

Purchaser Act, it appeared that the lease had been granted to one Mary Ann King, who was said to have died in 1873, having, by an informal instrument made in 1868, not under seal, purported to give the lease to her daughter, Sarah Jane Banks, who, from that time until the 10th of August, 1891, was said to have been in possession. Sarah Jane Banks, representing herself to be Mary Ann King, the original lessee, in 1889 made the mortgage of the lease, under which the vendor claimed title, and which was foreclosed on the 10th of August, 1891; Sarah Ann Banks being named in the proceedings "Mary Ann Banks." It was to prevent inquiry into the title of the mortgagor that the conditions of sale were framed, and the Court of Appeal held that they were sufficient for that purpose. It appearing by the evidence on the application under the Vendor and Purchaser Act that the vendor had, by virtue of the alleged posse. of Sarah Ann Banks, and those claiming under her since 1868, acquired a good possessory title, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held that the suspicious circumstance of Sarah Ann Banks having assumed to mortgage the property in the name of "Mary Ann Banks" did not prove the title to be actually bad, and, therefore, notwithstanding this circumstance, and the fact that the purchaser would not have a complete chain of covenants for title, the court (overruling Kekewich, J.) declared that the vendor had made a good title in accordance with the contract. The purchaser, however, refused to carry out the purchase in accordance with this order, and thereupon the vendor brought an action for the specific performance of the contract, relying on the order of the Court of Appeal as establishing his title, and as estopping the purchaser from raising any further objection to it. The defendant, by way of counterclaim, claimed to review the order of the Court of Appeal, on the ground of the discovery of new and material evidence which he could not with reasonable diligence have previously discovered. This evidence established that Mary Ann King, the original lessee, had, in fact, died in 1871, instead of 1873, leaving a will which the purchaser was prevented from discovering sooner by reason of it having been alleged that she died in 1873. By this will she bequeathed the leasehold to her daughter, the said Sarah Ann Banks, as executor and trustee for herself and two sisters; that she had for many years dealt with the lease as trust property, and had paid