

the title deeds, and copies of other documents in his custody, but should "not be bound or required to produce any original deed, or other documents than those in his possession and set forth in the abstract, or which relate to other property." It was contended that these stipulations, when read together, imported that the purchaser had no right to have the abstract of title verified, except in so far as the vendor could verify it by the production of "the deeds, or other documents in his possession." But Lord Cottenham was of opinion that the first of the conditions was not in any way limited by the second, and that the vendor was consequently bound to verify the title shewn upon the abstract, either by producing the title deeds themselves, or, if any of them were not in his possession, by other satisfactory evidence. A reference to the Master was directed for the purpose of inquiring whether the vendor could fulfil this obligation.

In *Osborn v. Osborn* (1870), 18 W.R. 420, it was held by Malins, V.-C., that a condition of sale, which merely stipulates that the title shall commence with a certain indenture leaves it open to the purchaser to shew that the vendors were not competent to convey; but that, if their incompetency to do so is not shewn, they must be assumed to have been competent.

In *Geoghega v. Connolly* (1858), 8 Ir. Ch. Rep. 598, it was provided by the condition in question that the purchaser should deduce a good title to the premises sold, from a date specified to the time when the contract was made; that the title of the vendor's lessor should not be questioned, nor the vendor be bound to go behind the same; and that certain copies of previous searches and judgments affecting the property, and an abstract of title were to be handed to the purchaser. By Trevor, M.R. (Ir.), the concluding clause was construed as shewing that the provision as to not questioning the lessor's title could only mean that the vendor was not to prove it further than in the manner so pointed out. But the condition was deemed to be too ambiguous to justify a court in decreeing specific performance.

In *McIntosh v. Rogers* (1887), 14 Ont. R. 97, by an agreement it was provided: "No title deeds, abstracts or evidences of title are to be required other than those in the vendor's possession, nor shall the vendor be required to give a covenant for the production of the same." Held, that under this stipulation, the vendor was relieved from the absolute obligation to make a good title to the land. Boyd, Ch., observed: "If the evidences of title coupled with the abstract—and it may be the public register—do not disclose and prove a good title, I would say, as at present advised, that the purchaser was not bound to complete: but in such case the vendor may not be liable in damages, because by the condition he is relieved from the obligation of making out the title to be good."

In other cases the question upon which the rights of the parties depended was this:—whether the given stipulations operated merely so as to debar the purchaser from making inquiries or requisitions from the vendor, or as to disable him from avail-