

## RECENT ENGLISH DECISIONS.

porated under the Ontario Letter Patent Act, which provides for set-off, *Macbeth v. Smart* may be held to define the law of set-off administered by the Courts in actions by creditors of a company against a shareholder for amount of his unpaid stock, and in so far as the proceedings taken by the liquidator under the Winding up Act against the shareholders of a company partake of the character of such an action, it is probable that case may be found to apply.

And in so far as the claims of creditors proveable against the company resemble the case in 25 C. P. 503, the law of set-off as administered by the Court in that case would enable the liquidator to set-off the amount of any unpaid stock due by such creditor as a shareholder in the company.

These anomalies render the administration of the Winding up Act difficult to both practitioner and judge, and call for legislative action so that the law may be made uniform as respects all classes of claim and all classes of companies.

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PROCEEDING to the January number of the *Law Reports* we find they consist of 14 Q. B. D. p. 1-54; 10 P. D. p. 1-5; and 28 Ch. D. p. 1-102. Of the first two of these the only cases requiring notice are practice cases, which will be noted in another place. In the last the case of *Smith v. Land and House Property Corporation*, at p. 7, requires noting.

SPECIFIC PERFORMANCE—MISREPRESENTATION—  
"DESIRABLE TENANT."

Here, in an action for specific performance of a contract for the sale of real estate, the defendants claimed cancellation of the contract or compensation on the ground of misrepresentation by the vendors. The misrepresentation consisted in a statement in the particulars that the

property "was let to a most 'desirable tenant.'" As a matter of fact, the vendors knew that the tenant had not paid his last rent, though over-due; and that he had only paid his last instalment but one after threats of distress, and by dribbles; and this case shows (1) in the language of Bowen, L.J., that "a tenant who has paid his last quarter's rent by dribbles under pressure must be regarded as an undesirable tenant"; (2) that, though it appeared that the words "a most desirable tenant" were inserted by the auctioneer without instructions from the vendor, this did not excuse the latter, for, in the language of Baggallay, L.J., at p. 13, it is "the duty of a vendor to see that the property is not untruly described, and he cannot be held to be excused because a description which the property will not bear has been inserted by the auctioneer"; (3) that where one is sent to a sale merely as an agent for the purpose of buying a property for the best price he can get it up to a certain sum, nothing that he may have heard or said on the occasion of the sale can be evidence against his principals, and therefore evidence was not admitted in this case to prove certain conversations alleged to have taken place between the auctioneer and such agent of the vendees, tending to show that he knew something to the tenant's disadvantage.

## STATEMENT OF OPINION—STATEMENT OF FACT.

There are also in this case certain *dicta* of Bowen, L.J., at p. 15, which are worth remembering. He says:—"It is material to observe that it is often fallaciously assumed that a statement of opinion cannot involve the statement of a fact. In a case where the facts are equally well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is, in a sense, a statement of a fact, about the condition of the man's