

cedent in the following case: *Phillips v. Caldwell* (1868), L.R. 4 Q.B. 159; *Waddell v. Wolfe* (1878), L.R. 9 Q.B. 515; *In re Hardwicke and Lipski's Contract* (1901), 2 Ch. 266. In view of the remarkable conflict of views which the foregoing criticisms disclose with regard to the case, only a court of error can now settle definitely the question of its correctness.

In *Hume v. Bentley* (1852), 5 DeG. & Sm. 520, upon a sale by auction of leasehold premises, one of the conditions was to this effect: "The lessor's title will not be shewn and shall not be inquired into." In a suit by the vendor to enforce specific performance by the purchaser, the defendant objected that the lease, which had been granted by a canal company, was void, because it appeared from the Act of Parliament incorporating the company that it had no power to acquire land or grant leases. Parker, V.-C., decreed performance, being of opinion that the only reasonable meaning of the stipulation was that inquiry was altogether precluded for every purpose, and that the purchaser was consequently bound to accept the lessor's title such as it was.

In *Hume v. Pocock* (1866), 1 Ch. App. 379, affirming L.R. 1 Eq. 423, it was stipulated in the contract that the vendor should be called upon to produce only the title from A. B. (the last owner), to himself. The evidence shewed that, to the knowledge of the vendee, A. B. was one of four supposed owners of the land in question, and that the vendee was anxious to buy up such title as he had in order to get rid of his opposition to a private Act of Parliament for the reclamation of the land. Held, that the purchaser was not at liberty to shew *alunde* that A.B. had no title, and that the vendor was entitled to a decree for specific performance of the contract.

In *Harnett v. Baker* (1875), L.R. 20 Eq. 50, one of the conditions of sale was that the legal title should commence with a certain settlement, and that purchasers should not require the production of, or investigate, or make any objection or requisition in respect of any matter affecting the legal title prior to such commencement thereof, whether appearing in the abstract or not. Malins, V.-C., held that a condition of this tenor was binding. But the case went off on another point. See § 9, *post*.

It was apparently to the doctrine applied in the above cases that North, J., referred in the following statement:—

"There is no doubt if the vendor had said, 'the purchaser shall take my estate, and shall not ask any question whatsoever about my title,' that 's a perfectly good condition, and if a man chooses to buy under those terms, it is open to him to do so." In *Nash v. Wooderson* (1885), Ch. D., 5 T.L.T.N.S. 49. (As to the actual point decided in this case, see § 9, *post*.)

But, having regard to the cases cited in the preceding section, and the general trend of modern decisions, which is distinctly in