

to its specific enforcement in any case where it is supported by a consideration (a).

Another view is that options, though unilateral, are not wanting in mutuality, if they are supported by a consideration (b).

The correctness of this latter theory as regards options after acceptance is, of course, not open to controversy, for the contract is thenceforward bilateral and therefore binding on both parties (c); and it may be that the general language used in the cases just referred to is accounted for by the fact that the possibility of their being a distinction between options before and after acceptance was not present to the mind of the court. A due regard for precision of terminology seems to require a recognition of this distinction; but obviously it can have no practical effect upon the rights of litigants. Inasmuch as the due assent of the grantee of the option and his performance of the prescribed conditions are essential pre-requisites to the maintenance of his suit, it follows that, in every instance in which the elements of an option specifically enforceable are present, the dealings between the parties must have reached a stage at which the ingredient of mutuality is unquestionably present (d).

(a) *Watts v. Kellar* (C.C.A. 1893) 56 Fed. Rep. 1.

(b) *Waterman v. Waterman* (1886) 27 Fed. Rep. 827; *Johnston v. Trippe* (1887) 33 Fed. Rep. 330; *Herman v. Babcock* (1885) 103 Ind. 461; *Schroeder v. Gemender* (1875) 10 Nev. 355; *Ross v. Parks* (1890) 93 Ala. 153, 30 Am. St. Rep. 47, 11 S.R.A. 148; *Goodpaster v. Courtney* (1860) 11 Iowa 161; *Calanchuri v. Bramstelle* (1890) 84 Cal. 249. The fact that the agreement, which includes the option to purchase, contains other stipulations—as that that the party receiving the option will build on the land and pay the taxes—will not prevent the enforcement of the option on the ground of want of mutuality. It will not be presumed that the privilege of purchase was not the very inducement of the acts which the person having the option was to perform. *Stansbury v. Fringer* (1840) 11 Gill & J. (Md.) 149 [demurrer overruled].

(c) *Frick's Appeal* (1882) 101 Pa. 485; *O'Brien v. Boland* (1896) 166 Mass. 481; *Carson v. Mulvany* (1865) 49 Pa. 88; *Smith's Appeal*, 69 Pa. 474; *Richards v. Green*, 8 C.E. Green (N.J.) 536; *Woodruff v. Woodruff* (1888) 44 N.J. Eq. 349 [mutuality held to be created by filing of bill for specific performance]; *House v. Jackson* (1893) 24 Or. 89; *Johnston v. Wadsworth* (1893) 24 Or. 494; *Gordon v. Darnell* (1880) 5 Colo. 300. An agreement giving a coke company an option to furnish a stated number of car-loads of coke at a specified price per ton if it can induce manufacturers to build more ovens to furnish the requisite amount, and, in case of its being successful, binding the other party to accept that quantity of coke ceases to be merely unilateral when the coke company is successful in inducing the coke manufacturers to build the necessary ovens. *Sheffield, &c., Co. v. Hull, &c., Co.* (1893) 101 Ala. 446.

(d) Compare the remark of Fry, L.J., in his work on Spec. Perf., that a "more satisfactory reason [for allowing these contracts to be enforced] is that, by instituting proceedings the plaintiff has waived the original want of mutuality, and rendered the remedy mutual." See also *Yerkes v. Richards* (1893) 153 Pa. 646, 34 Am. St. Rep. 721, where it was held that want of mutuality cannot be predicated from the fact that the person seeking to enforce the option executed under seal the contract which gave it, as agent and without disclosing that his principal was his wife, and that as he does not show authority to bind her, a feme covert, by deed, she is not bound. The court remarked that, even if an option be