

RECENT ENGLISH DECISIONS.

ment constituting an addition to the dividend so as to make the agreement no longer *nudum pactum*, but an agreement for valuable consideration ; then there would be satisfaction."

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Proceeding with the Law Reports for April there still remain for review the cases in 19 Ch. D., pp. 311-519; 8 Q. B. D., pp. 317-444; 7 P. D., pp. 5-20.

PARTIES—PAYMENT INTO COURT—COSTS.

In the first of these, at p. 326, is the case of *Heatley v. Newton*. Here the plaintiff, who had purchased certain property at an auction, brought an action against the vendors and auctioneers to have the contract rescinded, the deposit, £1,300, repaid with interest, the costs of the action, and for damages. He alleged that no real bidding took place at the auction; that a number of pretended bids were taken by the auctioneer from time to time; that the whole was a fraudulent arrangement to run up the price; and that the auctioneer, as well as the vendors, must be treated as parties to the fraud; and that at all events a fraud was committed by the auctioneer in pretending to receive bids which he never in fact received at all. The auctioneers applied for liberty to pay the deposit into Court, and to have the action dismissed against them on such payment being made. The M. R. did not make the order exactly as asked, but he made an order that upon the money coming into Court, and upon the auctioneers undertaking to pay the interest on the deposit up to the time of payment into Court, and the costs *up to that time*, in the event of the Court holding the plaintiffs' to be entitled to such interest and costs, and of the other defendants' failing to pay them, the proceedings should be stayed as against the auctioneers. The Court of Appeal now held that this was not a proper order, for the reasons thus stated by Lindley, L.J., at p. 341:—"Any de-

fendant, I apprehend, can stay proceedings in an action upon giving the plaintiff all he asks for as against him, and if the auctioneers had said to the plaintiff, 'Here is £1,300 interest and costs up to this time—let us go,' I could understand it; but that is not what they have done, nor what they intended to do. What they have done is this: they have paid the £1,300 into the Court in the hope that it would stop interest, (as to which I say nothing now, although my impression is rather against them,) and they say:—"We will not pay that to you, but we leave you to discuss with the vendors as to who is to have it; if you are right you will get it, and if you are wrong the vendors will get it; we have got rid of it and all liability as to the costs of the action subsequently to this time.' I am of opinion that they cannot take this course. They must abide the consequence of that which is alleged to be their wrongful act. If they are wrong they are liable to a judgment of £1,300 with interest and costs, and that liability cannot be got rid of by any such process as this. And therefore," he said, "the auctioneer's summons ought to have been dismissed with costs."

DISCOVERY—PARTIES.

An interesting subordinate point is discussed in this case. Counsel for the plaintiff argued that he was entitled to keep the auctioneers before the Court, apart from any question of personal pecuniary responsibility, upon the ground alone of being able to obtain discovery from them which would enable them to establish their case as against the other defendants. As to this Lush, L.J., says:—"I quite agree that you cannot claim to retain parties as defendants in a suit merely because you want to interrogate them; but it appears to me that where they are properly made defendants it is a ground for not letting them off summarily, that there is a very great advantage accruing to the plaintiffs from being at liberty to interrogate them instead of simply calling them as witnesses at the trial.