

The vendor cannot take advantage of the condition if he has knowingly entered into the contract with a defective title; and in such a case the purchaser was held entitled to specific performance with compensation (i). Nor can a vendor arbitrarily or wantonly rescind the contract, nor put up for sale that to which he knows he cannot make a title (j). So, where a termor agreed to sell the fee and attempted to take advantage of such a condition on discovery of the want of title by the purchaser, it was held that he could not do so, and the purchaser was held entitled to damages (k); for equity will compel a vendor to perform as much of his agreement as he is able (l). But in a late case (m) where a vendor agreed to sell five acres, and the abstract showed a title to three and a half only, the remainder having been enclosed by the vendor and occupied by him for a number of years, it was held that he might take advantage of the condition and rescind the contract on the ground that it would involve him in great trouble and expense to answer requisitions as to the one and a half acres.

If the vendor is guilty of any wilful misrepresentation (n), or makes any attempt to defraud or deceive the purchaser (o), the condition will not protect him; and generally, any gross negligence or improper conduct is apparently sufficient to deprive the vendor of his right to shelter himself under it (p). Nor can he avail himself of the condition to improperly escape from the performance of any duty which

(i) *Nelthorpe v. Holgate*, 1 Coll. 203. But this case was decided upon its own peculiar circumstances.

(j) *Heppenstall v. Hose*, 51 L. T. N. S. 589; *Mawson v. Fletcher*, L. R. 6 Ch. App. 94.

(k) *Bowman v. Hyland*, L. R. 8 Ch. D. 588.

(l) *Thomas v. Dering*, 1 Ke. 729. And see *Wood v. Griffith*, 1 Swans. 54; *Mortlock v. Buller*, 10 Ves. 315; *Western v. Russell*, 3 V. & B. 192.

(m) *Heppenstall v. Hose*, 51 L. T. N. S. 589.

(n) *Price v. Macaulay*, 2 D. M. & G. 347.

(o) *Greaves v. Wilson*, 25 Beav. 296.

(p) *Turpin v. Chambers*, 29 Beav. 104.