

He then proceeds:—"In my opinion, neither of these circumstances can affect the plaintiff's right to insist upon the *covenant* which the defendants gave him. It was decided in *Christie v. Taylor*, a judgment of my own, but sustained on appeal and not reported, that the purchaser is not bound to search the title where he has secured a *covenant* from the vendor. He is entitled to rely upon that *covenant*. I think that the law goes farther and that even though the purchaser knows at the date of the agreement of some defects in title, or learns of it afterwards, yet he may rely upon the purchaser's express *covenant* to give him a good one, and only a new agreement can *disentitle* him to it. It would indeed be strange if a party by performing his own part of a contract with knowledge that the other could not perform some part of his, should thereby deprive himself of the right to insist on the other performing what he had agreed to perform."

In the Supreme Court of Canada,¹ Duff, J., dealt with the case solely as a question of agency law; while Brodeur, J., gave reasons for agreeing with and confirming the judgment of the trial judge.

The learned judge's* statement that the purchaser is entitled to rely upon the vendor's *covenant* can be accepted at once; a *covenantee* is always entitled to rely upon the *covenant*; but it is respectfully submitted that the conclusion that "a party performing his part of a contract with knowledge that the other could not perform some part of his," while not depriving the former of his right to rely on the *covenant*, entitles the *covenantee* to *rescind* the contract is a *non sequitur*. It is respectfully submitted that having inserted the *covenant* he is not only entitled to "rely" on it, he is bound to "rely" on it. This necessarily involves and involves only the consideration of the *remedies* of a *covenantee* for *breach* of *covenant* for title. I propose at least to *argue* that he is not entitled to *rescind*.

¹ 1917, W. W. R. 121.

* *i.e.*, Stuart, J.

¹ Though I was counsel for the defendant in this case, this question is now, of course, purely an academic one.