As a general rule, a purchaser in possession does not lose by delay his right to specific performance; but the benefit of this principle cannot be claimed, where there is nothing to show that the lessor and his mortgagee recognized or were bound to recognize the possession of the tenant, after notice of intention to purchase, as being the possession of a purchaser under the contract for sale (*b*).

After the contract has become binding by the declaration of an intention to exercise the option, time cannot be made of the essence of the contract by a notice from the vendor to complete the purchase, unless the period fixed by the notice is a reasonable one; and the question of reasonableness must be determined at the date when the notice is given (*c*).

**44. When non-performance of conditions is excused.**—The terms on which a court of equity will relieve against the legal consequences of a non-performance of conditions were thus explained as regards one common kind of optional contracts, more than a century ago:

"Where the lessee has lost his legal right, he must prove some fraud on the part of the lessor, by which he was debarred the exercise of his right; or some accident or misfortune on his own part, which he could not prevent, by means whereof he was disabled from applying for a renewal at the stated times, according to the terms of his lease." (*d*)

But several other excepted cases are recognized in later decisions besides those here mentioned. The non-completion of the contract at the time stipulated will be excused, where the vendor repudiates the contract (*e*); or where there is a bonâ fide dispute as to the terms on which the option may be exercised, unless the omission to settle those terms can be attributed to the fault or default of the holder of the option (*f*); or where the grantee's failure to complete

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(*b*) *Mills* v. *Haywood* (C.A. 1877) 6 Ch. D. 196.

(*c*) *Crawford* v. *Toogood* (1879) 13 Ch. D. 153; *Pegg* v. *Wisden* (1850) 10 Beav. 239.

(*d*) Lord Thurlow in *Bateman* v. *Murray* (1779), as quoted in *Rawstone* v. *Bentley* (1793) 4 Bro. P. C. 415.

(*e*) *Mansfield* v. *Hodgdon* (1888) 147 Mass. 304 refusal to include in the conveyance portion of the land covered by the option.

(*f*) *Hunter* v. *Hopetown* (1865) 13 L.T. (H.L.) 130, per Lord Kingsdown. There the actual point on which the decision turned was that a landlord, while a suit is pending in which he denies the relation of landlord and tenant, cannot justify his refusal to grant a new lease on the ground that the tenant should have treated the refused lease as granted, and that, if he desired a further renewal after the end of the period on which the lease so refused would have expired, he should have given notice of his desire for renewal twelve months before such expiration, as specified in the original instrument. In some cases, however, the