rule stated by Lord Langdale in Lucas v. James, 7 Ha. 410, at p. 425, that, in order that it may be proper for the Court to enter upon the question of title at the trial, the defect or supposed defect in the title should be prominently put forward in the pleadings, which was not the case in this instance.

The real question for trial was, whether there had been a cancellation or rescission of the agreement, though even that issue was not very distinctly raised by the pleadings. The learned Chief Justice dealt with it, however, and held that the agreement had not been put an end to but was still subsisting. And it seems plain that the letter of 30th September did not amount to a rescission. The defendant was not entitled summarily to repudiate the agreement and declare it off: Hatten v. Russell, 38 Ch. D. 334. But, even if he was, the letter did not do so in a distinct and definite manner. It did nothing more than suggest the writer's opinion that there was no course left but to let the matter drop, an opinion which it afterwards appeared was not shared by his client. And, notwithstanding that letter, the matter of making the title was allowed to proceed.

Finding this issue against the defendant, the learned Chief Justice directed judgment to be entered declaring that there was a binding contract between the plaintiff and defendant, and that, subject to the inquiries directed, the same ought to be specifically performed. He then directed a reference to the Master to inquire whether a good title could be made, and when the plaintiff was in a position to make title, with inquiries as to compensation or abatement in the purchase money, in case it appeared that a good title could not be made in respect of some of the properties; and reserving further directions and costs.

These directions, if properly embodied in the formal judgment, would have offered the defendant all the protection and relief he was entitled to at that stage of the action: see Seton on Judgments, 6th ed., vol. 3, p. 2226, and notes p. 2230 and p. 2260 (6), and notes 2261 and 2262. But, in framing the formal judgment, the direction to inquire as to when it was first shewn that a good title could be made, was omitted. Whether this arose from oversight or from some other cause, the defendant could have had it rectified by motion to vary the minutes. A proper direction to that effect, in apt language, should now be inserted, and the formal judgment varied to that extent. But the de-