

RECENT ENGLISH DECISIONS—RECENT ENGLISH PRACTICE CASES.

delivery of the abstract. He accepted the title, and tendered a draft conveyance of the land with the wall, omitting all reference to the obligation to repair. The vendors' solicitors added the words "subject to and with the liability for ever to repair the wall." The purchaser would not agree to the addition, and the vendors thereupon gave notice of rescission; whereupon the purchaser brought this action for specific performance, claiming the right to a conveyance without the additional words. Pearson, J., says: "If the obligation to repair the wall did run with the land, it would bind the purchaser, whether there was any reference to it in the conveyance to him or not. If it did not run with the land, the vendors had no right to insert any words in the conveyance imposing the obligation on the purchaser." As to the question of the right to rescind he said: "A condition of this kind is in my opinion intended only to meet the case of a purchaser insisting on an objection which the vendor is absolutely unable to remove; or if not absolutely unable, the removal of which would throw upon him such an amount of expense as it would be unjust that he should be compelled to bear."

REPORTS.

ENGLAND.

RECENT ENGLISH PRACTICE CASES.

MCILWRAITH V. GREEN.

Payment into court—Denial of liability—Action for several breaches of contract—Payment into court in respect of one breach—Acceptance in satisfaction of all demands—Costs—Rules (1883). Ord. 22, rr. 6, 7. (Ont. Rules 215, 218.)

In an action for breach of contract assigning two distinct breaches, the defendants pleaded denying the breaches and paid money into Court in respect of one of the breaches. The plaintiffs gave notice under Ord. 22 r. 7, that they accepted the money paid into Court in full satisfaction of the causes of action in the statement of claim.

Held, affirming decision of Q. B. D. (13 Q. B. D. 897), that the plaintiffs were entitled to the costs of action without proceeding to judgment. [C. A. 14—Q. B. D. 766.]

BRETT, M.R.—"For the defendants it has been urged that the plaintiffs ought, in express terms, to have abandoned the prosecution of all the causes of action, and that they ought to have given a notice of discontinuance, or withdrawal of that breach in respect of which the money was not paid in by the defendants. . . . It seems to me, that the notice actually given by the plaintiffs, and the notice in the form suggested are exactly equivalent. . . . I dissent from the view of Field, J., in *Crosland v. Routledge* W. N. (83) 228."

BARKER V. LAVERY.

Appeal to House of Lords—Stay of execution.

Execution for costs, pending an appeal from the Court of Appeal to the House of Lords, will not be stayed, unless evidence be adduced to show that the appellant will be unable to recover such costs from the respondent should the appeal be successful. [C. A. 14—Q. B. D. 769.]

EARL OF SELBORNE, L.C.—"The defendant is not entitled to have the application granted as a matter of course. Evidence ought to have been adduced to show that the plaintiff would be unable to repay the costs if he should be unsuccessful before the House of Lords. As to the request for time to make an affidavit about the plaintiff's means, we cannot accede to it; those who apply for a stay of execution must come before us prepared with all necessary materials."