

cross and independent action, and has no connection with the original claim. Where, however, a foreign defendant counterclaims for a breach by the plaintiff of the contract sued on, security will not, as a rule, be ordered, as the court has a discretion to refuse the application.

In the space allotted to this article it is impossible to take up the practice in connection with the matter or cite the cases on the subject, but the above are the conclusions arrived at after a thorough study of the authorities and the examination of a large number of the most important decisions bearing on the subject.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

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SPECIFIC PERFORMANCE—BUILDING CONTRACT—LAND CONVEYED IN COVENANT TO BUILD.

Wolverhampton v. Emmons (1901) 1 Q.B. 515, is a kind of case which does not usually fall to the Queen's Bench Division (as we see it is still called in England notwithstanding the recent demise of the Crown). The action being one for specific performance of a contract to build. The contract arose in this way. The plaintiffs, a municipal corporation, being the owners of a vacant piece of land, conveyed it to the defendant in consideration of £1,000, and his entering into a covenant to build houses upon the plot of a minimum height, and within a specified time. Delay took place in building, and by a subsequent arrangement in consideration of the time being extended the defendant agreed to build eight houses in accordance with a specified plan. Wills, J. who tried the action, at first doubted whether a judgment for specific performance could be awarded in the case of a building contract, but ultimately came to the conclusion that it could, where the terms of the contract were precise, and damages would not be a sufficient indemnity, and he gave judgment accordingly, which was affirmed by the Court of Appeal (Smith, M.R. and Collins and Romer, L.JJ.), that court also being of opinion that although the terms of the original contract were too indefinite, yet that by the subsequent agreement they had