

RECENT ENGLISH DECISIONS.

ever suit the question arose,—“Where the language is plain and therefore no real question of construction arises, I think the Court is bound to execute the contract as it finds it, and if it presses hardly upon one party or the other the answer is that that party entered into it with his eyes open.” And he said that the substance of a condition of the above kind appeared to him to be this:—“In making the bargain the purchaser agrees—‘I will not raise any question about broken covenants. I will run my risk of any forfeiture of my lease that may be incurred in respect of them. If there has been any breach I do not think it is likely that it will be pressed, but I will take the chance of that.’ I think that is the object with which a vendor inserts these conditions on a sale, and that is the object with which a purchaser agrees to such a condition. He takes upon himself the chance of whether there has been a breach, and if there has whether a forfeiture can be enforced.”

FORM OF ORDER FOR SPECIFIC PERFORMANCE.

Another point, which arose in *Lawrie v. Lees*, (iii.) concerned the form of order. It was objected that the order directed that the plaintiff should pay, and that upon his paying the defendant should execute an assignment, without directing that these two things should be cotemporaneous. But the House held that the proper way to construe such an order was that these should be reciprocal matters which would have to be done cotemporaneously—that one party was not bound to pay until the other party was ready to execute the assignment, and that the one was not bound to execute the assignment until the other was ready to pay.

REHEARING AFTER DECREE FOR SPECIFIC PERFORMANCE.

Lastly, Lord Blackburn observes, (iv.) at p. 36, and Lord Watson speaks to the same effect, as follows:—“I think it might happen that, there having been a decree of this kind, (specific performance), whilst investigating the title the parties might discover for the first time that there was really a substantial objec-

tion to specific performance; and it certainly would be very reasonable in such a case that it should be said. The Court will give a rehearing and see whether it does go to specific performance or not. Such a case might arise, and if the Court did grant a rehearing the Court would take evidence upon it.” And after alluding to the objection that had been raised, that the breach of covenant, which had taken place in this place, was a continuing breach, and that, therefore, though the title would, under the above condition, be good unto completion of the contract, yet the day afterwards there would be an infirmity which might interfere with it, he said:—“I think that point ought to have been brought forward either before the decree was made for specific performance, or if as is suggested it was discovered for the first time afterwards, by getting a rehearing, and I think evidence would be taken on all sides to see whether this was a sort of objection which ought to prevail.”

B. N. A. ACT—DISTRIBUTION OF LEGISLATIVE POWER.

The next case requiring notice, *The Citizens Insurance Co. v. Parsons*, p. 97, will probably be conceded to be one of the most important decisions yet delivered by the Privy Council with reference to the British North America Act. The judgment first points out that notwithstanding the declarations in sect. 91, that “the exclusive legislative authority of the Parliament of Canada, extends to all matters coming within the classes of subject” therein enumerated, and that “any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces,” it is obvious from a comparison of the contents of the two sections, that the legislature could not have intended that the rule thus laid down should in all cases apply, for in some cases the powers exclusively assigned to the provincial legislatures in sect.