of it; and it is probably for that reason that the rule has been criticised as involving the making of a new contract for the parties.

I do not find this stated in so many words in any of the very many cases in which the rule has been applied, but in none of them have damages in addition to the abatement of the purchase-money been awarded, nor have they, as far as I have been able to discover, ever been claimed. . . .

[Reference to Horrocks v. Rigby (1878), 9 Ch. D. 180, 183, 184.]

What was said by Sir F. H. Jeune at the end of his reasons for judgment in Day v. Singleton (supra) also supports the view I have expressed as to an abatement of the purchase-money. . .

To give to the purchaser in a case such as this, in addition to what his vendor can convey, an abatement of the purchase-money, damages for not getting that which the vendor cannot convey, would be, I think, directly contrary to what was decided in Bain v. Fothergill. If he had elected to treat the contract as broken and to claim damages for the breach of it, he would be entitled to recover as damages only the costs of the investigation of the title; and it would be anomalous indeed if, having elected to take what the vendor could convey, with an abatement of the purchase-money, damages for the breach of the contract, in so far as it was not performed, were to be assessed on a different basis, and the purchaser were to be entitled to recover for the loss of his bargain.

The learned trial Judge appears to have been of opinion that the respondent company was entitled, in addition to the abatement of the purchase-money, to damages for the breach of the contract, because, as the learned Judge was induced to believe, the appellant might by a little exertion have obtained the title and carried out his bargain, and because, after the discovery in 1908 of the defect in his title, and notwithstanding the letters written to him by the respondent company . . . he "by his deliberate and continuous silence invited and encouraged the plaintiffs to continue their improvements and expenditures, and to believe, as they evidently did believe, that the defendant would be able to and would in fact carry out his contract."

I am unable to agree with this view. There was no duty resting upon the appellant to get in the title of the remaindermen; and, therefore, no ground upon which damages could be awarded against him for not having done so. No doubt, as was said in