

## CHANCERY DIVISION.

LONDON, May 1, 1889.

*In re* THE 163RD STARR-BOWKETT BUILDING SOCIETY AND SABIN'S CONTRACT. (24 L. J. N. C.)

*Vendor and Purchaser—Conditions of Sale—Right to Rescind.*

Land was contracted to be sold under a condition which, after providing in the usual way for the time in which requisitions and objections to title were to be sent in, continued, "in case the purchaser shall within the time aforesaid make any objection to or requisition on the title which the vendors shall be unable or unwilling to remove or comply with," then the vendors may by notice in writing annul the contract.

The purchaser sent in his requisitions and objections in due course, and thereupon the vendors, who were the trustees of the society, passed a resolution to the effect that they were unwilling to comply with them, and without making any attempt to answer any of them, served a formal notice on the purchaser annulling the contract, and stating that they were "unwilling to remove or comply with the objections or requisitions or any of them."

CHITTY, J., held that under the special form of the condition in question the right to rescind arose directly the requisitions were made; and that though the word "unwilling" ought to be interpreted as "reasonably unwilling," yet, in the absence of any evidence of caprice or *mala fides*, he must assume that the conduct of the vendors was reasonable, and that the contract was therefore duly annulled.

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THE LAW OF THE FLAG.

Notwithstanding the authority of Mr. Justice Willes in *Lloyd v. Guibert*, 35 Law J. Rep. Q. B. 74, in favor of a presumption that the parties to affreightment contracts intend to be bound by the law of the ship's flag, the tendency of the later decisions has been to turn the presumption into a question of fact. The latest decision on the subject was delivered by the Court of Appeal, consisting of the Lord Chancellor and Lord Justices Cotton

and Fry, on May 2, in the case of *In re The Missouri Steamship Company (Lim.) (Monroe's claim)* noted this week. The claim was for damages to cargo alleged to have arisen through the negligence of the company's servants on board their steamship *Missouri*, plying between England and America. The contract of affreightment was signed by the American agents of the company in Boston, Massachusetts, and contained the usual clause covering the loss in question. By Massachusetts law this limitation clause was void as contrary to public policy, so that the sole question in the case was as to the law by which the validity of the contract was to be determined. The court decided that the English law was applicable, and therefore disallowed the claim. The decision is remarkable on account of its reiteration of the principle which may now be regarded as having practically superseded all the old presumptions in cases of this kind. The question will now be always, as it was stated by the Lord Chancellor in the *Missouri* case to be: What was the law which the parties contemplated as that which was to govern the contract? In order to give a correct answer, all the circumstances attending the contract must be considered. In the present case, the fact that the parties intended that the English law should apply was deduced from the following, amongst other things—*i.e.*, that the cargo was to be carried by an English company, having a domicile in England, that the ship was an English ship carrying the English flag, and, most conclusive of all, that the contract contained all the ordinary provisions of an English bill of lading. The decision is in accordance with that of the Court of Appeal in the earlier case of *The Gaetano & Maria*, 51 Law J. Rep. P. D. & A. 67, while, though the result is different, the *ratio decidendi* is identical with that in the case of *The Chartered Mercantile Bank of India, etc., v. The Netherlands India Steam Navigation Company (Lim.)*, 52 Law J. Rep. Q. B. 220.—*Law Journal*.

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THE JESUITS' ESTATES ACT.

On the subject of the Act 51-52 Vict. cap. 13, respecting the settlement of the Jesuits' Estates, the opinions of several prominent