

Scott, have both testified that when this agreement was entered into the purchasers were informed of the giving of the first "option," though at this time there can be no doubt that the owner thought it of no effect, because his wife had refused to become a party to it.

The plaintiffs in the first-mentioned action procured an assignment of the first and second "options," and then obtained a deed of the land from the owner and his wife, after paying to them the price mentioned in the first "option;" but all this was done after they had actual knowledge of the third "option."

The third "option" is registered—irregularly, the plaintiffs in the first-mentioned action contend—and that action is brought to have the cloud, which they allege such registration creates upon their title, removed.

The second-mentioned action is brought by the land agents who obtained the third "option"—Bailey and Hehl—to recover damages from the owner and his wife—the Neils—for breach of their agreement to sell—that is, in the event of the plaintiffs succeeding in the first-mentioned action.

There was no need for two actions; all questions ought to have been raised, and should be determined, in one; the questions involved in the second-mentioned action should have been brought out in third party proceedings.

But each case must now be dealt with as it stands.

According to the evidence adduced, the first "option" has priority, for whatever it, the option, may be worth, over the third.

The second option has no effect, and is out of the question, for two reasons: (1) it was obtained by misrepresentation; and (2) it expired without being acted upon; both of which objections to it are open to the holders of the subsequent "option."

Notwithstanding the first "option," the owner and his wife might, of course, sell whatever legal or equitable rights in and in respect of the land remained in them; so that the holders of the third "option" might take the benefit of any defect in the first option that would have been open to the owner—for instance, a defence under the Statute of Frauds—and that might be a formidable defence to the first-named action; but it has not been pleaded, and I can deal with this case now only *secundum allegata et probata*. An amendment, raising the question, is not to be made unasked for; whatever might be the case if the defendants were present and seeking it.

Then, according to the letter of existing "options," the