

SELECTIONS.

fects either by the vendor's executing a security, or by his paying into court a sufficient portion of the purchase-money to abide the event. In *Milligan v. Cooke*, 16 Ves. 1, the court ordered an enquiry, what was the difference in value of the interest proposed for sale and the interest the vendor had, and if the Master should find that he was unable to ascertain such difference in value, "the Master should settle such security by way of indemnity as it should appear just that the vendor should execute." In *Wilson v. Williams*, 3 Jur. n. s. 810, where the vendor had omitted to state that his wife would be dowerable out of the property, and she refused to concur, it was directed that so much of the purchase-money should be retained in court, the annual interest whereon would equal the annual profits receivable by the wife as her dower, the vendor to receive the interest during the joint lives of himself and his wife, the interest to be paid to her during her life if she survived him, and the principal upon her decease to go to the vendor. But it may be doubted whether compensation could not have been assessed in that case; an actuary could have calculated the chance of the wife having dower, and the probable duration of such dower. And to compel a vendor to pay money into court to abide the event for the purpose of protecting the purchaser against a contingency, might be an even greater hardship to him than to order him to pay a lesser sum out and out by way of compensation.

Secondly, where there has been a condition of stipulation in reference to compensation.

The condition may be either that compensation shall, or that it shall not, be allowed.

A condition allowing compensation seems to have no effect on the mutual rights of vendor and purchaser, except in the three cases mentioned below. The rules given above, as to the granting of compensation in the absence of any previous agreement, will therefore be applicable even where there is an agreement that compensation shall be given; e.g. the court will rescind the contract, notwithstanding the condition, if there has been an essential misdescription and the purchaser wishes to have the contract rescinded.

The three exceptions above referred to are the following:

(1) A condition allowing compensation to the purchaser will be enforced even where the error has not been discovered until after completion, unless the condition is especially limited to error discovered before completion. This, notwithstanding some conflicting decisions, may be taken as having been settled by the case of *Bos v. Helsham*, L. R. 2 Ex. 72, *Re Turner and Skelton*, 13 Ch. D. 130, and *Palmer v. Johnson*, 12 Q. B. D. 32, 13 Q. B. D. 351. The condition, however, does not apply, after completion, in the case of a defect in the title, where the vendor has not made any misstatement. Thus in *Exp. Riches*, 27 Sol. J. 313, where the vendor had only a life estate in part of the property, but sold as absolute owner, the Court of Appeal held that a condition for compensation in case any "error, misstatement or omission" should occur did not apply, as this was a mere defect in title. And where the condition for compensation is only in respect of any "deficiency in the quantity or acreage," the purchaser would probably not be able after completion to obtain compensation for any other error, e.g. a misstatement of the rental. If the condition embraces in terms only "errors and misstatements," or "misdescriptions," a question might arise whether a mere omission would be within the condition. The actual decision in *Manson v. Thacker*, 7 Ch. D. 620, might perhaps be upheld on the ground that the non-mention of the hidden culvert was an "omission," and not an "error" or "misstatement," and that the condition did not expressly include "omissions."

(2) Where there is the usual condition for rescission, the right of the vendor to enforce that condition may be affected by the fact that the contract contains a condition for compensation. In the absence of any condition as to compensation the purchaser's demand for compensation would, like any other requisition, enable the vendor to rescind under the condition for rescission. If there is a condition for compensation, and an error covered by that condition is admitted or clearly proved by the purchaser, the vendor will have to give compensation, and cannot rescind on the ground of unwillingness to comply with the purchaser's requisition.