option to continue the term of the lease under cl. 5 and accordingly continued in occupation of the demised premises, paying the increased rent. No new lease was signed by the parties. On March 29, 1971, i.e. some nine months after the expiration of the original term, the lessee addressed a letter to the lessors in the following terms:

> "We hereby give you notice of our intention on 30th April, 1971 to exercise the option granted to us under Instrument of Lease dated 17th June, 1969 to purchase all those parcels of land ... known as 96½ Old Hope Road ... free of encumbrances."

On April 19, 1971 the lessors, through their solicitors, wrote the lessee's solicitors challenging the "purported exercise of the alleged option".

> "In our view your clients only had an option to purchase during the period of the first year. Clause 6 of the lease is clear that for a special consideration of £500 which was paid on the signing of the lease (as required by the lease) your clients were granted an option to purchase the leased premises for £20,000 during the period of the first year.
>
> Your clients were given the right to renew the lease for a further period of one year as per the provisions of clause 5. If this is being used by your clients to try and give themselves an option to purchase during the second year (it seems to us that this must be so) then we would make the following observations:-
>
> (1) It was never intended that clause 6 should apply in

any renewal period and the language used makes this clear.

(2) Even if it can be argued that clause 6 should be part of the renewed lease the two things would have had to have happened:-

(i) A further amount of £500 would have had to be paid.

(ii) The said further amount of £500 would have had to be paid on the signing of the new lease. No new separate lease was contemplated.

It makes nonsense of clause 6 to try and stretch the meaning thereof so as to be included in the renewed period. We believe that on reflection you will agree with us and we should like your confirmation.

Yours faithfully,

MANTON & HART. "

This letter prompted the following reply on May 6, 1971:

"We do not agree with your interpretation of the relevant provisions of the lease. Clause 5 provides that in certain circumstances the lessors will on the expiration of the initial term 'lease the leased premises to the lessee for a further period of one year ... subject otherwise to the same terms conditions and stipulations as are herein contained save and except this present clause for renewal'. Proper notice having been given by the lessee by 10th April 1970, the effect of clause 5 is that on 10th June 1970 a new lease was created for the further period of one year subject to the same terms conditions and stipulations contained in the lease of 17th June 1969 and including clause 6. In support of our contention we would refer you to Hill v. Hill 1947 AER at page 54 and, in particular, to the judgment of Lord Justice Moreton beginning at page 60. We respectfully submit that this

judgment supports our interpretation of clauses 5 and 6 of the lease ....

Yours faithfully,

LIVINGSTON ALEXANDER & LEVY. "

Here then were two totally irreconcilable views as to the meaning of cl. 5. In the result the Master was requested, by an originating summons, to answer the following two questions:

"1. Whether upon the proper construction of the said lease and in particular clause 6 thereof the lessee was entitled to exercise the option to purchase therein contained during the continuation or renewal of the term thereby created referred to in clause 5 thereof or only during the original term thereby created.

2. Whether there has been in fact a valid exercise of the option to purchase therein contained."

It is to be observed that the first question appears to assume that there was a "continuation" of the term "created" by the lease dated June 17, 1969. It did not really reflect the questions to which the parties sought an answer, namely, whether a new lease had been created for a further period of one year, and, assuming an affirmative answer, whether cl. 6 was to be regarded as a term of that new lease. The Master, however, recognizing the precise area of dispute between the lessors and the lessee answered the question in the summons thus:

"There was no new lease granted in the present case. Same was merely an extension of the existing lease by virtue of cl. 5."

The several matters contained in the correspondence above noted were advanced in argument before the Master. The lessee now seeks to challenge the Master's conclusion.

In my judgment this appeal turns on the answers to three

questions. The first is: Can it be said that on a proper and fair construction of cl. 5 the parties demonstrated a clear intention that a new lease should be granted on the expiration of the term limited by the original lease of June 17, 1969? The second question is: Assuming that the answer to the first question is in the affirmative, did the parties intend cl. 6 to be written into the lease? The third question is: Assuming that the answer to the second question is in the affirmative, did there come into being a contract giving rise to a contractual right in the lessee to call upon the lessors to transfer 96½ Old Hope Road?

