

the latter cannot compel the landlord to renew the lease as to himself alone (*f*).

(*e*) *Application for renewal of lease upon the occurrence of a specified event.*—The general rule is that a tenant for lives forfeits the right of renewal if he does not comply exactly with provisions of the lease as to applying for the insertion of a new life after the death of a cestui que vie (*g*). Similarly where the lessor and lessee, in contemplation of the tenancy's continuing for a long term, provide for several renewals at the end of periods reckoned, not by lives, but by years, the right of renewal will be treated as being forfeited forever by the lessee's neglect to make application after the expiration of the first of these periods, where, upon a reasonable construction of the instrument, the lessor must have intended to limit the privilege to this extent (*h*).

But it is otherwise where a lease for a long term provides that the tenant may procure another lease for the same term by applying at the expiration of specified shorter periods during the currency of the term. The option of renewal is then regarded as a privilege which recurs as often as the end of one of these periods comes round (*i*).

39. Time usually of the essence of optional contracts.—(See also sec. 38 (*f*), *supra*.)—"In ordinary contracts of purchase, both parties are at once bound, and unless there be some special circumstances, the time for payment of the purchase money or for the conveyance of the estate, is not deemed of the essence of the contract" (*a*). In the case of such contracts, therefore, the circumstance that the day fixed for the payment of the money and completion of the purchase has passed, does not ordinarily entitle either party to refuse to carry out the agreement (*b*). A different rule usually

(*f*) *Finch v. Underwood* (C.A. 1876) 2 Ch. D. 310, [right of renewal of lease was here expressly made to depend upon the lessee's having "duly observed and performed all the covenants of the lease."]

(*g*) *Bayley v. Leominster* (1792) 3 Bro. Ch. Cas. 520, 1 Ves. 476, [two lives had dropped before election to renew was declared]; *Bergham v. Guy's Hospital* (1769) 3 Ves. 295; *Eaton v. Lyon* (1798) 3 Ves 690; *Pernette v. Clinch* (1894) 26 N.S.R. 410.

(*h*) *Rubery v. Jerwoise* (1786) 1 T.R. 229; *Nicholson v. Smith* (1882) 22 Ch. D. 640.

(*i*) *Bogg v. Midland R. Co.* L.R. 4 Eq. 310, 313, distinguishing *Eaton v. Lyon*, *supra*.

(*a*) *Weston v. Collins* (1863) 3 N.R. 345, 34 L.J. Ch. 353, per Ld. Westbury. As to the general principle upon which it is determined whether time is of the essence of the contract, see Dart's V. & P., 6th ed., pp. 482, et seq. As to the effect of the lapse of time generally, upon the right to obtain specific performance, see Fry's Spec. Perf. ch. XXV.

(*b*) *Ranelagh v. Melton* (1864) 2 Dr. & Sm. 278.