Engel v. Fitch (1868-9), L.R. 2 Q.B. 314, L.R. 4 Q.B. 659; Williams v. Glenton (1866), L.R. 1 Ch. 200, 209; and Day v. Singleton, [1899] 2 Ch. 320, 332-3.

The rule applicable where the other course is taken is nowhere, as far as I am aware, more clearly, or, as I think, more correctly stated than in the following passage from the Cyclopædia of Law and Procedure, vol. 36, p. 740: "Although the purchaser cannot have a partial interest forced upon him, yet if he entered into the contract in ignorance of the vendor's incapacity to give him the whole, he is generally entitled to have the contract specifically performed as far as the vendor is able, and to have an abatement out of the purchase-money for any deficiency in title, quantity or quality of the estate." This is not, it is said, making a new contract for the parties, since the vendor is not compelled to convey anything which he did not agree to convey, and the vendee pays for what he gets according to the rate established by the agreement.

At p. 742 of the same volume it is said that, "if the purchaser at the time of entering into the contract, was aware of the defect in the vendor's interest or title, or deficiency in the subject-matter, he is not, suing for specific performance, entitled to any compensation or abatement of price;" and Barker v. Cox (1876), 4 Ch. D. 464, is treated as "an exceptional case, where enforcement of the rule would have been a great injustice to the vendee" (note 78 (England), p. 743); though it is cited in Fry on Contracts, 5th ed., sec. 1266, as authority for the statement that "even if a purchaser has from the first been aware of the state of the title, that circumstances will not necessarily exclude him from the benefit of the principle under consideration (i.e., that stated in sec. 1257, which is, "Although as a general rule where the vendor has not substantially the whole interest he has contracted to sell . . . he cannot enforce the contract against the purchaser, yet the purchaser can insist on having all that the vendor can convey, with compensation for the difference.")

The statement quoted from p. 742 is supported by the high authority of Lord Hatherley, L.C., in Castle v. Wilkinson (1870), L.R. 5 Ch. 534, 536, and is treated by him as settled law; and sanction for it is to be found in the opinions of Judges recorded in several reported cases.

In the circumstances of the case at bar, it is immaterial whether the rule be or be not subject to the qualification that the purchaser at the time of entering into the contract was