

RULES OF COURT—RESCISSION OF CONTRACT.

and without fear of man. That they and their successors may be enabled truly to do justice within these walls, so long so the British name shall endure; that the blessing of the Almighty may rest upon their labours: that the law which they administer may ever be a terror to evildoers, and a strength and support to those who have right on their side; and that your Majesty may be preserved for many future years, still to shed fresh lustre upon a throne founded on law, sustained by justice, and established in the hearts of your Majesty's people, is the fervent prayer of all the Judges of your Majesty's Supreme Court of Judicature, for whom on this august occasion it has been my privilege to address your Majesty."

RULES OF COURT.

A valued correspondent draws our attention to the provisions of O. J. A. sec. 54, ss. 3, which appears to get over some of the difficulties suggested in our last number. It is possible, also, that the Interpretation Act, s. 8, ss. 33, to which our correspondent also refers, removes the doubt raised by us as to the necessity of all the Judges of the High Court concurring in the making of Rules for the High Court. If this be so, any doubt as to the validity of the Rules already passed would seem to be set at rest. The main objections to the present system, discussed in our previous remarks, can, however, hardly, we think, be disputed—namely: that the present Rule-making body, even though the minimum number be seven, as our correspondent avers, is too large: that there is a discordance of aim among its members, and a corresponding want of harmony of action in the body, as well as a difficulty in getting the necessary number of Judges together for a sufficient time, and a danger that crude suggestions may be formulated into Rules without sufficient consideration. Moreover, that when Rules are passed, it seems to be nobody's business to see that they are published speedily in an authentic form for the information of those for whose guidance they are framed. We

believe Rules passed in the beginning of January have not yet been published officially.

These objections and difficulties, we are sure, no one can be more anxious to see removed than the learned Judges themselves.

RESCISSION OF CONTRACT.

Two cases in which the same principle of law was involved appear to have been recently decided; the one by the English Court of Appeal, *Mersey Steel and Iron Co. v. Naylor*, 47 L. T. 369, and the other by the Q. B. Division of Ontario, *Midland Ry. Co. v. Ontario Rolling Mills Co.*, 19 C. L. J. 31. In both cases the question at issue was whether a wrongful refusal to pay, pursuant to a contract, for part of the goods delivered thereunder, amounted to a rescission or renunciation of the contract, or whether the party refusing to pay, could nevertheless recover damages for breach of contract for the non-delivery of the remainder of the goods. In the English case the Master of the Rolls declared that there is no absolute rule which can be laid down in express terms as to whether a breach of contract on the one side, has exonerated the other from performance of his part of the contract. It is stated in *Freeth v. Burr*, L. R. 9 C. P. 208, 29 L. T. N. S. 773, that the question in such cases must turn on "whether the acts and conduct of the party evince an intention no longer to be bound by the contract," and this statement of the law was cited with approbation by the Master of the Rolls. In the English case the refusal to pay was based on a mistake in law as to the legal right of the plaintiff company to receive the money—a petition for its winding up having been presented. In the Ontario case the refusal to pay was caused by a mistake of fact, as to the delivery of part of the goods for which payment was claimed. And in both cases, it was held that the refusal to pay under the circumstances was no abandonment of the contract; and in both these cases which were brought to recover the price of the goods actually delivered,