"There can be no doubt that the vendor of a lease unconditionally undertakes to give a good title, but every person may enter into a qualified contract:" *Spratt* v. *Jeffrey* (1829), 10 B. & C. 249 (Parke, J.).

"There is no doubt that, upon the authorities, the parties may so contract and so bind themselves by conditions precluding inquiries into the title, as that the purchaser may be bound actually to accept and pay for a bad title:" Archibald, J., in *Waddell* v. *Wolfe* (1874), L.R. 9 Q.B. 515.

For the estate, whatever it be, that the purchaser has bargained for, he "has a right to a good title, unless he has expressly assumed the risk of the title, or agreed to take such title as the vendor is able to give:" *Lounsberry* v. *Locander* (1874), 25 N.J. Eq. 554.

The cases which illustrate the fourth of the situations thus enumerated form the subject-matter of the present article.

2. Footing upon which restrictive stipulations are construed.—The primary rule of construction with reference to which the enforceability of restrictive stipulations is determined is indicated by the following statements:—

"If a vendor means to exclude a purchaser from that which is matter of common right, he is bound to express himself in terms, the most clear and unambiguous. And if there be any chance of reasonable doubt or reasonable misapprehension of his meaning, I think that the construction must be that which is rather favourable to the purchaser than to the vendor:" Shadwell, V.-C., in *Symons* v. *James* (1842), 1 Y. & C. C.C. 490.

In *Seaton* v. *Mapp* (1846), 2 Coll. 556, one of the conditions of the sale of a leasehold property provided thus: "The purchaser shall not be entitled to inquire into, or take any objections to, the title to the premises prior to the lease by which the premises are held." A suit for specific performance was dismissed by Knight-Bruce, V.-C., who said: "The word 'lease' may be construed differently by different persons. I think, as that word is here used, that there is sufficient to raise a doubt—a question. I think that as between vendor and purchaser, the purchaser has a right to construe it as meaning something else than it meant four times before in the same conditions of sale—as meaning, in short, what he has construed it to mean—the original lease."

For other explicit affirmation of the rule that ambiguous stipulations will not be enforced against the purchaser, see *Hay* v. *Smythie* (1856), 22 Beav. 510; *Greaves* v. *Wilson* (1858), 25 Beav. 290, 27 L.J. Ch. 546.

A vendor who intends to bind the purchaser to take such title as he himself has, must "make the stipulation plain to the purchaser:" Lord Cottenham, in *South* v. *Hutt* (1837), 2 My. & Cr. 207.

"It is the duty of a vendor to make his conditions clear." Turner, L.J., in *Drysdale* v. *Mace* (1854: C.A.), 5 DeG. M. & G. 103, affirming 2 Sm. & Giff. 225.