

So also one who has the privilege of selling all the produce of a certain kind which his land may yield during a specified term of years may assign his right to the purchaser of the land (*j*).

The grantee of an option does not, by assigning it, estop himself from exercising a right which he has expressly reserved to withdraw from the contract (*k*).

VIII. TO WHAT EXTENT THIRD PERSONS ARE BOUND BY THE EXISTENCE OF THE OPTION.

33. Parties acquiring the subject-matter of the option by testamentary provisions.—A covenant by a lessor to renew or pay for the improvements runs with the land and binds his devisee (*a*).

34. Subsequent purchasers.—(*a*) *At law*.—At law a purchaser of land affected by an option is bound by it, wherever it falls under the category of covenants running with the land. Thus an option of re-purchase binds the land in the hands of any person to whom it may pass (*b*). So covenants for the perpetual renewal of leases, being regarded as real agreements, affect the legal interest of all who take the estate with notice of them (*c*).

(*b*) *In equity*.—The granting of an option, not supported by a consideration, does not, for reasons which will be obvious, by referring to sec. 21 ante, create a right which will prevail against the interest of a subsequent purchaser. In a court of equity the same principle will of course prevail, where the consideration was merely nominal, and did not really pass (*d*). In such cases, the mere fact that a third person knows that the offer purports to be open till a date fixed will not prevent him from making a better offer (*e*).

(*j*) *La Rue v. Groezinger* (1890) 18 Am. St. Rep. 179; 84 Cal. 281 [decided with special reference to Cal. Civ. Code, secs. 1044, 1458, 1459, which virtually embody the rules of courts of equity as to assignments].

(*k*) *Clark v. Harman*, 9 D.C. 1.

(*a*) *Irvine v. Simonds* (1864) 11 New Br. R. 190.

(*b*) *London &c. R. Co. v. Gomm* (C.A. 1882) 20 Ch. D. 562.

(*c*) *Earl of Shelburne v. Biddulph* 6 Bas. P.C. 356, 363. But a covenant for perpetual renewal, entered into by a person holding a limited interest in lands does not bind the estate beyond that interest. Hence, if his assignee acquires the inheritance, it is not bound by the covenant. *Brereton v. Twohy* (1858) 8 Jur. Com. L. 190.

(*d*) *Graybill v. Brugh* (1893) 89 Va. 895, 37 Am. St. Rep. 844.

(*e*) *Dickinson v. Dodds* (C.A. 1876) 2 Ch. D. 463, per Mellish L.J., p. 474.