

Held, That a recital, in a patent, two years old, of a death intestate, is not sufficient evidence of the fact, as between vendor and purchaser.
Sutherland v. Schultz 13

Rescission of contract for want of title.—Waiver of rescission.—After a contract had been made for the purchase of 73 $\frac{1}{2}$ acres, the purchaser discovered that the vendor had no title to 5 acres of the land. He then gave notice of rescission, and demanded a return of his deposit. *Held*, That he was entitled to repayment. Afterwards the vendor agreed that a portion of the deposit should be returned, and the purchaser promised to repay it on the vendor "furnishing satisfactory title" to the property. Twenty-nine days afterwards the purchaser commenced this action for the return of the deposit. Meanwhile the vendor had used due diligence to perfect his title, and succeeded in doing so seven days after the issue of the writ. *Held*, That purchaser had waived his rescission; that there was a new agreement engraved on the old one, by which the purchaser agreed to wait a reasonable time for the perfecting of the title. Clark v. Everett 229

Return of deposit.—Specific performance.—Rescission.—*Held*, That where a contract for the purchase of real estate is rescinded, owing to the default of the purchaser, he cannot recover back his deposit. Robertson v. Dumble 321

Specific performance.—Damages.—Date of assessing damages.—In an action by a purchaser, for specific performance of a contract respecting lands, intended to be held by him for sale, where damages have been decreed, instead of specific performance, on account of the sale, by the vendor, of the lands to a third party, the date of the breach of the contract is the period at which the value of the land in question is to be estimated for the purpose of assessing the damages.
Boulton v. Shore 22