

right (a). So also a party holding an option for the purchase of timber which is not limited as to time may estop himself from asserting it against a third person by acquiescence in the acts of the latter in removing the timber, and assisting the men engaged in the work (b).

50. Where the adequacy of the price is left to the discretion of the trustees, their action in accepting a certain amount will not ordinarily be interfered with, unless proof of fraud is given (c).

51. Equities adjusted under special circumstances between lessee and under-lessee, with option of renewal.—Where a tenant for lives under a lease not containing a covenant for perpetual renewal purchases the fee simple in order to save his estate, after the refusal of the holder of the reversion to renew the lease, such purchase does not give an under-lessee with a toties quoties covenant an absolute right to demand a perpetual renewal, by the insertion of new lives, but merely entitles him to call for a conveyance of the particular property comprised in his under-lease, upon the terms of satisfying his share of the expenses of acquiring it, having regard to the value of his covenants, which will have to be deducted from the valuation of the fee simple of the property comprised in his lease (d).

52. Enforcement of provisions giving continuing partners the option of purchasing share of retiring partner.—Since, generally speaking, a clause in partnership articles giving continuing partners a right of pre-emption as regards the share of a retiring partner is not the subject of conveyance in court of law, it is not open to courts of equity to say, when the rights under such a clause are in question, that the parties will be left to their legal remedy. The jurisdiction of the latter courts to enforce the performance of such a clause is not merely discretionary as in the case of an ordinary contract between vendor and purchaser. In a proper case the violation of the right of pre-emption will be restrained by injunction, and its performance enforced, as a matter of course (e).

(a) *Orby v. Trigg* (1722) 9 Mod. 2.

(b) *Hanly v. Watterson* (1894) 39 W. Va. 214.

(c) *Edmunds v. Millett* (1855) 20 Beav. 52, refusing to restrain a sale.

(d) *Postlethwaite v. Lewthwaite* (1862) 2 Johns. & H. 237.

(e) *Humfray v. Fothergill* (1866) 1 Eq. 567.