

The Appellant's objections to this judgment are

I. That by law the contract of sale upon which the Respondent's action is founded was a mere nullity, and that therefore no action of damages lay for the breach of it.

The 26. G. III. c. 60, s. 17, enacts, "that when and so often as the property in any ship or vessel, belonging to any of His Majesty's subjects, shall be *transferred* to any other or others of His Majesty's subjects, in whole or in part, the certificate of the Registry of such ship or vessel shall be truly and accurately recited, in words at length, in the bill or other instrument of sale thereof, and that otherwise such bill of sale shall be utterly null and void to all intents and purposes."

Not long after the passing of this Statute it was decided that a bill of sale, not containing a recital of the certificate of registry, was absolutely void; although the grand bill of sale was delivered at the time of the transaction, and the person to whom the transfer was made took possession of the Ship as soon as she returned to England.—*Rolleston & al. vs. Hibbert & al.* 3. T. R. 406.

The 34 Geo. III. c. 68. s. 14. to remove doubts which had arisen upon the construction of the 26 of the King, enacts "That no transfer, *contract or agreement for transfer*, of property, in any ship or vessel, made or intended to be made after the first day of January, 1795, shall be valid or effectual for any purpose whatsoever, either in law or equity, unless such transfer, contract or agreement for transfer, of property in such ship or vessel, shall be made by bill of sale, or instrument, *in writing*, containing such recital as prescribed by that clause."

Whether the transaction between the parties in the present cause is to be considered as a sale, or as an agreement to sell, the result is the same; it is "not valid or effectual for any purpose whatsoever either in law or equity," not having been made "by bill of sale or instrument in writing" containing the recital prescribed by the 26 Geo. III.

But it has been said that the sale of the Ship in question by the Appellant without power to give a title was a fraud, and that therefore the Court might award damages—In answer to this it is to be observed—

1. That the evidence in the cause proves that the Appellant acted with the utmost good faith.

2. That the allegations of the declaration amount only to an averment of a breach of contract.

3. That if a mere breach of contract is sufficient to take a case out of the Statute, the Statute is rendered nugatory, because if this were law, the same remedy would exist upon a breach of this ineffectual and invalid agreement as upon the breach of a valid and effectual one—to wit, an action of damages.

4. That even in the case of a wilful and fraudulent refusal to complete the title by the indorsement on the certificate required by these acts, where all the other formalities have been observed, it is extremely doubtful and is yet undecided, whether the High Court of Chancery itself, can afford relief.—11 *Ves. Jr.* 621. & seq.

The analogous Statutes of the English Law are—the Statute of frauds—and the annuity acts—in the French Law the Ordinance of Donations.

Under these Statutes it was never argued that the mere breach of the Contract was a fraud which entitled the party to have the Contract considered as valid.

The construction given to the registry acts has not been restrictive; on the contrary, it has been declared by high authority that— "If Judges could have any leaning in their minds on such occasions they would not have any inclination to put such a construction on the words of this act as would tend to evade the wholesome provisions of it." *Ld. Kenyon*, 3. T. R. 412.

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