

DIGEST OF ENGLISH LAW REPORTS.

meeting shall be determined by three-fourths of the members present or voting by proxy; and upon all general questions involving . . . any essential addition or alteration in the original rules, . . . all subscribers in India not able to attend" shall be allowed to vote by a written communication. In 1852, the Directors of the Company ordered that no refund be allowed in future, and sent out a new set of rules to be submitted to the Service, omitting the rule as to refund. In 1853, the new rules were passed at a general meeting, by 108 to 2. *Held*, that the refund was abrogated by the subscribers, in 1853, and that payments in excess after that date were not recoverable. (Lord Hatherly, L. C. dissenting.) — *Secretary of State for India v. Underwood*, L. R. 4 H. L. 580.

CONDITION.—*See* CHARITY, 1; LANDLORD AND TENANT.

CONDITIONS OF SALE —*See* VENDOR AND PURCHASER, 2.

CONFIDENTIAL RELATION.

A decree was made in a foreclosure suit directing a sale in case of non-payment; at the sale the property was purchased by W., who was solicitor of a creditor of the mortgagee in a suit for the administration of the mortgagee's estate. Two days before the sale, W. took out a summons for the creditor to have leave to attend the proceedings in the foreclosure suit, but no order was made until after the sale. W.'s name was on the printed particulars of sale as one of the solicitors of whom particulars and conditions of sale might be obtained. *Held*, that the creditors were not precluded from purchasing, and therefore W. was not precluded by being their solicitor. — *Guest v. Smythe*, L. R. 5 Ch. 551.

CONSIDERATION.

Declaration that the plaintiff had alleged that certain moneys were due to him from H., and was about to take legal proceedings against H. to enforce payment; and thereupon, in consideration that the plaintiff would forbear from taking such proceedings for an agreed time, the defendant promised to deliver to the plaintiff certain bonds. Averment of forbearance. Breach, non-delivery of the bonds. Plea, that at the time of the agreement no moneys were due to the plaintiff from H. *Held*, that the plea was bad; otherwise, if it had alleged that the plaintiff knew he had no claim against H. — *Callisher v. Bischoffsheim*, L. R. 5 Q. B. 449.

See CONTRACT, 1.

CONSTRUCTION.—*See* APPOINTMENT; ATTORNEY; BANKRUPTCY, 2; CHARITY; COMPANY, 2; CONTRACT, 2, 3; ESTATE TAIL; STATUTE; VENDOR AND PURCHASER, 2, 3; WILL.

CONTRACT.

1. The plaintiff, by G. & B., stockbrokers, sold to M., a stock-jobber, 100 shares of stock, to be settled for on the next account day. The defendant agreed with M. to "take in" for him 100 shares, *i. e.*, to take the shares or deliver to him on a certain day the name of an unobjectionable purchaser to whom they should be transferred; if the name were not delivered, the vendor might sell out the shares. No such name was delivered; instead of it, M. gave G. & B. a memorandum, and on the same day it was arranged between the defendant and G. & B. that the delivery of the name by the defendant should stand over until required by them. It was found that the plaintiff was ready and willing to execute a transfer, but that the name delivered by the defendant was objectionable. The company being wound up, a call of £5 a share was made, and paid by the plaintiff. The action was brought to recover £500 so paid. *Held*, that there was a contract between the plaintiff, through his brokers, and the defendant, that the defendant would, when required, deliver a name, into which the shares might be transferred; that this contract was not performed by him, and that he was liable to the plaintiff for the amount of the call with interest. — *Allen v. Graves*, L. R. 5 Q. B. 478.

2. The defendants issued the following circular: "We are instructed to offer to the wholesale trade for sale by tender the stock in trade of E., and which will be sold at a discount in one lot. Payment to be made in cash. The tenders will be received and opened at our office," &c. The plaintiffs made the highest tender, but the defendants refused to accept it. *Held*, that there was no contract to sell to the person who should make the highest tender. — *Spencer v. Harding*, L. R. 5 C. P. 561.

3. The defendant, a merchant at Liverpool, sent to the plaintiffs, commission merchants at Mauritius, an order for sugar at a limited price, *viz.*, "You may ship me 500 tons; . . . fifty tons more or less, of no moment, if it enables you to get a suitable vessel . . . I should prefer the option of sending vessel to London, Liverpool or the Clyde; but if that is not compassable, you may ship to either Liverpool or London." He also sent a telegram, received at the same time with the letter, "If possible,