

RECENT ENGLISH DECISIONS.

who occupy similar positions of trust and dignity—to emulate which will be a duty, but to equal which will indeed be difficult.

We publish in another place the address presented to Judge Gowan by the Bar of his County on the occasion of his retirement, and his reply thereto.

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The September number's of the Law Reports comprise 11 Q. B. D. p. 313-485; 8 P. D. p. 149-178; 23 Ch. D. p. 577-689.

BILLS OF LADING DRAWN IN TRIPPLICATE—TENDER OF TWO ONLY—MERCANTILE USAGE BASED ON CREDIT NOT ON DISTRUST.

In the first of these the first case requiring notice is *Sanders Brothers v. Maclean & Co.*, p. 327, which is an interesting decision on bills of lading and mercantile law and usage in connection therewith. The action was brought by the vendors on a contract entered into between them and the defendants for the sale and purchase of cargoes of iron. The contract merely stated that the cargo was to be paid for in London in cash in exchange for bills of lading. Two parts of the bill of lading of the particular cargo in question were tendered to the defendants on August 3rd, 1880, but they rejected those on the ground that it appeared, by the parts of the bill of lading which were presented to them, that the bill of lading had been drawn in three parts, and two only were tendered to them. Thus, in the words of Brett, M. R., the question was whether, "where, by the terms of an ordinary contract of sale relating to goods shipped, payment is to be made against bills of lading, it is a part of that contract that all the existing copies of the bill of lading must be offered in order to entitle the sender of the goods to payment?" The Court of Appeal unanimously decided this question in the negative, and they held that if the purchaser refuses to accept the bill of lading tendered and to pay, he does so at his

own risk as to whether it may turn out to be the fact or not, that the bill of lading tendered was an effectual one, or whether there was another of the set which had been so dealt with as to defeat the title of the purchaser as indorsee of the one tendered. As to this, Cotton, L. J., observes, at p. 339:—"Now although undoubtedly if the third part of a bill of lading should be indorsed and parted with to some party before the tender of the first part, such tender would not be a compliance with the contract, because that which would be tendered would not be an effectual bill of lading, yet, in my opinion, if the purchaser chooses to refuse to accept the cargo, because he does not know whether in fact the tender does comply with the terms of the contract, and whether the other part of the bill of lading has been parted with or not, he does so at his peril, and if it should turn out on investigation that in fact what was tendered to him was an effectual bill of lading, effectual to pass the property in the cargo, then he broke his contract by not paying the money, and by refusing to accept the cargo when such effectual bill of lading was tendered to him." Bowen, L. J., at p. 342, makes some very interesting observations on mercantile usage generally. He says:—"If we were to hold such a tender is not adequate, we must, as it appears to me, deal a fatal blow at this established custom of merchants, according to which, time out of mind, bills of lading are drawn in sets, and one of the set is habitually dealt with as representing the cargo independently of the rest. If the set, for purposes of contracts like the present, must always be kept together, the whole object, be it wise or unwise, of drawing bills of lading in triplicate is frustrated. For if one of the set were lost, or had been forwarded by the shipper or any subsequent owner of the cargo to his correspondent by way of precaution, the cargo becomes unsaleable. The only possible object of requiring the presentation of the third original must be to prevent the chance, more or less remote, of fraud on the part of the