

sum of money named as the price of the interest or estate to which the option relates (*b*); or—supposing the discharge of such a liability to have been expressly made a condition precedent to the right to demand a conveyance,—cancel some collateral debt, such as a mortgage on the property sold (*c*), or an outstanding note of the vendee himself for goods supplied by the vendor on some prior occasion (*d*).

In some early cases the doctrine seems to be laid down quite strongly that, where the right to renewal of a lease is made dependent upon the payment of fines at specified times, the court will not, in the absence of some special circumstance, assist the lessee where he has neglected to perform this condition (*e*); but in later rulings a distinction is taken between a mere omission to pay the fine, and wilful neglect or refusal to renew the lease. In the former case equity will relieve against the breach of the condition, in the latter specific performance will be denied (*f*). The failure to pay the fine during the currency of the term is of course not fatal to the right of renewal, where the provisions relating to the renewal are couched in terms which indicate that it was the intention of the parties that the fine was not to be paid until after the expiration of the old term (*g*).

*Grayson*, 3 Or. 111; *Bostwick v. Hess* (1875) 80 Ill. 138; *Stembridge v. Stembridge* (1888) 87 Ky. 91; *Weaver v. Burr* (1888) 31 W. Va. 736; *Clark v. Gordon* (1891) 35 W. Va. 735. "Where there is no stipulation for penalty or forfeiture, but a privilege is conferred, provided money be paid within a stated time, there the party claiming the privilege must show that the money was paid accordingly." *Davis v. Thomas* (1831) 1 Russ. & Myl. 506.

(*b*) *Dawson v. Dawson* (1837) 8 Sim. 346; *Carter v. Phillips* (1887) 144 Mass. 100; *Longfellow v. Moore* (1887) 102 Ill. 289. Even a tender of the money will not be sufficient, if the agreement distinctly contemplates a completion of the purchase before the end of the period. Thus, where one party pays a sum for an option to buy within so many days a piece of property for a specified price in cash, upon payment of which the owner is to make deed, the rights under the option are not saved by merely notifying the owner of an acceptance of the offer, and an offer to deposit such amount as might be required of him, pending examination of title. *Killough v. Lee* (1893) 2 Tex. Civ. App. 260.

(*c*) *Stembridge v. Stembridge* (1888) 87 Ky. 91.

(*d*) *Schiels v. Horbach* (1890) 30 Neb. 536.

(*e*) See House of Lords decisions cited in the judgment in *Lawstone v. Bentley* (1793) 4 Bro. P.C. 415.

(*f*) *Lennon v. Napper* (1807) 2 Sch. & L. 682; *Chesterman v. Mann* (1851) 9 Hare (1851) 9 Hare 206 [evidence showed that up to the time when the renewal was open under the terms of the lease, the lessee had temporized on merely colourable grounds about coming to a definite arrangement, and had no *bona fide* intention of renewing].

(*g*) *Nicholson v. Smith* (1882) 22 Ch. D. 640. The time with reference to which the question of an under-lessee's laches in failing to pay the fine which is due from him upon his obtaining a renewal of the lease is reckoned not from the latest time at which the mesne landlord might have procured a lease, but from the time when the under-lessee is called upon to contribute to the payment of the fine. *Chestermann v. Mann* (1851) 9 Hare 206.