

REVIEW OF CURRENT ENGLISH CASES.

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CONTRACT—SALE OF GOODS—CUSTOM OF TRADE—REASONABLE-
NESS.

Produce Brokers v. Olymphica Oil Cake Co. (1916) 2 K.B. 296. This was a motion to set aside the award of arbitrators which was based on an alleged custom of the oil trade, whereby in the case of a contract of resale in the printed form of the Incorporated Oil Seed Association, the buyers impliedly agreed to accept the original seller's appropriation if passed on without delay, provided it was valid at the time it was made, even though, at the time of being passed on, the appropriation might, apart from the custom, be invalid by reason, for example, that the goods had been lost at sea. The award in question found that at the time of the appropriation of the goods in question being passed on, the goods had in fact been lost at sea, but that by reason of the custom above referred to, the appropriation was effectual. The Divisional Court, Horridge and Rowlatt, JJ., held that the validity of the custom in question depended on whether or not it was reasonable, and they held that it was reasonable and therefore valid and binding on the parties to the contract in question.

LANDLORD AND TENANT—COVENANT FOR QUIET ENJOYMENT—
NUISANCE BY ANOTHER TENANT OF SAME LESSOR—INJUNC-
TION—LIABILITY OF COMMON LESSOR—DEROGATION FROM
GRANT.

Malzy v. Eichholz (1916) 2 K.B. 308. This was an action to restrain a nuisance by carrying on a noisy trade. The plaintiff and defendant Castiglione were both lessees of adjoining premises from the defendant Eichholz. The plaintiff's lease contained a covenant by Eichholz for quiet enjoyment, and Castiglione's lease contained a covenant on his part not to carry on his business so as to be an annoyance to Eichholz or his tenants. Castiglione had granted leave to one Dent to carry on mock auctions on part of Castiglione's premises, which was carried on noisily and attracted crowds and interfered with the plaintiff's enjoyment of his premises. The plaintiff claimed that the defendant Eichholz was obliged to take steps to prevent his tenant Castiglione from so using his premises. The action was tried by Darling, J., with a jury, and in answer to questions the jury found that Dent's business was conducted so as to be a nuisance to the plaintiff with