

apparently no court has yet had occasion to determine whether it "depends on an implied term in the contract, or is a collateral right given by the law."

In *Ellis v. Rogers*, *supra*, Cotton, L.J., declined to express any opinion upon this point. See also the remarks of Fry, L.J.

A "good title," in the view of courts of equity, "is one which an unwilling purchaser can be compelled to take." Lindley, L.J., in *Scott v. Alvarez* (1895), 2 Ch. (C.A.) 603.

The operation of the ordinary rule as to the purchaser's right is excluded in the following situations:—

(1) Where the purchaser knows that he cannot get a good title.

This situation is referred to in *Ellis v. Rogers*, *ubi supra*, where no restrictive stipulation was involved.

Under this head reference may be made to a case in which it was held that when both the plaintiff and the defendant claim a leasehold interest under the same instruments, and the defendant purchases the plaintiff's share, he cannot object that the lessor's title is not shewn: *Phipps v. Child* (1857), 3 Drew. 709.

(2) Where the purchaser's waiver of objections is inferable from his conduct after the formation of the contract.

For a review of the cases decided upon this ground, see Sugden, *Vendors and Purchasers* 14th ed., pp. 342 *et seq.*, and Williams, *Vendors and Purchasers* 2nd ed., pp. 188 *et seq.*

(3) Where the purchaser is estopped from insisting on a perfect title.

In illustration of this class of cases reference may be made to *McMurray v. Spicer* (1868), L.R. 5 Eq. 541, where at the time when the contract in question (which was an open one), was signed, the purchaser verbally agreed to take a limited title, and negotiations went on for a long time on that footing. The Court at the hearing limited the inquiry as to title accordingly.

(4) Where the purchaser has expressly agreed to accept a qualified title.

"Every person who proposes an estate for sale without qualification asserts in fact that it is his to sell, and consequently that he has a good title; but a vendor, if he thinks fit, may stipulate for the sale of an estate with such title only as he happens to have:" Leach, V.-C., in *Freme v. Wright* (1819), 4 Madd. 323.