Tassell v. *Smith*, 32 L. T. O. S. 4; *Vint* v. *Padgett*, 31 L. T. O. S. 21; 2 De G. & J. 611; and *Bevor* v. *Luck*, 5 Eq. 537, is now overruled by the case of *Jennings* v. *Jordan*, to which we have above referred.

The right of consolidation may be claimed by the mortgagee as well in a suit to foreclose, as in one to redeem: (*Johnston* v. *Reid*, 29 Gr. 293; *Watts* v. *Symes*, 1 D. M. & G. 240; *Selby* v. *Pomfret*, 1 J. & H. 336; S. C. 3 De. G. F. & J. 585). But in an action for foreclosure against a purchaser of the equity of redemption of one of the estates, the plaintiff mortgagee has no right to consolidate any mortgage not in default: (*Cummins* v. *Fletcher*, 14 Ch. D. 699; 42 L. T. N. S. 859; 49 L. J. Ch. 117, 563); and it would seem from the principles laid down in that case, that the same rule applies where the action is against the mortgagor himself. But in an action for redemption, it would seem, on principle, that it is not necessary that all the mortgages should be in default in order to entitle the mortgagee to consolidate them.

In an action for foreclosure or sale by a prior encumbrancer, a subsequent incumbrancer may consolidate: (*Merritt* v *Stephenson*, 7 Gr. 22; *Ross* v. *Stevenson*, 7 P. R. 126).

The right of consolidation exists as we have seen by reason of two or more mortgages made by the same mortgagor, coming to the same hand, and it is not at all necessary that they should have originally been made to the same person.

The right to consolidate as against a purchaser of the equity of redemption in one of the estates may be lost by the conduct of the mortgagee in neglecting to give notice of his claim to consolidate, even though the purchaser has actual notice of the second mortgage: *Dominion S. and I. Co.* v. *Kittridge*, *supra*.

Although in a redemption suit a mortgagee may have a right to consolidate all the mortgages held by him against the same mortgagor, even though some of them be not in default; yet the plaintiff in an action for redemption has not a reciprocal right to insist on redeeming any mortgage not in default, nor yet any mortgage of which he is not the owner of the equity of redemption, even though it be one which the mortgagee, if he chose, might claim the right to consolidate. The privilege of consolidation being an equity which the mortgagee may insist on if he pleases, but which the mortgagor, or those claiming under him, cannot compel him to submit to. Thus, although the mortgagee may, if he pleases, treat two distinct mortgages as one security as against the mortgagor, yet the latter cannot insist on their being treated as one as against the mortgagee. In *Bald* v. *Thompson*, 16 Gr. 177, the mortgagee lent $2,000; to secure which, he took two mortgages on different properties to secure $1,000 each. He foreclosed one of these mortgages and afterwards parted with the property, and it was held that his so doing was no bar to a subsequent action for foreclosure of the other mortgage; although, if the two mortgages had been in fact one security, the mortgagee's parting with one part of the property under such circumstances would have been an obstacle in the way of foreclosing the residue: (*Gowland* v. *Garbutt*, 13 Gr. 578; *Munsen* v. *Hauss*, 22 Gr. 279).

RECENT ENGLISH DECISIONS.

A portion of the February number of the *Law Reports* for the Chancery Division still remains to be noticed.

SPECIFIC PERFORMANCE—AGENT'S MISREPRESENTATION.

Mullens v. *Miller*, p. 194, shows that misrepresentation by the agent of the vendor of real estate as to matters affecting the value of the property sold, is a good defence to a suit for specific performance. Bacon, V.C., in his judgment, says:—"A man employs an agent to let a house for him; that authority, in my opinion, contains also an authority to describe the property truly, to represent its