

RECENT ENGLISH DECISIONS.

bonds payable to bearer is not within the ordinary scope of the business of a firm of solicitors, the cheques, letters and entries were too ambiguous to affect the defendant with acquiescence in his partner, Parker, having the custody of the bonds as part of the partnership business, and that, therefore, he was not liable for their misappropriation. In connection with this case we may refer to a recent case before Kay, J., of *Mannus v. Mew*, noted in the *Law Times* for 28th March last, where a partner, in a firm of solicitors was held liable for the misappropriation by his co-partner of the moneys of a client received by the firm for investment.

SPECIFIC PERFORMANCE—ALTERNATIVE CLAIM FOR DAMAGES.

In *Hipgrave v. Case* (28 Ch. D. 356), which is the next case to be noticed, the action was for specific performance of a contract of sale to the defendant of a house and goodwill, fixtures and stock-in-trade of a business. The statement of claim claimed specific performance of the contract, or in the alternative, for the payment of £100 as liquidated damages fixed by the contract. The statement of defence alleged false representations by the plaintiff as to the character of the business, and denied that plaintiff was able and willing to perform the contract on his part. After the close of the pleadings the plaintiff gave the defendant notice that unless the defendant would complete the purchase within a week he would re-sell the business, which he accordingly did. No amendment was made in the pleadings, and the action went to trial, when the plaintiff's counsel, while admitting that the claim for specific performance must be abandoned, claimed to recover the £100 as liquidated damages. Bacon, V.-C., before whom the case was tried, dismissed the action on the ground that the alternative right to damages did not arise until there had been a default in

specific performance, and the plaintiff himself, having rendered specific performance impossible, was not entitled to damages. This decision the Court of Appeal now affirmed; the ground of the judgment is thus shortly stated by the Master of the Rolls: "I think that the plaintiff, having by the form of his pleadings and by his conduct of the case, elected to put his claim as one for specific performance, with an alternative claim for damages merely as a substitute for specific performance in case, for any reason, the Court should feel itself unable to give effect to his prayer for specific performance, the plaintiff cannot now be allowed to change the whole nature of his action, by turning it into an ordinary action for damages as at common law."

COMPANY—TRANSFER OF SHARES—REFUSAL OF COMPANY TO REGISTER TRANSFER.

In the case which follows of *ex parte Harrison, In re Cannock and Rugely Colliery Co.*, the Court of Appeal over-ruled the decision of Bacon, V.-C., on a question of company law, respecting the right of directors to refuse to register a transferee of shares. By the articles of association it was provided, that the directors might refuse to register a transfer of shares while the transferor was indebted to the company, or if they should consider the transferee an irresponsible person. It was also provided, that persons becoming entitled to shares on the bankruptcy of a shareholder, might be registered on the production of such evidence as might be required by the directors, and that any transfer, or pretended transfer, not approved by the directors, should be void. A shareholder, who was indebted to the company, executed a transfer of his shares to the nominee of a bank as a security for advances, and the directors refused to register the transfer. Subsequently, the shareholder became bankrupt, and his trustee, with the consent of the bank and