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Vendor and Purchaser--Complete Purchase--Doctrine of

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injuries resulting from its wrongful or negligent act. It is suggested that New York is perhaps right in this, and that the courts of our own and other states would do well to follow her lead.

—J. H. W.

VENDOR AND PURCHASER—COMPLETE PURCHASER—DOCTRINE OF.—In a recent case, the plaintiff, as owner of the oil and gas under a seventy-five acre tract, seeks by a bill in equity to perpetually enjoin the defendant, lessee of the board of education, from drilling a well, and to cancel, as a cloud upon plaintiff's title, the lease from the board of education to the defendant. The only issue of fact is whether the plaintiff is a complete purchaser of the oil and gas rights in the tract without notice of the rights of the defendant under an unrecorded deed to the board of education from a common grantor. *Held,* that to be protected by Section 5, Chapter 74 of the Code, against a prior unrecorded deed, one must be a *complete* purchaser for value, must have had no notice of the prior contract or deed, and must have paid *all* the purchase money for the land purchased by him. *United Fuel Gas Co.* v. *Morley Oil and Gas Co.,* 131 S. E. 716 (W. Va. 1926).

In laying down the above rule the Supreme Court has followed the common law doctrine of "complete purchaser", whereby one, though he had paid part of the consideration, if he received notice of a prior claim before completing the payment (or even after paying the *whole,* if he received notice before obtaining his conveyance), would lose all his claim upon the land. *Tourville* v. *Naish,* 3 P. Wms. 307; *Wigg* v. *Wigg,* 1 Atk. 384; *Story* v. *Lord Windsor,* 2 Atk. 630; *Beverley* v. *Brooke,* 2 Leigh 446. This common rule has been uniformly followed in West Virginia by recent decisions and perhaps by all the decisions in this state on the point with the exception of one case. *Mitchell and Romine* v. *Dawson,* 23 W. Va. 86. In that case however, the court held that C although he received notice of B's equitable lien before paying all the purchase price, took the land from A discharged from B's lien except as to that part of the purchase money still due from C to A at the time he received notice of B's lien. The Supreme Court

in its decision in the United Fuel Gas Co. Case makes no mention of the Mitchell Case just referred to. However, as there have been numerous decisions since the Mitchell Case, holding, in effect, that a complete purchaser is one who has paid *all* the purchase price and received a conveyance of the legal title, the Mitchell Case has undoubtedly been overruled in West Virginia. *Welch* v. *King*, 82 W. Va. 258; *Webb* v. *Bailey*, 41 W. Va. 463; *Heck* v. *Morgan*, 88 W. Va. 102. Virginia has a somewhat different doctrine as to who is a complete purchaser entitled to the protection of a court of equity. In 1881, the Supreme Court of Virginia held that a complete purchaser is one who has paid the purchase money, and who, although he has not received a conveyance of the legal title, is entitled to call for it. *Preston* v. *Nash*, 76 Va. 1. In 1887 the legislature of Virginia, recognizing the severity of the common law rule, enacted that:

> "As against any person claiming under a deed or other writing which shall not have been admitted to record before payment by a subsequent purchaser for valuable consideration of the *whole* or a *part* of his purchase money, such subsequent purchaser notwithstanding such deed or other writing be admitted to record before he becomes a complete purchaser, shall, in equity, have a lien on the property purchased by him for so much of his purchase money as he may have paid before notice." *Virginia Code*, 1924, § 5200.

Minor, in commenting on this Virginia statute, says it does not seem to apply if the subsequent purchaser obtains notice of the prior claim otherwise than by its tardy admission to record. Minor, Real Property, §1409. It will be seen therefore, that even in Virginia under the present statute the Mitchell Case would not be followed, for in it the subsequent purchaser did not receive notice of the prior lien by its admission to record and in such instance common law principles would still seem to apply in Virginia and the purchaser would have no lien at all. It will be noticed that the Virginia statute by making the recordation of the prior conveyance notice to the subsequent purchaser, who has not yet paid the entire purchase price, puts a burden upon the purchaser in having to search the record every time he makes a payment, to ascertain whether a conveyance prior to his has been recorded since he made his last

payment. Needless to say, the requirement of such action from the purchaser is utterly impracticable. It is also submitted that the relief afforded a subsequent purchaser by the Virginia statute is not as desirable as that given in the Mitchell Case, since, in Virginia, the subsequent purchaser upon learning of the prior unrecorded conveyance merely receives a lien in equity on the property purchased, for so much of his purchase money paid before he received notice, but the Mitchell Case lets him keep his bargain and only makes him responsible to the owner of the prior unrecorded conveyance for the amount of the purchase price still due. The Supreme Court of West Virginia could then, no doubt, by a reaffirmance of the doctrine of "complete purchaser" as laid down in the Mitchell Case, go even farther in protecting a subsequent purchaser, who has paid only part of the purchase price, then he receives under the Virginia statute. In thus tempering the common law doctrine the Court could reach a more desirable end than that afforded in Virginia and, a *fortiori,* more desirable than the doctrine as laid down in the recent United Fuel Gas Co. Case.

—H. R. A.

PRACTICE IN JUSTICE'S COURT JOINING OR SPLITTING CAUSES OF ACTION.—The plaintiff brought two actions against the defendant, before a justice of the peace, for $498.50, in the aggregate, the purchase price of flour. In the first action, the plaintiff recovered $276.00, for flour sold and delivered from January 2 to January 18, 1924, on bills payable February 1, 1924. To the plaintiff's second action, on bills due December 1, 1923, and January 1, 1924, for flour sold and delivered during November and December, 1923, and also on bills for sales and deliveries on January 19 and 21, 1924, the defendant pleaded part of §48 c. 50, W. VA. CODE, quoted below, as a special plea in bar. Judgment was given for the plaintiff, and was affirmed on appeal to the circuit court. The defendant brought error. *Held,* judgment affirmed. *Clay* v. *Meadows,* 130 S. E. 656 (W. Va. 1925).

This case seems to have been decided upon the doctrine of *stare decisis;* for it is admitted, in the opinion, that "individual members of the court entertain the view that