

of the grantee to exercise it, and, in view of such exercise, has consented to prolong the relations upon the continuance of which the right of exercising it depends, the grantee's non-compliance with a provision that so many days' notice shall be given of his intention will not be fatal to his rights (*h*).

45. Waiver of performance by grantor.—The conditions upon which the grantee of an option is to be entitled to its benefits may of course be waived altogether by the grantor. Such a waiver will be inferred from any statements of the grantor of the option which indicate that he regards the obligations of the grantee, as still existing—as where a lessor, after his lessee has failed to complete a purchase within the time limited, writes a letter to the lessee, threatening to take proceedings for the enforcement of the contract, if there should be any further delay (*a*). So also a covenantor who by his own conduct causes a failure to comply with the condition that the price should be paid before a certain date waives the condition to that extent (*b*). But in no case will a waiver be implied, where the grantor of the option was not aware of the breach of the condition which entitled him to forfeit the privilege (*c*).

XI. ENFORCEMENT OF OPTIONS BY THE COURTS.

46. Options, though merely unilateral contracts, specifically enforceable.—The fact that an option is a merely unilateral contract has naturally suggested, in suits for specific performance, the objection that they are wanting in mutuality; but it is now well settled that courts of equity will not refuse relief upon this ground.

Some authorities treat these cases as exceptions to the general rule that a contract is not specifically enforceable unless it is mutual,—that is such that it may be enforced by either party against the other (*a*). In other words, the broad ground is taken that the mere fact of a contract being unilateral is no impediment

(*h*) *Wilson v. Herbert* (1893) 76 Md. 489.

(*a*) *Pegg v. Wisden* (1850) 16 Beav. 239.

(*b*) *Mansfield v. Hodgdon* (1888) 147 Mass. 304. Compare sec. 43 ante.

(*c*) *Thompson v. Guyon* (1831) 5 Sim. 65 [landlord allowed tenant to remain in possession, not knowing that he was liable to ejectment for breach of covenants in the lease].

(*d*) Fry Spec. Perf., sec. 470; *Lawrenson v. Butler*, 1 Sch. & Lef. 13; *Chesterman v. Mann* (1851) 9 Hare 206 [covenant by lessor to renew].