

continued for an additional period. The contract is then treated as an entire one, part of the consideration of which is the option to take the goods for the extended term (*r*).

Of course if an option, whether given by a lease or as part of any other kind of transaction, is evidenced by a covenant it comes within the principle that a contract under seal stands on the same footing as one supported by an actual consideration (*s*). It should be noted, however, that, as equity will always inquire into the consideration of a contract, regardless of its form, a seal will not supply the place of a real consideration in a suit for specific performance if it is proved that none actually passed (*t*).

The grantee of an option, on the other hand, is not in any way bound by merely expressing his willingness to consider an offer (*u*). It is obvious, indeed, that any other theory of the situation would be wholly inconsistent with the essential import of these transactions, which is simply that a certain amount is given for the privilege of considering whether it will be worth while to acquire some valuable interest within the period specified.

7. Acceptance of offer, whether supported by a consideration or not, creates a contract binding both parties.—The acceptance of the offer within the period specified by the party making it has the

(*r*) *Christian &c. Co. v. Brenville &c. Co.* (1894) 106 Ala. 124.

(*s*) *Faulkner v. Hebard* (1854) 26 Vt. 452; *Willard v. Tayloe* (1869) 8 Wall. 557; *O'Brien v. Boland* (1896) 166 Mass. 481; *Mansfield v. Hodgdon* (1888) 147 Mass. 304. See also the English cases, hereafter cited, as to options of purchase granted in leases which, although not deciding this point in express terms, obviously assume the correctness of the doctrine in the text.

(*t*) *Crandall v. Willig* (1897) 166 Ill. 233.

(*u*) *Coleman v. Applegarth* (1887) 6 Am. St. Rep. 417, 68 Md. 1; *Harding v. Gibbs* (1888) 125 Ill. 85, 8 Am. St. Rep. 345. A lease allowing the lessee an option to purchase before a certain date, the rent to form part of the price, and providing that, if he should determine not to purchase and notify the lessor thereof, the payment of the rent should be postponed to a specified day, does not become a binding contract of sale for the reason that the lessee fails to give notice of his intention not to purchase. *McCalmont v. Muthall* (1858) 4 All. (N.B.) 200. Where one has the beneficial use of the property of another, and agrees to pay instalments which are described as rent or hire instalments, and which he is entitled to treat as payments for hire only, an obligation to purchase will not be predicated for the reason that it is also stipulated that by continuing to make the payments for a certain time he shall acquire the property. This stipulation still leaves him the power, at any moment, and at his own will, by returning the property to the owner, to put an end to any obligation to pay any further instalments. *Helby v. Mathews* (H.L.E.) 1895 A.C. 47. The special question in this case was whether the hirer was a person who had "agreed to buy goods" within the meaning of the Factors Act of 1889, sec. 9, so as to prevent the bailor from recovering the chattel from a pawnbroker to whom it had been pledged after a few payments had been made.