(3) The third exception to the general rule is one which in the opinion of the writer has no good foundation, but it is inserted here in deference to the authorities mentioned below. It is this, that where the defect is known to the purchaser at the date of the contract, or is one which the purchaser is by the conditions precluded from objecting to, the condition for compensation will nevertheless enable him to obtain compensation. The authorities for this very disputable proposition are the opinions of Mr. Justice Kay in *Lett* v. *Randall*, 49 L. T. 71, and of Vice-Chancellor Bacon in *English* v. *Murray*, 49 L. T. 35. In the former case the vendors had described the property as let on lease for 75 years from 1850, the fact being that the term commenced in 1858. Mr. Justice Kay thought that the purchaser did not actually know the description was wrong, but that even if he did, the vendors were bound to give compensation because they had contracted to give it. The argument that the purchaser had paid a higher price owing to the misdescription, because even if the purchaser knew of the mistake the other bidders did not, and being influenced by the description bid higher than they would otherwise have done, does not seem conclusive. Either the purchaser was content to give the price he offered, in which case he wanted no compensation, because he had suffered no damage; or he paid more in the expectation of obtaining compensation, in which case he committed a fraud on the vendors. In the case *Camberwell and South London Building Society* v. *Holloway*, 13 Ch. D. 754 (see p. 762), the late Master of the Rolls held that a purchaser who had notice that property described as a lease was only an underlease, was not entitled to compensation under a condition allowing compensation "if any error or mistake shall appear in the description, or in the nature or quality of the vendors' interest therein." And though the word "lease" was only ambiguous and therefore no actual misdescription had occurred, the principle of the case is certainly at variance with the opinion of Mr. Justice Kay in *Lett* v. *Randall*. The second part of the proposition above set out is even more doubtful, but is founded on *English* v. *Murray*, where a condition which was held to be sufficient to preclude the purchasers from rescinding on the ground of a defect in the vendors' title, was in the Vice-Chancellor's opinion not sufficient to preclude them from demanding compensation under the condition for compensation. But it is to be observed that the vendors there, both before the action and at the hearing, conceded the purchasers' right to compensation, the only point for the Vice-Chancellor's decision being whether the purchasers were entitled to rescind.

The condition that no compensation shall be allowed to the purchaser, though sufficient to prevent a purchaser from insisting on completion with an abatement of the purchase-money, is not sufficient to enable the vendor to enforce specific performance where there has been an essential misdescription. It has been said (by Malins, V.-C., in *Whittemore* v. *Whittemore*, 8 Eq. 603), "conditions of this kind must be construed as intended to cover small unintentional errors and inaccuracies, but not to cover reckless and careless statements." But it is not, properly speaking, a question of construction; it is rather a principle of equity that, notwithstanding the conditions of sale or the agreement, the vendor shall not have specific performance if he have materially misled the purchaser (*Re Terry & White*, 32 Ch. D. 14; see judgments of Lord Esher, M.R., and Cotton, L.J.). And not only is specific performance refused to the vendor in such cases, but the purchaser can obtain a decree for rescission of the contract.—*Law Quarterly Review.*