

## RECENT ENGLISH DECISIONS..

CONTRACT—VENDOR AND PURCHASER—COMPENSATION  
FOR MISDESCRIPTION IN ADVERTISEMENT—TAKING CON-  
VEYANCE NO BAR TO RECOVERY.

The first case we have to consider in the Queen's Bench Division Reports for September is that of *Palmer v. Johnson*, 13 Q. B. D. 351, in which the Court of Appeal affirmed the principle, that where, in a contract of sale, there is an express condition for the allowance of compensation to the purchaser in case any error, mis-statement, or omission, be discovered in the particulars, the purchaser is entitled to enforce that condition, even after accepting a conveyance without covenants. This principle was laid down in *Cann v. Cann*, 3 Sim. 447, in 1830, and was followed about eighteen years ago by the Court of Exchequer in *Bos v. Helsham*, 2 Ex. 72; but Malins, V.-C., in the case *Manson v. Thacker*, 7 Ch. D. 620, came to a different conclusion, refusing to follow *Bos v. Helsham*, and held that after conveyance a claim for compensation for misdescription could not be enforced. But the Court of Appeal now declared that *Manson v. Thacker* was not law. Brett, M. R. put the judgment of the Court on this ground, viz., that "the contract is one which is daily contained in conditions of sale by auction, and when there is with respect to it the decision of such a case as *Bos v. Helsham*, which, having been on demurrer, could easily have been brought by appeal to the Exchequer Chamber, and ultimately to the House of Lords, and yet one finds it unchallenged until now, after a lapse of eighteen years, and when also one finds that it was preceded in 1830 by the case of *Cann v. Cann*, in which a deliberate statement of the law was made on which the case of *Bos v. Helsham* was founded, one cannot but say, that this Court, according to what has been a universal practice, even of a Court of Error, would decide now in the same way, even though it would not have come originally to the

same conclusion." Referring to the contrary judgments of Malins, V.-C., he observed, "A court of law is not justified, according to the comity of our courts, in over-ruling the decisions of another court of co-ordinate jurisdiction, and therefore the Vice-chancellor ought not to have differed from those former decisions." Speaking of the recent case of *Joliffe v. Baker*, 11 Q. B. D. 255, he said, "as to the elaborate judgment of Williams, J., in *Joliffe v. Baker*, if it conflicts with those two cases, viz., *Cann v. Cann* and *Bos v. Helsham*, I think, to the extent it so conflicts, it cannot be upheld."

The argument that the contract for compensation was merged in the conveyance was thus dealt with by Fry, L. J., in *Leggott v. Barrett*, 15 Ch. D. 309, 311: "Lord Justice James and the present Master of the Rolls laid down what is indubitably the law, that when a preliminary contract is afterwards reduced into a deed, and there is any difference between them, the mere contract is entirely governed by the deed, but that has no application here, for this contract for compensation was never reduced into a deed by the deed of conveyance. There was no merger, for the deed in this case was intended to cover only a portion of the ground covered by the contract of purchase."

This case therefore seems to proceed on the ground that the purchaser had a separate and independent contract for compensation which he was at liberty to enforce, because it was not merged in his deed of conveyance. But in the cases of *Besley v. Besley*, 9 Ch. D. 103, and *Allen v. Richardson*, 13 Ch. D. 524, which, equally with *Manson v. Thacker*, came under the condemnation of the Court of Appeal, there seems to have been no express contract for compensation, and it may be possible that on that ground those two cases may yet be maintained as good