title to the small parcel, 160 feet, enclosed with his land, which he did not own.

The defendant pointed out that 160 feet was not much more than one per cent. of the whole area sold, and he regarded it as trivial, as warranting the application of the maxim de minimis. The learned Judge could not so regard it. Not only was there an appreciable loss of area, but a loss of ornamental trees, and the expense of removing about 100 feet of a stone-wall. This could not be ignored: Brewer v. Brown (1884), 28 Ch.D. 309.

The defendant offered to bear the cost of removing the fence and to abate the price by the proportion which the 160 feet bore to the remaining land, based upon the price of the land apart from the buildings. The injury to the premises as a whole could not thus be ascertained. On the other hand, the sums asked by the plaintiff probably largely exceeded any compensation that would be allowed upon a reference in an action for specific performance.

None of the cases cited seemed to justify the forfeiture of a deposit and rescission of a contract by the vendor when he had not title to the property to be conveyed.

Discussion of the equitable principle of compensation. Reference to Rutherford v. Acton-Adams, [1915] A.C. 866; In re Terry and White's Contract (1886), 32 Ch.D. 14, 27; Jacobs v. Revell, [1900] 2 Ch. 858; Tolhurst v. Associated Portland Cement Manufacturers, [1903] A.C. 414, 422; Knatchbull v. Grueber (1817), 3 Mer. 124, 146; Halsey v. Grant (1806), 13 Ves. 73, 76; Mortlock v. Buller (1804), 10 Ves. 292, 305, 315; In re Arnold (1880), 14 Ch.D. 270; Flight v. Booth (1834), 1 Bing. N.C. 370; Lee v. Rayson, [1917] 1 Ch. 613.

The defendant was not in a position to invoke the equitable doctrine, because by the sale of the land he had put it out of his power to resort to equity. He could not now give specific performance even with compensation—he could not do equity.

Again, the contract itself must prevail. It provided that on any objection to title being taken, which the vendor should be unable or unwilling to remove, the agreement should be null and void and the cash payment returned without interest.

When the agreement itself provides for what is to happen upon certain events, it alone is to be resorted to; there cannot be any recourse either to law or equity for any other remedy: Ashton v. Wood (1857), 3 Jur. N.S. 1164.

There should be judgment for the plaintiff for $3,000 with interest from the date of the commencement of the action and costs.