

RECENT ENGLISH DECISIONS.

usually have. If, however, he goes away, if he gives up all power of dealing with the house as master, then I do not think that it is possible to say that he takes another person to lodge with him;" and the other Judges of the Court of Appeal concur in this view.

This completes the cases in the January number, and we can now proceed to the February number of the *Law Journal* Reports.

SPECIFIC PERFORMANCE—MISREPRESENTATION.

The first case in this number, *Goddard v. Jeffreys*, requires notice. In it a purchaser resisted specific performance of a contract for the sale of certain houses (i.) on the ground of mistake; (ii.) on the ground of misdescription. (i.) As to mistake, Kay, J., reviewing the case, deduced the following as the rule in respect to what sort of mistake on the part of the purchaser will enable him to resist specific performance:—"A purchaser may escape from his bargain on the ground of mistake, if it was a mistake that the vendors contributed to—that is, in other words, if he was misled by any act of the vendors; but if he was not misled by any act of the vendors—if the mistake was entirely his own—then the Court ought not to let him off his bargain on the ground of a mistake made by himself solely, unless the case is one of considerable harshness and hardship;" and taking this as the rule, he decided against the defendant in the case before him. (ii.) As to the question of misdescription, the purchaser alleged (a) that the length of the term for which a tenant of the vendor held a portion of the property was misstated in the particulars of sale. Kay, J., however, held that the *onus* was upon the purchaser to prove,—where it was not a question of the length of the term sold, but of the length of the possession of a tenant under the vendor—that a misdescription of the length of the tenancy tended to injure him; and that as in the case before him he had not ventured even to allege that he would suffer any injury by it, this ground entirely failed;

(b) that although before the time fixed for the completion of the purchase, the rental equaled the amount stated in the particulars, yet at the time said particulars were issued, the rents were not so high as stated. Kay, J., held that this defence was of no more weight than the others.

SOLICITOR—FRAUD OF CO-PARTNER.

Biggs v. Brice, p. 64, illustrates the rule that all the partners of a firm (in this case a firm of solicitors) are liable for money received by their firm in the course of their regular business, and in the discharge of its duty. In the present case the money was the deposit paid over by auctioneers, selling property under an order of the Court, to the solicitors of the party having the conduct of the sale. Bacon, V.C., said: "The innocent partners are the solicitors for the plaintiff having the conduct of the sale—officers of the Court, who know the decree for sale, and know that it is their plain duty to see that the deposit and the proceeds of sale are paid into Court. It was their plain duty to receive this deposit from the auctioneer, and they would have neglected their duty if they had not done so." While on this subject it may not be out of place to refer to *Re attorney*, 7 P. R. 174, in which Wilson, J., observes that in this country we have no such class of persons as scriveners, but solicitors receive money to invest generally, in the usual and ordinary course of their profession: thus showing that the distinction drawn in England between cases where one of a firm of solicitors has misappropriated money received to invest generally, and cases where he has misappropriated money received for the purpose of effecting some special investment, cannot apply here. In the former case, it is held in England, innocent partners are not liable, because to receive money for investment generally is not part of the proper business of solicitors, but of scriveners. (*Bourdillon v. Roche*, 27 L.J. Ch. 681; *Plumer v. Gregory*, 43 L.J. Ch. 803; *Lindley on Partnership*.)