I deal now with the first question. I hope I do no injustice to Mr. George's very attractive arguments if I summarise them thus: By its very nature an option to purchase, although contained in a document called a lease, is not one of the terms of the lease but is in law a collateral agreement. Such an option in a lease does not form part of any extension of that lease unless the parties thereto expressly so declare. In the case of a new lease, as distinct from the extension of an original lease, an option to purchase does not form any part of the new lease unless the parties say so expressly or the circumstances are such that by necessary implication the option forms part of the new lease. It was therefore essential to determine the true meaning of cl. 5. A careful reading of that clause made it abundantly clear that what the parties contemplated was not a new lease but a continuation of the term limited by the original lease. In that circumstance there could be no question of any right in the lessee to the exercise of the option granted by cl. 5 as it had purported to do in its letter of March 29, 1971 in the absence of an express declaration by the lessors in favour of such a right.

As has been observed in so many cases, in questions involving the construction of particular documents, a comparison of decided casses is, more often than not, calculated to confound rather than to illuminate. For myself I have not the least doubt that the duty of a court called

upon to resolve a problem of interpretation is to examine the language used and to ascertain what that language means. I do not, therefore, propose to deal with such cases as Hill v. Hill (1947) 1 All.E.R. 54, Sherwood v. Tucker (1924) All E.R. Rep. 354 and Batchelor v. Murphy (1925) All E.R. Rep. 176, cited by both Mr. George and Mr. Williams. I think, however, that it is important to bear in mind the observations, albeit in a somewhat different context, of Lord Tomlin in Hillas & Co. v. Arcos Ltd. (1932) All E.R. Rep. 494 at p. 499:

> "The problem for a court of construction must always be so to balance matters that, without the violation of essential principle, the dealings of men may as far as possible be treated as effective, and that the law may not incur the reproach of being the destroyer of bargains."

I turn now to an examination of cl. 5. The lessors assert in unmistakably clear terms that if the lessee "desires to continue the term hereby created for a further period of one year from the expiration of the term hereby created and shall on or before the 10th day of April, 1970 notify the lessors in writing of such desire", they will do something on the expiration of the said term subject to certain named conditions. What did the lessors undertake to do? Again, in equally clear terms, they undertook to "lease the leased premises" to the lessee for a further period of one year. The very clear offer "to lease the leased premises" made by the lessors was made to depend on three conditions, namely: (i) a desire on the part of the lessee to continue the term for a further period of one year; (ii) a communication in writing of that desire by the lessee to the lessors on or before a certain date; and (iii) the non-existence of any breach of, or failure to perform, the several covenants conditions and stipulations on the part of the lessee at the time of the written communication of its desire.

In the events as they occurred the lessee having fulfilled the

the foregoing conditions called upon the lessors to honour their undertaking. This the lessors did. An essential element of that undertaking and, indeed, of the agreement between the parties, was that the "lease of the leased premises" was to be subject to "the same terms conditions and stipulations" as were contained in the original document called the lease. This, in my view, is the unquestionably clear result of the words "subject to the same terms conditions and stipulations as are herein contained". In the ordinary use of language the words last quoted can mean no more and no less than "subject to those terms conditions and stipulations as are contained in this document identified as a lease". The lessors, however, took the precaution to exclude from their undertaking those clauses in the original lease dealing with rent and renewal. In substitution for the rental clause in the original lease they offered a renewal at a higher rental and they excluded the renewal clause altogether. At this point I ask - what does "renewal" mean? Certainly it must mean to grant a new lease. Why did the parties agree to the exclusion of the renewal clause? In my view the obvious answer must be that they appreciated that the exercise of renewal meant, and could only have meant, the grant of a new lease. There cannot, in my judgment, be any question here of extending the original lease. What can be extended, and what undoubtdly the parties intended to extend, was the relationship of landlord and tenant. This they sought to do by the devise of a new lease with a significant difference in one term, (the term as to rent), and the complete exclusion of another (the renewal term). This necessarily involved a new contract, a new lease, and no mere extension of the term limited by the original lease. To hold that what the parties did involved a mere extension of the original term is to ignore the true content of the offer made by the lessors "to lease the leased premises" and the acceptance of that offer by the lessee.

