

Payment within the period covered by the option is, of course, not obligatory where it is not required to be so made (*h*). Sometimes this non-essentiality of time may be inferred from the terms of the contract (*i*); or it may be deduced from the acts of the grantor of the option (*j*).

An extension of the time given for payment by a contract so worded as to make time essential does not destroy the essentiality of the condition altogether, but payment on the further day named is obligatory (*k*).

Money paid on account of an ordinary purchase is recoverable, if the contract is not completed owing to no fault of the vendee's, but a different rule governs, where the contract provides for a forfeiture of the sum paid for an option, in case the purchase is not completed within the time limited (*l*).

43. Delays in completing the contract after acceptance. consequence of.—Any laches after a demand for a lease is made by a tenant from year to year will be taken strongly against the tenant; but a subsequent acceptance of rent will cure such a defect (*m*).

(*h*) *Watson v. Const* (1891) 35 W. Va. 463.

(*i*) Where it was provided that the tenant should "have the option of any time during the term to purchase the premises for £3500, and, upon payment thereof to the lessor, the said term should cease, and the tenant should thereupon be entitled to an assignment, it was held that the contract of sale became complete when the tenant notified the lessor of his intention to purchase, and the payment of the purchase-money was not a condition precedent to the existence of a mutually obligatory agreement. *Mills v. Haywood* (C.A. 1877) 6 Ch. D. 198. Where a lessee has the right of purchasing at any time within a specified period by giving three months' notice, and notice is duly given, time will not be considered to be of the essence of the contract, so far as regards its completion of the contract by payment of the price. *Pegg v. Wisden* (1852) 10 Beav. 239. The general rule has been said to be, that time is not of the essence where the contract shows no intrinsic purpose which would be defeated by delay in payment of the price, and there is no condition that the contract shall be avoided by the failure to make payment at the time appointed. *Wilson v. Herbert* (1893) 76 Md. 489, where the court decreed a renewal of a lease, in spite of the failure of the lessee to pay the purchase price before the end of the term, where the stipulation was merely that the property would be conveyed for the price specified, provided the lessee paid the arrears of rent, and also any rent that might be due up to the end of the term.

(*j*) Time is not of the essence although a lease only gives the tenant the right to purchase at any time within a year from its date, where the tenant has held over with the landlord's consent after the expiration of the year and is still in possession when he elects to purchase. *O'Arniss v. Keyer* (1856) 20 Pa. 289.

(*k*) *Barclay v. Messenger* (1874) 43 L.J. Ch. 449; 22 W.R. 322.

(*l*) *McConkey v. Peach Bottom &c., Co.* (1895) 68 Fed. 830.

(*m*) *Hersey v. Giblett* (1854) 18 Beav. 174. A tenant with an option to purchase who after giving notice of his intention to exercise his option, delays for five years to enforce the contract, cannot claim specific performance, especially where the subject-matter of the contract is of a somewhat speculative and fluctuating value, (in this case a tavern), *Mills v. Haywood* (C.A. 1877) 6 Ch. D. 198.