ignorant of the defect; for, in my opinion, for the purpose of the application of the rule, the time of the respondent company's entering into the contract was the date of the lease, and not the date of the notice of the intention to purchase, though, no doubt, that was the day upon which the contract to purchase became complete; for it is common ground that when the lease was executed both parties believed that the appellant was the owner in fee simple of the land.

I am, therefore, of opinion that, subject to what I shall say later on as to the other objections to the application of the rule, the case at bar falls within it, and the respondent company is entitled to require the appellant to convey as much as he can and to submit to an abatement of the purchase-money.

I confess that I do not understand, either from the reasons for judgment of the learned Judge or from the formal judgment as settled, upon what principle the calculation as to the abatement to be allowed is to be made. The proper method is that indicated in the quotation I have made from the Cyclopædia, that by which the respondent will pay for what he gets according to the rate established by the agreement, or, in other words, by the purchase-price. . . . Where the vendor is the owner in fee simple of parcel A, and has only a limited interest . . . in parcel B, having ascertained the proportionate part of the purchase-price attributable to that parcel, it will be necessary to ascertain the difference in value between the limited estate and the estate in fee simple in parcel B on the basis of the proportionate part of the purchase-price attributable to it; and the difference will be the sum by which the purchase-price is to be abated. The mode in which the amount of the compensation in Powell v. Elliot (1875), L.R. 10 Ch. 424, was ascertained, was in accordance with this principle. If the judgment is to stand, it should be varied by substituting for the declaration as to the abatement a declaration in accordance with the opinion I have just expressed.

It is, I think, clear, upon principle, that the purchaser who elects to take what the vendor can convey, with an abatement of the purchase-money for a deficiency in title, quantity, or quality of the estate, is not entitled to anything beyond that. He is not bound to take what the vendor can give, but may rescind the contract or claim damages for the breach of it; and what he in effect does when he makes his election is to agree to take the partial performance with the abatement, in lieu of the rights he might otherwise have arising out of the contract or the breach