

found guilty. They must have looked at each other with startled eyes, as if asking, 'Who next?' Viewed from any angle, the verdict of the Becker jury is the most terrible blow that the wicked and flaunting alliance between the guardians of the law and the violators of it has ever received."

RESCISSION OF EXECUTORY CONTRACTS.

The *Law Quarterly Review* in its October number contains the first part of a learned and exhaustive article on the subject of the rescission of executory contracts for partial failure in performance. We copy the concluding portion of the writer's remarks, which are as follows:—

"I have pointed out that the right of one party to a contract to rescind for breach, or failure to perform, and the right of such party to resist the enforcement of the contract, in an action on the contract for damages by the party in default, are in effect one and the same thing. With regard to enforcement by action for specific performance, however, there is this distinction, that, while specific performance may be resisted on any ground that would justify rescission, or (what amounts to the same thing) constitute a good defence of failure of consideration to an action on the contract for damages, specific performance is a remedy in the discretion of the Court, and may be refused on grounds that would not justify rescission of the contract, Fry on Specific Performance, 5th ed., 19, 20, 211, 221.

Leaving out of account this latter class of defence to an action for specific performance, one would (since the passing of the Judicature Acts) expect to find in a harmonious system of law a single principle governing—

(a) The right to resist the enforcement of a contract, on the ground of failure of consideration, whether such attempted enforcement were by action on the contract for damages, or by action for specific performance.

(b) The right to enforce a contract by action for damages or by action for specific performance, with compensation to the