

were meant to describe the interest, viz., twenty-eight years, without reference to and without affecting the questions of title. It could exclude all enquiry as to title. It could not be intended to exclude all enquiry as to title, for the defendant was not the original lessee. Some of the means assignments might be defective, and the plaintiff might clearly enquire into any defects except those in the title of the original lessor. Taking the agreement altogether, I am disposed to say that the defendant contracted to sell a qualified title only." Parke, J., stated his conclusion as follows: "There can be no doubt that the vendor of a lease, unconditionally, undertakes to give a good title, but every person may enter into a qualified contract. This certainly was so to some extent. The question is, to what extent the qualification goes, and I think that depends upon the words as to not requiring the lessor's title. They could not mean that the vendor should simply assign such interest as he had, for an objection arising after the original grant might have been made. The words, 'as he now holds the same,' are ambiguous, but the plaintiff contracted to pay for an assignment without requiring the lessor's title. For the plaintiff it is contended that he is nevertheless at liberty to object to the lessor's title, though the contract does not bind the defendant to produce it; but this is an unreasonable construction, and cannot be sustained." This decision has frequently been commented upon in later cases. In *Shepherd v. Keatley*, (1834), 1 C. M. & R. 117, it was distinguished on the ground that it was decided with reference to a contract of an essentially different tenor—one which was construed as involving "not merely a waiver of producing the lessor's title, but a waiver of that title altogether." (Alderson, B.) But from the language used by the judges it is apparent that, even when allowance was made for the different form of the contract, they regarded it as being scarcely consistent with the decision which they were giving. Their criticism led Lord St. Leonards, in his character of text-writer, to express the opinion that it "would not be followed as an authority." See Sugden, *Vendors and Purchasers*, 13th ed., p. 392. This statement presumably embodies the view which he would have adopted if he had been called upon to determine the point in his judicial capacity. His opinion was mentioned with approval in two Irish cases: *Leathem v. Allen* (1850), 1 Ir. Ch. Rep. 693 (Brady, Ch.); *Geoghegan v. Connolly* (1858), 8 Ir. Ch. Rep. 598 (Trevor, M.R.). Another unfavourable criticism made by an eminent judge in an extra-judicial capacity will be found in Fry, on *Specific Performance*, 5th ed., § 1331, note 3, where it is asserted that the decision in *Spratt v. Jeffrey* had been in effect overruled by later cases. That the same view was held by Malins, V.-C., seems to be a necessary inference from his language in *Harnett v. Baker* (1875), L.R. 20 Eq. 50. That the decision was based upon an erroneous construction of the contract in question was suggested by Parker, V.-C., in *Hume v. Bentley* (1852), 5 DeG. & Sm. 520; and by North, J., in *In re National Provincial Bank, etc.* (1895), 1 Ch. 190. On the other hand *Spratt v. Jeffrey* was considered by Shadwell, V.-C., to have been well decided; *Duke v. Barnett* (1846), 2 Coll. 337. It has also been referred to as a valid pre-