

prevails in cases of the type under review. In these the controlling principle is that, wherever it is stipulated in effect that, provided the intending purchaser shall do a specified act, then the owner will convey the land, the relation of vendor and purchaser does not exist between the parties unless and until the act has been done as stipulated (c). Clearly that relation can never come into existence at all if any act upon which such existence is expressly made dependent has been left unperformed at the expiration of the period for which the offer holds good. Mutatis mutandis; a similar principle is applicable where the negotiation contemplates a transfer of interests, not amounting to a complete sale.

**40. Option lost, if not accepted within period limited.**—Accordingly in most cases of options, as such offers are ordinarily worded, the rights of the party to whom the offer is made are gone forever, unless he duly communicates the fact of his acceptance to the party making the offer before the period which the latter allowed for consideration has expired (a).

An acceptance is ordinarily deemed to be given in time if communicated at any time during the period specified in the contract for the duration of the option (b), even though the stipulation is for so many days' notice, and the period covered by the option may be so nearly ended when the notice is given that it will have completely expired before those days have elapsed (c). And if the

(c) *Randolph v. Melton* (1864) 2 Dr. & Sm. 278. In *Page v. Hughes* (1842) 2 B. Moos (Ky.) 439, it was said that time was generally essential for the reason that the contract was not mutual. But the consideration seems irrelevant. The question is merely one of the intention of the person making the offer.

(a) *Coleman v. Applegarth* (1887) 6 Am. St. Rep. 417, 68 Md. 211; *Maughlin v. Perry*, 35 Md. 352; *Weaver v. Burr* (1884) 31 W. Va. 736; *Dyer v. Duffy* (1894) 30 W. Va. 148; *Mason v. Payne* (1871) 47 Mo. 517; *Burrett v. McAllister* (1890) 33 W. Va. 738; *Schields v. Horbach* (1890) 30 Neb. 536; *Longworth v. Mitchell* (1875) 26 Ohio St. 334; *Atlee v. Bartholomew* (1887) 60 Wis. 431; *Magoffin v. Holt* (1863) 1 Duv. (Ky.) 951 and the cases cited in the following notes.

(b) *Shipman v. Grant*, 12 C. P. (Ont.) 395 [not necessary to give notice before the period begins]; *Brown v. Slee* (1880) 103 U.S. 828 [notice need not be given on the actual day a re-purchase is made under an option].

(c) *Geyer v. Warren* (1868) 175 Ill. 328. It has been held, however, that a notice of so many days required to be given by a lessee having an option of purchase at any time within five years is too late, when it is only given two days before the term expires, *Mason v. Payne* (1871) 47 Mo. 517. A similar obligation may sometimes be created by the express terms of the option. Thus when the notice of the lessee's desire to purchase is to be one of six months expiring on one of the quarterly days appointed in the lease for the payment of rent, a notice given at such a time that before it has been running six months, the end of the term is reached, is out of time, and a sale will not be enforced. *Riddell v. Dufford* (1893) W. N. 30.