

RECENT ENGLISH DECISIONS.

prudent vendor who wished to sell at a fair price insert such a condition as this? It appears to me to be full of warnings and conditions, which, although in some special cases it may be proper to insert them, yet amounted in the present instance to a suggestion of traps and pitfalls where none existed. Taking into account that there was no compensation clause, I think such a condition was calculated to frighten away purchasers." As to the right of the purchaser to resist performance of the contract on this ground, Fry, L.J., made the following observations: "It was contended that the only cases in which the Court has refused to enforce such a contract have been where the trustees selling have been defendants, and it was argued that where the vendors are plaintiffs the Court will enforce specific performance. I think such a view is abhorrent to the practice of the Court. In truth, however, the question is not reasonably open. *Rede v. Oakes* (4 D. J. & S. 505), is a distinct authority where the plaintiffs are vendors who have entered into a contract which is a breach of trust, they cannot enforce it against the purchaser."

BREACH OF TRUST—ACQUIESCENCE BY CESTUI QUE TRUST.

The following case of *Sawyer v. Sawyer* (28 Ch. D. 595) is a decision of the Court of Appeal affirming the judgment of Chitty, J., and establishes that where a trustee claims that his *cestui que trust*, who is a married woman, has concurred in a breach of trust, he must show that she acted for herself in the breach of trust, and was fully informed of the state of the case in order to entitle him to claim indemnity out of her interest in the fund for the liability she incurs in consequence of the breach. It is not enough merely to show that she consented to the breach of trust. This decision appears to conflict with the modern trend of legislation, which is all

the time striving to emancipate married women from the disabilities they were formerly subject to, and to place them on the same footing as men with regard to their property. Equity lawyers, however, do not seem to be able to rid themselves of the notion that a woman, in spite of the theories of modern legislators, needs special protection, and that acts which would bind a man do not necessarily bind a woman. Thus Fry, L.J., who gave the judgment of the Court was compelled to admit that while in the case of a man of full years consenting to a breach of trust the Court would presume him to be acting with a full knowledge of all the circumstances, yet in the case of a *feme covert* no such presumption exists in favour of the trustee whose primary duty is to protect the fund for her benefit.

SEPARATION DEED—ACCESS TO CHILDREN—REMOVAL OF CHILDREN OUT OF JURISDICTION.

The next case, *Hunt v. Hunt* (28 Ch. D. 606), requires but a brief notice here. The question was simply whether a husband who had covenanted in a separation deed to allow his wife access to his children, for at least one day in every fortnight, could be restrained from removing the children to Egypt whither he had been ordered as a medical officer in the army. Pearson, J., granted an injunction restraining the removal, but on appeal his decision was reversed on the ground that no case was made that the defendant was removing the children for the purpose of preventing his wife having access to them, and the covenant did not bind him to keep them in a place where she could conveniently have access to them.

SOLICITOR—STRIKING OFF ROLL—JURISDICTION OF COURT OF APPEAL.

In the following case of *Re Whitehead* (28 Ch. D. 615), a motion was made to the Court of Appeal to strike a solicitor off the rolls. The Court of Appeal had directed the official solicitor to take pro-