

Appeal (Cotton, Bowen and Fry, L.JJ.) held that the representation that the property was held by lease, when it was, in fact, held by under-lease, was a fatal misdescription, and that the 5th condition did not apply, for that "error in the description of the property" meant only errors in the description of the physical property, and not a mistake in the description of the vendor's title; and, therefore, affirming the decision of Kay, J., that a good title could not be made. Fry, J., points out the substantial difference between a lease and under-lease, and that the outstanding two days would make it impossible for the tenant to surrender the lease to the freeholder and take a new lease.

WILL—LEGACY—HUSBAND AND WIFE—GIFT TO WIFE WHILE LIVING APART—CONDITION—LIMITATION.

*In re Moore, Trafford v. Maconochie*, 39 Chy. D. 116, the court was called upon to determine the legal effect of a legacy bequeathed in the following manner: the testator directed his trustee to pay to his sister, Mary Maconochie, "during such time as she may live apart from her husband, before my son attains the age of twenty-one years, the sum of £2 10s. per week, for her maintenance while so living apart from her husband." The sister was married some years before the date of the will, but had never lived apart from her husband till some time after the death of the testator. The testator's son was living, and was an infant. Kay, J., held that the bequest could not be construed as a gift to Mary Maconochie during the joint lives of herself and husband until the son attained twenty-one, upon a condition, that might be rejected as against the policy of the law, that she should live apart from her husband; but that it was a limited gift of weekly payments to be made during a period the commencement and duration of which were fixed in a way the law does not allow, and that, therefore, the gift was void; and in this decision the Court of Appeal (Cotton, Bowen and Fry, L.JJ.) concurred.

PRACTICE—COSTS AS BETWEEN SOLICITOR AND CLIENT—JURISDICTION—ACTION AGAINST TRUSTEES OF A CHARITY FUND—UNJUSTIFIABLE LITIGATION.

*Andrews v. Barnes*, 39 Chy. D. 133, is a case in which Kay, J., dismissed an action brought by a vicar and churchwardens of a parish to recover from the defendants a fund of small amount, which the plaintiffs claimed was held by them for a charitable purpose connected with the parish, upon a condition which had become incapable of fulfilment and being of opinion that the action was unjustifiable, he ordered the plaintiffs to pay the defendants' costs, as between solicitor and client. The plaintiffs appealed on the question of costs, but the Court of Appeal (Cotton, Fry and Lopes, L.JJ.), held that he had jurisdiction to make the order as to costs, and refused to alter it. Fry, L.J., who delivered the judgment of the court, points out that the jurisdiction in equity regarding costs was essentially different from that at common law, and, from a consideration of the authorities, he concludes that there was inherent in the Court of Chancery, at the time of its abolition, a general and discretionary power to award costs, as