

RECENT DECISIONS.

sonable cause is for the judge alone to determine, upon the facts found for the jury; as evidence of malice it is a question wholly for the jury, who, even if they should think there was want of probable cause, might nevertheless think that the defendant acted honestly and without ill will, or any other motive or desire than to do what he *bona fide* believed to be right in the interests of justice—in which case they ought not to find the existence of malice. Thus although it is an anomalous state of things that there may be two different and opposite findings in the same cause upon the question of probable cause—one by the jury and another by the judge—such is at present the law.

NEW TRIAL—VERDICT AGAINST EVIDENCE.

In *Solomon v. Bitton*, p. 176, the Court of Appeal held that the rule on which a new trial should be granted on the ground that the verdict was unsatisfactory as being against the weight of evidence, ought not to depend on the question whether the learned judge who tried the action was or was not dissatisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to.

WINDING UP—SET OFF.

In the *Ince Hall Mills Co. v. Daylas Forge Co.*, p. 179, the question for decision, stated broadly, was, whether in an action brought by a limited company in the course of compulsory winding up by the court for the recovery of the price of the goods delivered by the company after the commencement of the liquidation, but in execution of a contract entered into before liquidation, it is competent to the defendant to set off against this debt a debt due to him from the company incurred prior to the liquidation. Watkin William J. held that the set off was not allowable. He said the rights of the parties depended upon whether the debts which were sought to be set off one against the other, were mutual debts between the same parties and in the same in-

terest; and he held they were not. For from the moment of the winding up the company is stopped as an independent going concern; every transaction entered into by it from that moment is void, unless sanctioned by the court; and if it be allowed by the court to continue to carry on its business and enter into or complete transactions, it does so in a new interest and a new capacity, and solely for the purpose of winding up its affairs in the interest of its creditors and shareholders, except in one class of cases having no application to the present, viz., where transactions *bona fide* executed and carried out between the petition and the winding up order may in the discretion of the court be ratified and confirmed. While the practical effects of the defendants' contention would be that the company by a transaction which is void, unless sanctioned and ratified by the court, would be paying one creditor in full out of the assets of the insolvent company in preference to the other creditors.

LARCENY—MONEY DEMANDED WITH MENACES.

In *Reg. v. Lovell*, p. 185, the court for C. R. followed *Reg. v. M'Grath*, L. R. 1 C. C. R. 205, in holding that when A. obtains money from B. by menaces, A. is guilty of larceny, even though some money be owing to A. from B. for work done.

SOLICITOR—UNQUALIFIED PRACTITIONER.

In the next case *Abercrombie v. Jordan*, p. 187, the Court of Appeal held that an unqualified person who acts as a solicitor commits an offence against 6-7 Vict. c. 73, s. 2 (R. S. O. c. 140, s. 1) though he acts in the name and with the consent of a duly qualified solicitor. The offender here was an accountant, who, so far from being a solicitor's clerk, as he described himself, really so to speak employed the solicitor in question, C., and carried on business jointly with him, transacting sometimes with C. and sometimes alone various matters which it was alone competent to a solicitor to transact, generally using the name of C. and Co., but sometimes not, and