

So laid down in *Else v. Else* (1871), L.R. 13 Eq. 196. There a sale was made by the Court of Chancery under conditions which precluded the purchaser from objecting to the title prior to the document chosen as the root of title, and made recitals in deeds more than twenty years old conclusive. A recital covered by this condition was so framed as to conceal a defect of title prior to the date fixed for commencement of title. The purchaser having inquired into the prior title, refused to complete on the ground that it was bad. *Held*, that, as the sale was by the court, the purchaser was not precluded by the conditions from raising the objection, and ought to be discharged from his purchase. Lord Romilly said: "Conditions of sale are quite fair, even where framed by the court, if they will still, in the opinion of the court, leave the purchaser in possession of the thing he has bought, even though he does not get what is called a marketable title." . . . In a sale under the authority of the court; which, above all things, ought to teach others, and set them the example of straightforward dealing, and telling the truth, and the whole truth, such a condition under the circumstances of this case is binding on no one."

See also *Banister, Broad v. Muntion* (1879), 12 Ch. D. (C.A.) 13, the effect of which is stated in the preceding section.

11. Difference between remedial rights of purchaser in legal and equitable actions.—It is well established that "conditions of sale may be so framed as to entitle a vendor to retain the deposit, although he cannot enforce the contract against the vendee."

So laid down by Pollock, B., *arguendo*, in *Want v. Stallibrass* (1875), L.R. 8 Exch. 175. For decisions which illustrate this statement, see *Corrall v. Cattell* (1839), 4 M. & W. 734, 3 Y. & C. 413, (§ 2); *In re National, etc., Bank* (1895), 1 Ch. 190 (§ 8); *In re Banister, Broad v. Muntion* (1879), 12 Ch. D. (C.A.) 13 (§ 9); *Scott v. Alvarez* (1895), 2 Ch. (C.A.) 603 (§ 8).

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