

agreed to sell the lands, discovered that the freeholds really belonged at the date of the contract to the defendant himself, subject to a leasehold interest in the vendor. This fact so discovered was communicated to the defendant. *Held*, that the purchaser was not precluded by the condition, from taking on the objection, to the title on the ground thus ascertained, and that the vendor was not entitled to a declaration that he could make a title, but merely to an order directing an inquiry as to title. A decree of specific performance was refused. After referring to the two classes of restrictive stipulations specified in § 4, ante, Hall, V.-C., proceeded thus: "A condition of the latter class is no doubt valid but the court has never yet gone so far as to hold that such a condition precludes a purchaser from saying to the vendor, at any rate before the completion of the contract. 'We have both been proceeding under a common mistake. You said the property was yours, but I find by some document which I have seen that it is mine, and the contract you are asking me to complete is one without consideration, for I shall be paying the purchase-money and getting nothing for it.' . . . Where there has been such a common mistake, and there is no fraud, the court will not, in a suit for specific performance, compel the purchaser to complete such a contract."

In *Hume v. Pocock* (1866), 1 Ch. App. 379, aff'g L.R. 1 Eq. 423, it was laid down that the mere assertion by the vendor or his agent that he has a good title, on the faith of which the purchaser relies without investigating the title, is not necessarily such a misrepresentation as will preclude the vendor from enforcing the contract specifically.

10. Special conditions framed in pursuance of a judicial order.—

In an Irish case where a court was settling the conditions of a judicial sale, it sanctioned a condition limiting the right of the purchaser to insist on the vendor producing the title of the lessor in a specified lease, but refused that part of the motion which asked that the purchaser should be required to admit the title of the lessor, and that he should be precluded from investigating the title.

Lahey v. Bell (1844), 6 Ir. Eq. 122.

But there is no general rule of practice to the effect that conditions of the latter description should not be imposed on persons purchasing at judicial sales. All that is required under such circumstances is that the conveyancing counsel appointed by the court shall "not assert anything which may mislead or deceive an innocent, *bonâ fide* purchaser."