

## RECENT ENGLISH DECISIONS.

tended was wrong, and that the agreement had a totally different meaning, and should ask the Court to attach that meaning to it, and grant on that footing specific performance, the granting of which is in the discretion of the Court."

## COVENANT.

In *Nicoll v. Fenning*, p. 258, the vendors of a certain portion of an estate of twenty-five acres covenanted with the vendee, C., that they, "their heirs and assigns, should not thereafter sell or convey any portion of the estate without requiring the purchaser to enter into a covenant with them not to allow any building to be erected thereon to be used as a public house, tavern or beer shop." Afterwards further portions of the estate were sold, the various purchasers being required to covenant not to use, or permit to be used, any building on the premises assigned as a tavern, public house or beer shop. The action was brought by the assignee of the first vendee, C., to restrain one of the subsequent purchasers of a portion of the estate, and a yearly tenant of the said purchaser, from using a building on the estate as a beer shop. Bacon, V. C., granted an injunction and an enquiry as to damages. He said, referring to the first covenant: "Every person to whom they (the vendors) afterwards sold was entitled to the benefit of that covenant. \* \* \* From that date the rest of the property was subject to that restriction; and from that date it was not competent for the vendors in equity to dispose of that property, unless they protected not only C. but all the rest of the owners of the property, from the inconvenience of having any other public house or beershop than that for which C. held a lease. \* \* \* Was it capable of argument in a Court of Equity that the persons who claimed the benefit of that covenant were precluded from suing to prevent its breach by a person who knew when he bought that he bought subject to that restriction? \* \* \* The functions of a Court of Equity are to prevent the commis-

sion of frauds of any sort, and it is the duty of the Court to suppress chicanery or ingenious devices for the purpose of evading a plain distinct obligation. \* \* \* All the plaintiff asks in this case is to be put in the same position as if the covenant had been made by the defendant directly with him. But whoever else might have sued at law, in enforcing the contract, he would be at best but a trustee of the covenant for the benefit of the plaintiff, who had a right to the benefit of it."

## PATENT—PRIOR USE IN COLONY.

In *Rolls v. Isaacs*, p. 268, Bacon, V. C., had to decide whether the prior public use in Natal, a British Colony, having power to grant its own letters patent, invalidated letters patent granted in England licensing the use of a certain invention in the United Kingdom. He held that it did not. Counsel, impeaching the patent, argued that there was a proviso making void the patent if it should appear to the Crown that the petitioner "is not the first and true inventor thereof within this realm as aforesaid," and that therefore the petitioner shall be the first and true inventor in all parts of the realm. The learned V. C., however, held that "inasmuch as there are in Natal the means of granting patents within that realm (if it is to be called by that name) if the Queen of England grants a patent for the exercise of an invention in this realm," (the United Kingdom,) "and the thing be a new invention in this realm, the fact of its having been practised previously in Natal cannot affect the power of the Crown to grant to the petitioner the right to exercise the invention which he for the first time communicates to the people of this realm."

## TRUSTS—RESTRAINT ON ANTICIPATION.

In the next case, *in re Benton*, p. 277, a testatrix left her real and personal estate to trustees on trust to sell, and the trustees were directed to invest and stand possessed of the proceeds upon trust for the sons and daughters in equal shares, those to the latter