

## VENDORS' AND PURCHASERS' ACT—RECENT ENGLISH DECISIONS.

for the construction of an instrument, the learned judge was making no new precedent in *Re East Williams*, 26 Gr. 110; *Givins v. Daniell*, 27 Gr. 502; *Re Eaton Estate*, 7 P. R. 396, this was done, and we think it would be a matter for regret if there should arise any disposition on the part of the judges to compel proceedings by action, in any case fairly within the scope of the summary procedure of the Vendors' and Purchasers' Act. In *re Eaton estate* it was expressly objected that the Court should not on an application under the Act construe an instrument; but Spragge, C., said that the rule invoked in support of that contention only applied "where executors and trustees apply for advice and direction of the Court, an entirely different thing, and with an entirely different object, from the provisions of the statute under which this application is made. If, in order to see whether a good title can be made, it is necessary to construe a will, or any other instrument, under which a vendor makes title, the Court will do it as it would be done upon an enquiry as to title on a bill for specific performance," and in *In re Burroughs*, L. R. 5 Ch. D. 601. James, L. J., thus expressed himself in regard to the scope and object of the corresponding English statute: "My opinion is, that upon the true construction of this Act of Parliament, whatever could be done in chambers upon a reference as to title under a decree when the contract was established, can be done upon proceedings under this Act, and that what this Act has done is this: it has enabled the parties to dispense with the form of a bill and answer, and at once put themselves in chambers in exactly the same position in which they would have been, and with all the rights, which they would have had under the old form of decree." See also the late case of *Re Barwick*, 5 O. R. 710.

## RECENT ENGLISH DECISIONS.

The August numbers of the *Law Reports* comprise 9 App. Cas. pp. 433-594; 26 Ch. D. pp. 433-604; 13 Q. B. D. pp. 197-339; 9 P. D. pp. 121-148.

CONTRACT FOR DELIVERY OF GOODS BY INSTALMENTS—  
REVISION OF CONTRACT.

The first case which demands attention is that of *The Mersey Steel and Iron Co. v. Naylor*, 9 App. Ca. 434, to which we drew attention *ante* vol. 19 p. 63, when it was before the Court of Appeal. The decision of the Court of Appeal has now been affirmed by the House of Lords.

In this case a contract had been entered into between the plaintiffs and defendants for the delivery to the defendants of a quantity of iron in instalments to be paid for within three days after receipt of each instalment. After two instalments had been delivered, a petition was presented to wind up the plaintiff Company, and the defendants, under advice of their solicitor, refused to make any further payments in respect of the second instalment without the sanction of the Court, which they asked the plaintiffs to obtain, thereupon the plaintiffs refused to make any further delivery, although demanded by the defendants. Subsequently the plaintiffs informed the defendants that they should consider the refusal to pay, as a breach of contract releasing the Company from any further obligations. Shortly afterwards a winding up order was granted against the plaintiff Company. The liquidator made no further deliveries, and brought the present action in the name of the Company for the goods delivered. The defendants counter-claimed for damages for non-delivery.

The House of Lords affirmed the judgment of the Court of Appeal, holding that upon the true construction of the contract, payment for a previous delivery was not a condition precedent to the right to claim