

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Woolcott
and Another v. Peggie, from the Supreme Court
of the Colony of Victoria; delivered November
14th, 1889.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

THIS is a purchasers' action for specific performance of a contract for the sale of some real property. — The defence was that before the action was brought the contract had been annulled by the vendor under a condition in the contract. There was a counter claim, the result of which necessarily depended on the result of the action.

The condition on which the vendor relied provided that in case the purchaser should, within the time limited, make any objection to, or requisition on, the title which the vendor should be unable or unwilling to remove, it should be lawful for him to annul the sale.

The requisition which led to the question between the parties was in substance this: The purchasers called the attention of the vendor to the fact that on the registry there appeared to be the entry of a previous contract by him for the sale of the very same property to a Mr. Taylor, and they required that this entry should be removed. After some little delay, which is fully accounted for by the circumstances of the case, the vendor stated, apparently with perfect

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truth, that he had never heard of the entry before the purchasers brought it to his notice; and he asserted, and apparently with equal truth, that he had never entered into such a contract as that referred to in the entry. The vendor at once set about getting the entry removed. He commenced proceedings against the person who had improperly procured the entry to be made, but as that person had left the Colony, he found that it was impossible to bring the matter to a speedy issue. All this was communicated to the purchasers, and they were asked what course they proposed to take. They were willing to give time if the vendor would give an indemnity, but otherwise they insisted on the entry being removed according to the requisition, that is, removed forthwith, or at any rate before the vendor was to be at liberty to deal with any part of the purchase money. The vendor was unwilling to give the required indemnity, and unable to remove the entry forthwith. At last, on the 2nd of September 1887, one of the purchasers, who was a solicitor, and had the conduct of the matter, wrote as follows: "With regard to Mr. Taylor's claim, I will, as already stated, give you any reasonable time to clear this away. Unless you accept my offer, which is in terms of your letters and the contract, on or before Monday next I shall take such action as I may be advised to enforce the same." That was in distinct language, threatening the vendor with litigation unless he accepted the purchasers' offer. Their offer was an offer to give time on condition, but only on condition that he gave an indemnity. The vendor intimated that he should be obliged to annul the sale. The purchasers still insisted on what they considered to be their strict rights. Under these circumstances the vendor gave notice that he rescinded the contract. Their

Lordships agree with the Courts below that he was justified in so doing.

Whether his action is to be regarded as founded upon inability to remove the objection in accordance with the exigency of the requisition, or on unwillingness to proceed further on the footing of a subsisting contract, in face of the consequences with which he was threatened (which seems the more natural view) is wholly immaterial. In either case, he was entitled to rescind the contract, provided he acted in good faith.

Their Lordships therefore will humbly advise Her Majesty to dismiss the appeal, and the Appellants will pay the costs.

