

RECENT ENGLISH DECISIONS.

old business, or that he was the successor in business of the old firm." The Court, also, held that they could not prevent the defendant from dealing with those customers, whom he *had* solicited. This would really, as Brett, L. J., points out, be enjoining the public, and depriving them of the liberty, which anybody in the country might have of dealing with whom they like.

INTERPRETATION OF CONTRACTS—RECITALS.

In the above case, moreover, previously to executing the formal deed of dissolution, the partners had signed a written agreement for dissolution, which was in some ways more specific in its terms than the deed, and was recited in it. This gave rise to some *dicta* on the interpretation of contract. Thus James, L. J., with the entire concurrence of Brett, L. J., says: "I think it is very important, according to my view of the law of contracts, both at common law and in equity, that if parties have made an executory contract which is to be carried out by a deed afterwards executed, the real completed contract between the parties is to be found in the deed, and that you have no right whatever to look at the contract, although it is recited in the deed, except for the purpose of construing the deed itself. You have no right to look at the contract either for the purpose of enlarging or diminishing or modifying the contract, which is to be found in the deed itself. A recital of the agreement in such deed would have the same effect as an ordinary preamble to an Act of Parliament or any other instrument, as showing what the object of the parties was, and what they were about to do, so as to afford a guide in the construction of their words; but you have no right, for any other purpose, to look at anything but the deed itself, unless there be a suit for rescinding the deed on the ground of fraud or for altering it on the ground of mistake."

And Cotton, L. J., enunciates another principle on the same subject, viz: "Where parties have made a bargain and have contracted as

to what rights one party shall gain over the other by the bargain, we ought not to put a forced interpretation on particular words used in the bargain in order to remedy what we may think in the particular case is a hardship on one of the parties."

It may be observed in passing that in a case a few pages on, *Walker v. Mottram*, the rule which precludes the vendor of the goodwill of a business from soliciting the former customer, though again affirmed by the Court of Appeal as regards voluntary sales, was held not to extend to the case of a compulsory alienation, as where, on bankruptcy, the business and goodwill have been sold by the trustee in bankruptcy.

MISREPRESENTATION—RESCISSION OF CONTRACT—ONUS.

Redgrave v. Hurd, p. 113, contains some lengthy judgments of the Court of Appeal on the above subject. The defendant resisted specific performance of a contract entered into with the plaintiff, on the grounds of misrepresentation by the latter as to the value of the business done by him as a solicitor. The evidence shewed that the defendant made some personal investigation into the affairs of the plaintiff to satisfy himself as to the value of his business, and Fry, J., citing *Atwood v. Small*, 6 Cl. & F. 232, held that if he made these enquiries carelessly and inefficiently, it was his own fault, and that having inquired to a certain extent, he could not now have the contract set aside. Jessel, M. R., in a long judgment, in which the other two judges concur, overrules this statement of the law. He reviews at great length *Atwood v. Small*, and concludes as to it that: "In no way, as it appears to me, does the real decision, or do the real grounds of decision support the proposition that it is a good defence to an action for rescission of a contract on the ground of fraud, to say that the man who comes to set aside the contract enquired to a certain extent, but did it carelessly and inefficiently, and therefore did not observe the fraud, and is thereby prevented from upsetting the contract."