

The plaintiff therefore failed to recover, as he would formerly have failed in a court of common law before the Judicature Acts, and was allowed no benefit upon any equitable grounds.

*Scott v. Alvarez* (72 L.T. Rep. 455; 73 L.T. Rep. 43; (1895) 1 Ch. 596; 2 Ch. 603) has been referred to above as the subject of criticism in Williams' Vendor and Purchaser. The author goes to speak of the case as an authority for the proposition that in the same court and the same proceedings "a suitor may at the same time obtain and be denied substantial relief according as his claim is rested on the doctrines of equity or of law," but this condemnation seems too strong. *Scott v. Alvarez* certainly was a singular case. It was a vendor's action for specific performance of a contract to purchase land, and the defendant counterclaimed for a return of the deposit. The vendor had sold under stringent conditions, and the title turned out to be absolutely bad. The Court of Appeal held that the defendant (purchaser) was not entitled to be relieved of his liability under the contract, and could not, therefore, recover the deposit, but that the plaintiff (vendor) was not entitled to an order for specific performance. Lord Justice Lindley described this result as "not altogether satisfactory, but it is a logical consequence of the double jurisdiction of this court and of the extraordinary jurisdiction exercised by courts of equity." As Lord Justice Lopes said: "Specific performance is discretionary, and a court of equity will not decree it where the title is obviously a bad one." The vendor might, of course, have brought an action for damages successfully, and in effect he did succeed in getting damages, for he retained the deposit. To this extent the plaintiff was not "denied substantial relief," and the mere fact that he could not get specific performance is hardly such a "paradox" as Mr. Williams would have us believe, nor is it due merely to law and equity being separate systems not yet amalgamated into one. There is nothing strange in one remedy rather than another being appropriate under certain circumstances. But undoubtedly great stress was laid by the Lords Justices in *Scott v. Alvarez* upon the distinct origins of the two remedies of a claim