

DISCUSSION.

It is, of course, well-recognized law that a contract may be good in part, and bad in part; and if you can separate the good part from the bad, the good part may be enforced, *Wood v. Benson* (1831), 99; *Mann v. Nunn* (1874), 43 L.J.C.P. 241.

The judgment under consideration puts the matter as follows, page 650: "It seems to me clear that the promise of the defendant to pay the sum of \$300 if he should not carry out his agreement is distinct from the agreement to purchase; it is an alternative." The judgment therefore assigns the present case to the same category as that occupied by such cases as *Mayfield v. Wadsley* (1824), 3 B. & C. 357; *Kerrison v. Cole* (1807), 8 East 231; *Green v. Saddington* (1857), 7 E. & B. 503; *Jeakes v. White* (1851), 6 M. 873; *Morgan v. Griffiths* (1871), L.R. 6 Ex. 70; *Boston v. Boston* (1904), 1 K.B. 124.

Of these cases that of *Jeakes v. White* (of which the judgment under comment says, "the case nearest the present that I have found is *Jeakes v. White*"), may be taken as typical. The facts in *Jeakes v. White* were that there was a verbal agreement that the plaintiff should lend the defendant £2,000 on a mortgage of land, and the defendant agreed to pay the plaintiff any expense he might incur in case the loan should fall through by reason of the defendant withdrawing or of his title proving insufficient. The defendant failed to make out a good title. The plaintiff sued for the expenses incurred and succeeded, it being held that the agreement was not within the Statute of Frauds. It may perhaps be thought that the circumstances in this case are not very closely analogous to those in the case under discussion. It seemed clear that the contract there sued on could not be said in any sense to be within the Statute of Frauds, and there would seem to be no good reason why the action should not be permissible. The matter was referred to during the course of the argument as follows: "Alderson, B., 'Then the contract merely relates to the investigation of a title, the parties agreeing that in case the title should turn out to be defective, the defendant should pay all the costs of the investigation. The con-