

as to render the contract non-enforceable, if the vendor believes the facts to be true, even though the condition is intended to cover a flaw which goes to the root of the title. In such a case it is not necessary to explain in the condition the specific defect in the title which the condition is intended to cover.

*In re Sandbach & Edmondson's Contract* (1891), 1 Ch. (C.A.) 97. There the conditions of sale were (1) that the title should commence with a certain settlement; and (2) that the purchaser should assume that the settlor died intestate and without an heir before a specified date. Held, that the vendor was entitled to a declaration that the purchaser was precluded by the conditions from making an objection to the title on the ground that the nature of the settlor's estate did not appear. Lord Halsbury said: "I should quite agree that, if there were an actual misstatement or such an imperfect statement of the facts as in the result makes what is stated untrue, the conditions would be so tainted with falsehood, that it could not be insisted on as against the purchaser misled by such taint of falsehood. But now that the facts are all known, the condition appears to have been aptly and properly framed to prevent the purchaser insisting on proof of what was then and there believed to be the fact, but which the vendor is not in a position to establish by legal proof." . . . It appears to me that an opposite view would establish the principle, that, apart from intentional misleading, and apart from any knowledge by the vendor that the facts required to be assumed were not true, a condition requiring assumptions as to the title could only be supported where the specific objection to the title was pointed out. For that proposition I can find no authority, and it certainly would make every title in which there was not only defect as a matter of fact, but absence of proof of soundness, absolutely unsaleable." The doctrinal limits of the decision are indicated by the following observation. "We cannot go into any question of fraud which might avoid the contract. This is a proceeding under the Vendors and Purchasers Act, which binds the parties to admit the contract."

(3) In one case the contract was held to be non-obligatory on the ground that, before the completion of the sale, the purchaser ascertained that he and the vendor contracted under a common mistake regarding the ownership of the property or some other material fact.

In *Jones v. Clifford* (1876), 3 Ch. D. 779, the defendants contracted to buy from the plaintiff freeholds and leaseholds under the condition that he should assume that E. M., who died in 1841, was seised in fee of the freeholds, and should not require the production of or investigate or make any objection in respect of the prior title. He accepted the title, but before the completion of the contract a sub-purchaser to whom he had