

certain leasehold property impressed with a trust for sale, which finally vested in the vendor (plaintiff), who was not the legal representative of the testator, but the executrix of the surviving trustee. One of the stipulations of the contract for the sale of this property was as follow :—
 "The purchaser shall not be entitled to require any further evidence of the assent of the testator's executors to the bequest of the leasehold, and the fact of such assent shall be admitted by him." Specific performance of the contract was decreed by Lord Romilly, who said: "The purchaser, might, in the absence of a special condition reasonably object that it must be shewn that the legal personal representative of the testator ought to be induced to assent, or to be shewn to have assented to this bequest. But in order to guard against this, the vendor introduced a special condition by which he states that one of the executors and the legatee for life of the property were in possession of it, in strict conformity with the trusts of the will for twenty-three years, and that this must be treated as conclusive evidence that the executors assented to the bequest. The defendant buys subject to this condition, and I am of opinion that he cannot afterwards say that he is not bound by it, and that he is now entitled to require that the consent of the legal personal representative shall be obtained or expressed by joining in the conveyance."

In *Best v. Hamand* (1879), 12 Ch. D. (C.A.) 1, it was stipulated in a contract for the sale of "surplus land" of a railway company, which had been conveyed by the company to the vendor, that the purchaser should "assume and admit" that everything (if anything was necessary) was done by the company to enable them to sell the land as surplus land, and should not call for or require further evidence to that effect. It was also stipulated that, if the purchaser should fail to comply with the terms of the agreement, the deposit should be forfeited to the vendor. The abstract of title shewed that the prior owners had not waived their right of pre-emption; and, as the vendor refused to remedy the defect, the purchaser brought an action claiming a return of the deposit and damages. *Held*, (reversing the decision of Hall, V.C.), that the purchaser was bound by the stipulations to admit the title of the company to sell to the vendor, and that as he had refused to abide by that stipulation, he had broken the contract, and could not maintain the action, or claim a return of the deposit. Baggallay, L.J., said: "The purchaser has full notice given him that the land to be sold is surplus land of a railway company. Then the contract contains a stipulation that the purchaser is to require no earlier title than the conveyance to the company; and then it goes on to provide that the right of the company to sell the land shall not be inquired into. That is the sense, I take it, of the clause in question in this action. I can hardly conceive any words bringing the case more clearly within the second class. If so, the purchaser has been insisting upon what he has no right to insist on, and the present action cannot be maintained."

In *In re McViolar's Contract* (1890), L.R. Ir. 307, it was held that a condition of sale which provided that the purchaser should assume that