

from the negotiations at any time prior to the time when the one to whom the offer is made accepts it (*e*), for it is only after such acceptance that an agreement mutually obligatory is deemed to exist. See sec. 8 post. The principle is that, "till both parties are agreed, either has a right to be off" (*f*). The mere fact that the subject-matter to which the undertaking relates is one of those which is within the provisions of the Statute of Frauds, and that the offer is duly reduced to writing will not affect the operation of this principle (*g*).

The same principles are applicable where, without any new consideration, the time for an option which was itself granted upon a consideration is extended. Such an undertaking is not obligatory, as the consideration for the first option will not do service for the second (*h*).

4. Discussion of this rule.—The rule established by the cases just referred to in the preceding section is different from that of the Civil Law, which treats as binding a promise to keep a proposal open for a definite time (*i*). It seems impossible to deny that this is one of the numerous instances in which that system is more consonant than our own to natural justice as well as to common sense. To the criticism of those jurists who take the ground that it is inconsistent with the plain principles of equity, that a person who has been induced to rely on such an engagement should have no remedy in case of disappointment (*j*), the only answer available is

(*e*) *Routledge v. Grant* (1828) 4 Bing. 653. See also *Bristol &c. Co. v. Muggs* (1890) 44 Ch. 616; *Martin v. Mitchell* (1820) 2 J. & W. 413, 428; *Thornbury v. Bevil* (1842) 1 Y. & C.C.C. 554; *Head v. Diggon* (1828) 3 Man. & Ry. 97; *Butler v. Thomson* (1875) 92 U.S. 412; *Eliason v. Henshaw*, 4 Wheat. (U.S.) 228; *Carr v. Duval* (1840) 14 Pet. (U.S.) 77; *Boston &c. R. Co. v. Bartlett* (1849) 3 Cush. 224; *Houghwout v. Boisambin* (1867) 18 N.J. Eq. 315; *Souffrain v. McDonald* (1860) 27 Ind. 269; *Eskridge v. Glover* (1834) 26 Am. Dec. 344, 5 Stew. & Port. (Ab.) 204; *Faulkner v. Hebard* (1854) 26 Vt. 452; *Weaver v. Burr* (1888) 31 W. Va. 736; *Dyer v. Duffy* (1894) 39 W. Va. 148, 24 L.R.A. 339; *Gordon v. Darnell* (1880) 5 Colo. 302; *Connor v. Renneker* (1886) 25 S.C. 514; *Larmon v. Jordan* (1870) 56 Ill. 204; *House v. Jackson* (1893) 24 Or. 89; *Crandall v. Willy* (1897) 166 Ill. 233; *Guston v. Union School Dist.* (1893) 34 Am. St. Rep. 361, 94 Mich. 502; *Warren v. Costello* (1891) 109 Mo. 33.

(*f*) *Routledge v. Grant* (1828) 4 Bing. 653.

(*g*) *Borst v. Simpson* (1889) 90 Ala. 373; *Burnet v. Bisco* (1809) 4 Johns (N.Y.) 235.

(*h*) *Ide v. Leisen* (1890) 24 Am. St. Rep. 17, 10 Mont. 5; *Coleman v. Applegarth* (1887) 6 Am. St. Rep. 417, 68 Md. 1.

(*i*) See Pollock Contr. p. 2.

(*j*) See *Boston &c. R. Co. v. Bartlett* (1849) 3 Cush. 224.