I turn now to the second question. It follows from the foregoing that when the lessors offered to grant, as I hold they did, a new lease

subject to the same terms and conditions as contained in the original lease they offered, as one of the terms of the new lease, the option contained in cl. 6. This was the offer accepted by the lessee. I agree entirely that ordinarily an option to purchase included in a lease for the sake of convenience is not an incident of the tenancy, but is merely collateral thereto. Where, however, the parties to a lease containing an option to purchase agree to a new lease containing the same terms conditions and stipulations as are to be found in the original lease I can think of no more reason, either in principle or in logic, why an option clause, one of the terms in the original lease, should not be written into the new lease. I am of the view that an intention to incorporate cl. 6 in the new lease is demonstrably clear, not only from the fact of the agreement that the new lease should contain the same terms as the original lease, but also from the fact that the parties chose, by the device of an express exception to exclude cl. 5, and not cl. 6, from the terms of the original lease. Could anything have been simpler than to expressly except cl. 6 if the intention of the parties was indeed to exclude that clause? I think not. I hold, therefore that cl. 6 was intended to form, and did form, one of the terms of the new lease.

And now I turn to the third question. Did there, on the notional signing of the new lease, come into existence a valid binding contract giving rise to a right in the lessee to call upon the lessors to transfer 96½ Old Hope Road? I answer the question simply: No such contract ever came into existence.

Clause 6 in its opening words provides: "For a further consideration of FIVE HUNDRED POUNDS which shall be paid on the signing hereof the lessors hereby grant unto the lessee an option to purchase the leased premises ..." The gravamen of the submission advanced by Mr. Williams on this aspect of the case is that an option arose immediately on the notional signing of the new lease by virtue of the words "I hereby grant ... an option". The only consequence of the

non-payment of the £500 was that the situation was to be equated with a promise unsupported by consideration. In such a case the lessors were free to sell the subject matter of the lease at any time before that promise was accepted by the lessee. The lessee did accept the lessors' offer by its letter of March 29, 1971, and on that date there came into existence a perfectly valid contract imposing on the lessors an obligation to transfer the property to the lessee. In my view these submissions pose a startling challenge to the fundamental concept of "bargain" in the law of contract, and to the doctrine of consideration as it applies to the formation of a contract.

It is a manifest error, I hold, to read the words "I hereby grant" in a context totally divorced from the preceding part of the clause. The very first word of the clause, "For" means, in the particular context of the words following, "in exchange for". What, therefore, the lessors offered was in exchange for something. That something was the payment of £500. But it was not merely the payment of £500 at any time that the lessee chose to pay. The grant of the option was in exchange for £500 to be paid on the signing of the new lease. Clearly the pre-condition to the formation of a valid contract was the acceptance of the lessors' offer. The lessors had prescribed the time and mode of acceptance. The clear intention of the parties expressed in cl. 6 was that if the lessee wanted to acquire and enjoy the right to call upon the lessors to transfer 96½ Old Hope Road at some time subsequent to the signing of the lease it should purchase that right for a stated sum. The payment of that sum was, in terms of time, clearly defined. This was no ordinary case of an offer which the offeror had gratuitously promised to keep open for an indefinite time, not exceeding eleven months, during which the offer could be accepted. So to read cl. 6 is to do extreme violence to language and, indeed, wholly to re-write the clause. There can be no warrant for so doing. To hold that an offeree is entitled to ignore the terms of an offer made to him and thereafter seek to impose on the offeror an

obligation of the offeree's choice would be to strike a terrible blow at the very foundation of the theory of offer and acceptance.

I hold that the purported exercise by the lessee of the alleged option to purchase 96½ Old Hope Road had no foundation in law or in fact. In the result I would dismiss the appeal with costs to the lessors (the respondents).

SWABY, J.A.

I have had the opportunity of perusing the judgments of Luckhoo, P. (Ag.) and Graham-Perkins, J.A. They have both arrived at the same conclusions as to the answers the Master should have given to the questions asked in the originating summons. I agree with these c conclusions and do not wish to add anything.

LUCKHOO, P. (Ag.)

In the result the appeal is dismissed. The order of the Master is varied by the substitution for the answer given to the first question of the following answer:

> "That the lessees were entitled to exercise the option to purchase contained in clause 6 of the lease during the continuation of the original term of the lease and not only during the original term."

The respondents will have their costs of this appeal to be agreed or taxed.