

If the nature of the transaction is such that it rests with the grantee of the option to reduce the contract to certainty by the terms in which his election is expressed, the language used must be definite and precise to warrant a court of equity in enforcing it (c).

48. Right of grantee of option to a good title.—A person with an option to purchase land has, like any other intending purchaser, a right to have a good title shewn to the property (a), unless this right has been waived by his own conduct or declarations; and the burden of proving such waiver lies on the grantor of the option (b). Similarly in the case of an agreement to lease, the vendor is bound to show that there is a subsisting valid agreement to lease. This he cannot do where he has given the owner of the premises a right to cancel the lease by failure to perform certain conditions, and, at the time when the purchaser repudiates the contract, there has been merely a conditional and contingent waiver of the right of the owner of the premises to avoid the term (c). Even where the contract giving the option provides that the money paid for it is to be forfeited if the purchase is not completed, the holder of the option may, if he discovers, before the end of the period which it covers, that the owner of the property has not a good title to it, rescind the contract and recover the money so paid (d).

49. Right to exercise option lost by estoppel.—A mortgagor who without the knowledge either of the heir of the mortgagor or of a purchaser from such heir, has reserved a right of pre-emption in case of a sale of the property, is precluded from claiming, as against such purchaser, the benefit of this right, where he allows the sale to be completed without mentioning that he had the

(c) *Christian &c. Co. v. Bienville &c. Co.* (1894) 106 Ala. 124, where the Court held that a contract for a water supply, with an option to the person supplied to have the service continued at a specified rate, was not void as to such option because of its indefiniteness as to such duration, but declined to enforce the agreement on the ground that the consumer had not expressed his election in sufficiently definite terms by a notice that he wished "to continue the service from month to month."

(a) *Welshman v. Spinks* (1861) 5 L.T. 385; *Brewer v. Broadwood* (1882) 22 Ch. D. 105; *Re Hunter* (1831) 1 Edw. Ch. (N.Y.) 1.

(b) *Welshman v. Spinks* (1861) 5 L.T. 385.

(c) *Brewer v. Broadwood* (1882) 22 Ch. D. 105.

(d) *Burks v. Davies* (1890) 20 Am. St. Rep. 213, 85 Cal. 110.