

Canada Law Journal.

VOL. XLVIII.

TORONTO, MARCH 1.

No. 5.

VENDOR AND PURCHASER—STIPULATIONS LIMITING THE OBLIGATION OF VENDORS OF REAL PRO- PERTY TO SHEW A GOOD TITLE.

1. Introductory.
2. Footing upon which restrictive stipulations are construed.
3. Stipulations binding the purchaser to take the same title as the vendor's.
4. Stipulations circumscribing the purchaser's right to make inquiries or requisitions in respect of the title. Generally.
5. Same subject. Stipulations construed as entitling the purchaser to avail himself of information obtained aliunde.
6. Same subject. Stipulations construed as precluding the purchaser from availing himself of information obtained aliunde.
7. Stipulations binding purchasers to make certain assumptions or admissions.
8. Stipulations precluding objections on the part of the purchaser.
9. Some special grounds for refusing to enforce stipulations against purchasers.
10. Special conditions framed in pursuance of a judicial order.
11. Difference between remedial rights of purchaser in legal and equitable actions.

1. Introductory.—The general rule, as enunciated by Lord St. Leonards, is that,

"In contracts for the sale of real estate, an agreement to make a good title is always implied unless the liability is expressly excluded." See Sugden, *Vendors and Purchasers*, 14 ed., p. 16. This statement was quoted by Cotton, L.J., in *Ellis v. Rogers* (1885), 29 Ch. D. (C.A.) 661.

By other authorities it has been laid down that

"The right to a good title is a right not growing out of the agreement between the parties, but which is given by the law:" Grant, M.R., in *Ogilvie v. Foljambe* (1817), 3 Mer. 53.

This phraseology was adopted by Pollock, B., in *Want v. Stallibrass* (1873), L.R. 8 Exch. 175, 185.

In some instances the actual principle upon which the right rests might conceivably be a matter of essential importance. But