

three years the lessors may sell the said premises free from the said lease on giving one calendar month's notice in writing of their intention so to do, but that the lessee shall have the option of becoming the purchaser at the price and terms agreed to be paid by the proposed purchaser on signifying his intention so to do in writing before the expiration of the said month, and on proceeding without delay to complete his purchase."

The defendants became purchasers of said lands sold under the Bergin mortgage and on the 30th November, 1908, obtained from the mortgagee a conveyance thereof. Thereupon it became the duty of the parties in pursuance of the agreement between them, to enter into a written lease of the lands, but they did not do so. When the agreement of the 27th of October, 1908, was entered into, the plaintiff was in possession, and so remained until March, 1909, when he abandoned possession, refused to pay rent, and the defendants took possession and leased the property to a third party.

It must be assumed that the plaintiff was in possession by virtue of the agreement, that is as lessee. The rights of the parties must be determined as if a formal written lease within the meaning of the agreement had been actually entered into, and under such a lease the conduct of the plaintiff would have operated as a forfeiture, so that as a matter of law the term provided for by the agreement came to an end in March, 1909.

The question then is, whether the plaintiff's option to purchase the lands also then ceased.

The plaintiff contends that notwithstanding the determination of the lease, his right of pre-emption continues throughout the period of five years from the time when the defendants acquired their conveyance, subject to the qualified rights of the defendants after the three years to sell to a stranger.

The question is what did the parties mean when by the agreement they said that the "lease shall contain a covenant and proviso on the part of the lessors that the lessee may at any time during the said term exercise his right of pre-emption," etc? It does not say during five years, but during the said term. That is, whilst the said term is still subsisting.

If the plaintiff's contention is adopted then at any moment during the five years, although the lease had ceased to exist, the plaintiff, on exercising his option, would be en-