

and the defendant's examination, in which he admitted that he had been convicted and sentenced. At the trial counsel for the defendant pointed out that fraud had not been proved in the action, but the judge held that was not necessary as the defendant admitted receiving money by mistake, or overpayment, from which he thought the law would imply a promise by defendant to pay back the money, and he gave judgment for the interest by way of damages. The Judicial Committee (Lords Macnaghten, Davey, Robertson and Lindley) under these circumstances came to the conclusion that the Crown must be taken to have practically abandoned its claim on the ground of fraud, and rested it on mistake, and although clearly of opinion that money obtained and retained by fraud, may be recovered with interest, yet, in a case of money obtained by mistake, interest is not payable, and they therefore reversed the decision as to interest. On the question of costs they announced that hereafter the Judicial Committee intended to follow the practice in the House of Lords, and in cases where the Crown and a subject are interested the rule will be that the Crown neither pays nor receives costs, unless the case is governed by a local statute, or there are exceptional circumstances justifying a departure from that rule.

LIEN — CHATTEL — HIRE-PURCHASE AGREEMENT — LIABILITY TO
REPAIR HIRED CHATTEL — LIEN ON CHATTEL FOR REPAIRS —
OWNERS.

In *Keene v. Thomas* (1905) 1 K.B. 136 the plaintiff sought to recover possession of a dog-cart which he had let to one Robertson under a hire-purchase agreement under which Robertson agreed to "keep and preserve the dog-cart from injury." The vehicle having got out of order, Robertson sent it to the defendant to repair, and the defendant claimed a lien thereon for the expense of the repairs. Default having been made by Robertson in payment of the instalments of his purchase money, the plaintiff claimed to be entitled to possession of the dog-cart free from the defendant's alleged lien, but the Divisional Court (Lord Alverstone, C.J., and Kennedy, and Ridley, J.J.) held that as, by the terms of the agreement, Robertson was bound to keep the dog-cart from injury, he had a right to send it to the defendant for repair, and it thus being rightfully in the defendant's possession he was entitled to the lien which he claimed both against Robertson and the plaintiff.