SPECIFIC PERFORMANCE—SALE OF LAND—EFFECT OF FIRE—On a bill for specific performance of a contract for sale of real estate, where fire destroyed the buildings before the execution of the deed or payment of balance of purchase money, it was held that the vendor could not obtain specific performance and the loss must fall upon the vendor. *Good* v. *Jarrard*, 76 S.E. Rep. 698 (S.C., 1912).

The doctrine of the principal case, that the vendor must bear the loss by fire or other accident happening between the making of the contract and its completion, is contra to the weight of authority and is followed directly in but five other state courts: *Cutliff* v. *McAnally*, 88 Ala. 507 (1889); *Gould* v. *Murch*, 70 Me. 288 (1879); *Thompson* v. *Gould*, 20 Pick. 134 (Mass., 1838); *Wilson* v. *Clark*, 60 N.H. 352 (1880); *Powell* v. *Dayton Co.*, 12 Ore. 488 (1885). The question is expressly left open in *Wetzler* v. *Duffy*, 78 Wis. 170 (1890). The New York courts seem to favour the rule in the principal case in their later decisions, *Smith* v. *McCluskey*, 45 Barb. 610 (1866); *Goldman* v. *Rosenberg*, 116 N.Y. 78 (1899); *Listman* v. *Hickey*, 65 Hun. 8 (1892); but in *Listman* v. *Hickey*, supra, which on its facts is more nearly like the principal case, Paterson, J., based his opinion upon the fact that the contract in question was for both real and personal property and was entire; he distinctly recognised the general rule to be that of *Paine* v *Meller*, infra, but distinguished this case from it on grounds given above.

The rule followed in the majority of jurisdictions (contra to the principal case) that the loss falls upon the vendee, was first laid down in *Paine* v. *Meller*, 6 Vesey, 349 (Eng., 1801), and has been followed repeatedly in this country: *Willis* v. *Wozencraft*, 22 Cal. 607 (1863); *Sherman* v. *Loehr*, 57 Ill. 509 (1871); *Cottingham* v. *Fireman's Co.*, 90 Ky. 439 (1890); *Skinner* v. *Houghton*, 92 Md. 68 (1900); *Walker* v. *Owen*, 79 Mo. 563 (1883); *Franklin Co.* v. *Martin*, 40 N.J.L. 568 (1878); *Gilbert* v. *Port*, 28 Ohio 276 (1876); *Dunn* v. *Yakish*, 10 Okl. 388 (1900); *Elliott* v. *Ashland Co.*, 117 Pa. 548 (1888); *Brakhage* v. *Tracy*, 13 S.D. 343 (1900).

If the vendor agrees expressly to deliver possession of premises in the same condition in which they were at the time of the bargain, he must, obviously, bear the loss resulting from fire or other accident. *Marks* v. *Tichenor*, 85 Ky. 536 (1887). It is equally clear that a person, whether he be the vendor or vendee, must be answerable for any loss due to his own negligence. *Mackey* v. *Bowles*, 98 Ga. 730 (1896).