

plaintiffs in the first-mentioned action have priority in regard to the husband's contract to sell, whilst the defendants have priority in regard to the wife's. There is nothing in the evidence sufficient to warrant a finding that the defendants were to take nothing under their option unless the holders of the first option failed to avail themselves of it; both husband and wife were, and had been from the time of giving the second option, in the belief that the first was "no good;" otherwise they would not have given the second and third, as the withholding of the third until the second had expired, among other things, goes to shew. The most that can be said against the defendants in this respect is, that they had notice of the first "option" sufficient to make their "option" subject to any legally enforceable rights under the first one.

The repayment of the cash payment on the third "option" is not strictly proved, and, if it were, it would not be sufficient evidence of any agreement to rescind or any waiver by both Bailey and Hehl, the joint purchasers, and none the less joint purchasers because, for their convenience, one of them only was named in the option.

My first impression, therefore, was, that the plaintiffs in the first action were entitled to priority, under the first "option," only in regard to the rights and interests of the husband in the land; and that the defendants in that action were entitled to priority to the extent of the wife's rights and interests in it; but I now think, and find, that there never was any intention on the part of any one concerned in the third "option" to sever in any way the rights and interests of husband and wife; that the contract was for all or nothing; and, failing to get all, they take nothing; just as, if an attempt were made to compel them to take the wife's rights and interests in the land only, they would have a complete defence in the assertion that it was to be all or nothing; and, accordingly, the wife was not guilty of a breach of her agreement with these defendants in joining in the deed to the plaintiffs if the husband were bound by the first option so to convey; and in this case, as the pleadings and evidence stand, I must hold that he was.

It ought, therefore, to be adjudged in the first-mentioned action that the plaintiffs' deed has priority over the defendants' option; which judgment, duly registered, will clear the title of any cloud that "option" may now be upon it.

It appears that, whilst these civil actions were pending, criminal proceedings were taken against one of the parties to