

that the rule restricting the recovery to nominal damages applies to every case where the vendor fails to convey through inability to make title; and that the rule is the same, whether the vendor has been guilty of fraud or not.

In several of the States a rule exactly the reverse of that adopted in New Jersey prevails. In these States the vendor's good or bad faith is treated as irrelevant to the question of the damages to be awarded, and in either case a recovery of substantial damages is allowed. (Maupin's Marketable Titles to Real Estate, 213.)

The doctrine which finds general favor in this country seems to be that which prevails in New York. By this, while a vendor contracting to sell in good faith, believing he has a good title, and afterwards discovering his title to be defective, for that reason, without any fraud on his part, refuses to fulfil his contract, is held liable to nominal damages only (*Conger v. Wearer*, 20 N. Y. 140; *Cockraft v. The N. Y. & H. R. R. Co.*, 69 N. Y. 201), yet, where he is chargeable with wrongful conduct, as where he fraudulently misrepresents or conceals the state of his title, or covenants to convey when he knows he is without authority to do so, even though he acts in good faith, believing that he will be able to procure a good title for the purchaser, he is held liable for the loss of the bargain. (*Pumpelly v. Phelps*, 40 N. Y. 59.) In this latter instance, however, if the purchaser knew, at the time he entered into the contract, that the ability of the vendor to convey good title depended upon a contingency, his recovery is limited to nominal damages, for under such circumstances the vendor can scarcely be said to have been guilty of wrong doing. (*Magraff v. Muir*, 57 N. Y. 155).

For a discussion of the reasons advanced for and against each of these rules, see Maupin on Marketable Titles to Real Estate, sec. 90, etc.; 3 Sedg. on Dam. 196; Sedg. El. of Dam. 320.—*University Law Review*.

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COLONIAL JUDGES IN ENGLAND.—Sir H. De Villiers, Chief Justice of the Cape Colony, is expected in London in April. The chief object of his visit is to take the oath as a Privy Councillor and his seat on the Judicial Committee. Sir Henry Strong, Chief Justice of the Supreme Court of Canada, is also expected to visit England shortly, for the same object.