

RECENT ENGLISH DECISIONS.

but where the transaction was such as was within the meaning of the Statute of Limitations, it is admitted, and cannot be denied, that the Courts of Equity, whether by analogy or whether they considered themselves bound by the Statute, . . . did recognise the binding authority of the Statute of Limitations, and if there were nothing else but the cause of action, and the cause of action had arisen more than six years before the commencement of the suit, the Courts of Equity interpreted the Statute of Limitations precisely in the same way as Courts of Law did. But assuming that the Statute of Limitations would be binding, the Courts of Equity, on doctrines of their own, sometimes applied, if other circumstances arose, a particular kind of equity. . . . They said, if the existence of the cause of action given by the defendant was fraudulently concealed by the defendant from the plaintiff until a period beyond six years, then they would not allow the defendant to prevent the plaintiff from supporting his right to his remedy on the ground that the Statute was a bar." And it is here that Holker, L. J., differs from his colleagues, and so arrives at a contrary conclusion on the whole case. He says: "I think the authorities show that, wherever there was a proceeding in equity which came within the description of the proceeding mentioned in the Statute of Limitations, there the Courts of Equity held themselves to be just as much bound by the strict language of the Statute as the Courts of Law were, for Acts of Parliament are omnipotent, and are not to be got rid of by declarations of Courts of Law or Equity. . . . In the case of a proceeding not within the Statute of Limitations, where the question has arisen whether the Statute shall run from the perpetration of a fraud or from its discovery, the Courts of Equity have said the Statute shall run from the discovery. . . . The present case is in effect an action on the case to recover back money obtained by fraud, and it is proposed to declare by a decision of a Court of Justice that the rule which the Statute of

Limitations has established shall be done away with, and that where that Statute of Limitations says that the Statute shall begin to run from the arising of the cause of action, this Court is to declare that instead of that the Statute shall begin to run from the discovery of that fraud. I am, therefore, unable to concur with the other members of this Court that the judgment should be affirmed." The above seems to bring into a clear light the important point of law in which Holker, J. dissents from the other Judges, which is not obvious from a first reading of the case, and is in no way indicated in the head-note. As to (2), space only permits the remark that the ground is taken by Brett, L. J., and the same view seems implied in the other judgments, that the Judicature Act has not altered the rights and remedies of any person—and does not repeal or alter the effect of any Statute which was applicable before to a particular case."

LANDLORD AND TENANT—NEGLIGENCE.

In *Ivay v. Hedges*, p. 80, it appeared that the defendant, being owner of a certain house, let apartments in it to lodgers, and allowed them the privilege of using the roof, which was flat, for the purpose of drying their linen. The roof had a rail round the edge, which, as the landlord knew, was out of repair. The plaintiff, one of the lodgers, went on to the roof to remove some linen, slipped, and the rail breaking, fell through to the court-yard below, and was injured. The Divisional Court now held no liability rested on the landlord. Lord Coleridge, C. J., says: "If there had been an absolute contract for the user of this place in a particular way, it might be that the defendant would have been liable for not keeping it in a safe condition. But if the contract was, as we must take it to be—I let you certain rooms, and if you like to dry your linen on the leads you may do so; in that case the tenant takes the premises as he finds them. No case has been cited in the English Courts which has the least bearing on the matter."