which is determined by the death of the party to whom the privilege is granted, and is neither a chose in action, nor a transmissible right of property (*b*). Unless this doctrine is merely a succinct form of stating the results of the English cases between the heirs and personal representatives, (*c*) it is difficult to understand upon what ground this purely personal quality is predicated. It can scarcely be intended to rest upon the presumption that, in the absence of words to the contrary, the grantor of an option must be taken to have wished to restrict the right of purchasing to the grantee designated. Such a presumption would be essentially futile in face of the fact that every vendor must be taken to appreciate the possibility of his property passing to some third party at any moment after the transfer to the vendee, whether it be by the death of the latter, or a re-sale.

As respects testamentary options, it has been laid down that, if a testator goes no further than to provide that an estate shall be offered to a particular person at a price to be fixed by his trustees, and that person does not act in his lifetime, signifying what he will do, the interest he has lasts no longer than his life, and will not descend to his real representative to be paid for by his personal estate (*d*). One of the reasons assigned for this doctrine is thus stated in a well-known treatise:

"The heir or devisee has no right to insist on the completion of a purchase, except where the contract is such as might have been enforced against his ancestor or testator; for otherwise he would be able to take the purchase money from the personal estate, in order to purchase for himself that which his ancestor was not bound to purchase, and perhaps never would have purchased" (*e*).

31. Administrators.— In the Rhode Island case, cited under the preceding section, the administrator was held, equally with the heir, and for the same reason, to be incapable of exercising the option, but in Michigan it has been laid down that the equitable

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(*b*) *Newton* v. *Newton* (1876) 23 Am. Rep. 476; 11 R.I. 390 [bill to enforce sale]; *Sutherland* v. *Parkins* (1874) 75 Ill. 338 [bill to enforce sale]; *Gustin* v. *Union &c., District* (1893) 34 Am. St. Rep. 361, 94 Mich. 502.

(*c*) In the Rhode Island case cited the court laid some stress upon this aspect of the matter, but it does not appear to be the controlling consideration.

(*d*) *Lord Radnor* v. *Shafto* (1805) 11 Ves. 448, 454. Lord Eldon accordingly decided that there was no one who was capable of exercising the right of pre-emption, but suggested that, possibly, if there were a recital in his will that he offered such price as the trustees would dispose at, in other words, a reasonable price, and that he would accept the property on those terms, the estate might possibly pass by the devise.

(*e*) Fry Spec. Perf., sec. 218; see also *Brown* v. *Monck*, 10 Ves. 597.