was assessed in *Seaman* v. *Vawdrey*, 16 Ves. 390 (which, however, was a suit by the vendor for specific performance), *Ramsden* v. *Hirst*, 4 Jur. n. s. 200, and *English* v. *Murray*, 49 L. T. 35 (where purchaser wished to rescind, the vendor pressing for specific performance with an abatement); but was considered not to admit of calculation in *Smithson* v. *Powell*, 20 L. T. 105, and *Re Bunbury's estate*, 1 Ir. R. Eq. 458. The method of assessment followed in *Ramsden* v. *Hirst**, viz. to deduct from the purchase-money the value of the minerals to be ascertained by an expert appointed by the judge, seems to be unfair to the vendor, as introducing too much uncertainty, since it was not even known whether there were any minerals at all. A fairer method, at all events in an agricultural neighbourhood, would be to estimate the value of the land as agricultural land, and if necessary reduce the purchase-money to such estimated value. In the case of a house in a residential neighbourhood, it seems impossible to say how much less the property is worth on account of the absence of title to the minerals, since the enjoyment of the property being unimpaired by the defect, the difference in value could only arise from the diminished saleableness of the house, which is too uncertain to admit of computation.

Upon the whole it seems the better opinion that where compensation cannot fairly be assessed the court will not grant compensation. But some of the cases undoubtedly go far to show that a way out of the difficulty can always be found; see (in addition to the cases referred to above, of compensation for the absence of title to minerals) the case of *Peacock* v. *Penson*, 11 Beav. 355, where compensation was assessed* for the damage sustained by the purchaser, in consequence of the vendor's inability to construct a road, which, by the conditions of sale, he had undertaken to make.

The proviso in rule 3 as to the misdescription being contained in the written contract is inserted on account of the law relating to parol variations of written contracts. A purchaser asking for partial performance with compensation for a parol misdescription will not be aided by the courts, because this would be enforcing a contract, one of the terms of which has not been reduced to writing. It would perhaps be unnecessary to make this insertion if reliance could be placed on the definition which is sometimes† given of "misdescription," distinguishing it as something which necessarily occurs in the written contract, the word "misrepresentation" being reserved for misstatements made *dehors* the contract. But this is an arbitary distinction, as a description may be made by parol, and a representation may be contained in the written contract. The distinction really aimed at in *Behn* v. *Burgess*, is that made above between essential and non-essential misdescriptions.

The words in brackets at the end of rule 3 are open to serious doubt; probably on the whole they should be omitted. In *Belmanno* v. *Lumley*‡ Lord Eldon expresses the opinion that the court can neither force the purchaser to accept, nor the vendor to give, an indemnity. It is probably correct to say that a purchaser cannot be forced to accept an indemnity, on the broad ground that the purchaser is entitled to rescind if the misdescription is essential, and no indemnity will be necessary if the misdescription is non-essential, and therefore capable of pecuniary valuation; though in *Wood* v. *Bernal*, 19 Ves. 220, Lord Eldon himself thought the purchaser might be compelled to take an indemnity for a small incumbrance upon a considerable estate. But a vendor has in many instances been held bound to give an indemnity. This has been ef-

* See the report of that case in 4 Jur. n. s. 200; the decree, however, merely declares that the purchaser "is entitled to compensation out of his purchase-money" (it was a sale by the court) "in respect both of an outstanding right under the agreement of 22nd Nov. 1823, to enter the land and sink shafts and work the mines, and also of the purchaser being precluded from working the coal (if any) under the said land himself," 1857 B. 1259. A subsequent order shows that £195 was paid to the purchaser for compensation, the amount of the purchase-money being £2,241; 1857 B. 1354. I have been unable to find the decree in *Seaman* v. *Vawdrey* either in the index or in the Records themselves.

* However, the decree itself contains no order or direction as to compensation, 1848 B. 257.

† Cf. *Behn* v. *Burgess*, 3 B. & S. 751.

‡ 1 Ves. & B. 224 followed in *Aylett* v. *Ashton*, 1 My. & Cr. 105.