But each case must now be dealt with as it stands.

According to the evidence adduced, the first "option" has priority, for whatever it, the option, may be worth, over the third.

The second option has no effect, and it is out of the question, for two reasons: (1) it was obtained by misrepresentation; and (2) it expired without being acted upon; both of which objections to it are open to the holders of the subsequent "option."

Notwithstanding the first "option," the owner and his wife might of course sell whatever legal or equitable rights, in, and in respect of, the land, remained in them; so that the holders of the third "option" might take the benefit of any defect in the first option that would have been open to the owner, for instance, a defence under the Statute of Frauds, and that might be a formidable defence to the first named action, but it has not been pleaded and I can deal with this case now only *secundum allegata et probata.* An amendment, raising the question, is not to be made unasked for; whatever might be the case if the defendants were present and seeking it.

Then according to the letter of existing "options," the plaintiffs in the first mentioned action have priority in regard to the husband's contract to sell, whilst the defendants have priority in regard to the wife's. There is nothing in the evidence sufficient to warrant a finding that the defendants were to take nothing under their option unless the holders of the first option failed to avail themselves of it; both husband and wife were and had been from the time of giving the second option, in the belief that the first was "no good"; otherwise they would not have given the second and third, as the withholding of the third until the second had expired, among other things, goes to shew. The most that can be said against the defendants in this respect is that they had notice of the first "option" sufficient to make their "option" subject to any legally enforceable rights under the first one.

The repayment of the cash payment on the third "option" is not strictly proved, and if it were it would not be sufficient evidence of any agreement to rescind or any waiver by both Bailey and Hehl, the joint purchasers, and none the less joint purchasers because, for their convenience, one of them only was named in the option.