

On the other hand it is equally well settled that an option granted on a real consideration creates a substantial interest in the subject-matter, to which the rights of a subsequent purchaser who has notice of its existence are postponed in equity (e).

The possession of a tenant is constructive notice to one dealing with the landlord of the actual interest such tenant may have in the land, such as the rights acquired under an option to purchase within a given period (f), or to renew the term (g).

35. Creditors of the party giving the option.—As against creditors of the owner, having constructive notice of the option, the equitable interest of the holder of the option relates back to the date of the contract; and, wherever a contract giving an election to purchase has been registered, such creditors are put upon inquiry whether election has been exercised (h).

36. Wife of party granting the option.—A married woman is in no way bound by an option granted by her husband on her lands, where she was not a party to the transaction, and protested against it from the first moment that it came to her knowledge (i).

IX. NECESSITY FOR THE PERFORMANCE OF THE PRESCRIBED CONDITIONS BY THE GRANTEE OF THE OPTION.

37. Strict performance of conditions usually a pre-requisite to securing the benefits of an option.—The terms upon which options are granted are commonly such as to bring them within the general principle thus laid down by Lord Westbury:

"If it be clear that any particular act is a condition precedent, it is immaterial whether it be or be not reasonable to require that it be first done on the one side before any obligation arises on the other. The things required must be done in the order and sequence which are stipulated." (j).

It follows, therefore, that the holder of an option will, in the great majority of instances, be unable to enforce the inchoate

(e) *Hershey v. Giblett* (1854) 18 Beav. 174 [tenant for year had an option to receive a lease upon demand]; *Ross v. Parks* (1890) 93 Ala. 153, 30 Am. St. Rep. 47, 11 L.R.A. 148; *Barrett v. McAllister* (1890) 3 W. Va. 738; *Clark v. Gordon* (1891) 35 W. Va. 735; *Jackman v. Groat* (1827) 7 Cow. (N.Y.) 285.

(f) *Daniels v. Dawson* (1809) 16 Ves. 253; *Kerr v. Day* (1850) 14 Pa. 112, 53 Am. Dec. 526.

(g) *Blackwell v. Smyly* (1866) 3 W.W. & A'B. (Vict. Eq.) 1.

(h) *Donnelly v. Parker* (1872) 5 W. Va. 301.

(i) *Graybill v. Brugh* (1893) 37 Am. St. Rep. 874, 89 Va. 895.

(j) *Weston v. Collins* (1865) 5 N.R. 35, 5 L.J. Ch. 353.