

RECENT ENGLISH DECISIONS.

retail dealers sold to persons who bought it as the defendants' soap. It may be noted that the plaintiffs' case failed so far as they relied on having a trade mark; but it was held that the case was within the common law doctrine that a man cannot pass off his goods as those of another.

MORTGAGOR, AND MORTGAGEE—BANK—LOAN TO CUSTOMER—TRANSFER OF STOCK BY THREE PERSONS TO SECURE LOAN—TRUST—RETRANSFER TO NOMINEE OF BORROWER—LIABILITY OF MORTGAGEE.

Magnus v. Queensland National Bank, 36 Chy. D. 25, is a decision of Kay, J., which illustrates the duty of mortgagees to retransfer securities on the repayment of the loan, so that they may re-vest in the same parties as those from whom they received them. In this case Goldsmid, a stock broker, was one of three trustees, and he proposed to his co-trustees to sell certain B. stock belonging to the trust, and purchase N. E. stock with the proceeds. In order to carry out this proposed change of investment the co-trustees concurred with Goldsmid in executing a deed of transfer of the B. stock to Buchanan and Smith who were respectively manager and accountant of the defendant bank. Goldsmid was a customer of the defendant bank, and borrowed a large sum of money from them, and, unknown to his co-trustees, deposited the transfer of the B. stock with them as security for the loan, Buchanan and Smith being transferees as trustees for the bank, and Goldsmid representing to them that he had the authority of his co-trustees to give the stock as security. The deed of transfer was sent to the B. company, and registered after notice to the co-trustees. In February, 1882, Goldsmid paid off the loan, and then the bank, at his request, and without notice to the co-trustees, authorized Buchanan and Smith to transfer the B. stock to purchasers from Goldsmid. Goldsmid received the purchase money and invested the same in the purchase in his own name of N. E. stock. This stock he subsequently sold, and converted the proceeds to his own use; he however paid dividends on this investment to the *cestui que trust* for some time, but ultimately absconded. The present action was then brought by the *cestui que trust* of the trust estate and the co-trustees to compel the bank to make good the loss of the B. stock to the trust estate, on the ground that they, by transferring the stock to

purchasers, improperly placed the proceeds of the B. stock in Goldsmid's sole control, whereas they should have retransferred the stock to the three trustees by whom it had been transferred to them; and Kay, J., held that the bank had acted improperly, and was therefore liable to the plaintiffs as claimed. He thus states the case at p. 35:

A customer of a bank borrows money of them, and hands to them as security a transfer of railway stock by himself and two other persons—his co-trustees. Subsequently he pays off the loan, and the bank, instead of retransferring to the three mortgagors, transfer to a nominee of their customer. That, for the purpose of this case, is precisely as though they had transferred to himself or any stranger. Thereby the stock was lost to the trust estate. In my opinion, the bank are liable for the value of the B. stock at the time when they transferred it.

COMPANY—SHARES—FRAUDULENT MORTGAGE OF SHARE CERTIFICATES—RIGHT OF LEGAL OWNER OF SHARES AS AGAINST MORTGAGEE—ESTOPPEL.

Passing now to the *Colonial Bank v. Hepworth*, 36 Chy. D. 36, we have a decision of Chitty, J., upon the conflicting rights of the legal owner and an equitable mortgagee for value without notice. The subject-matter of the contest was certain shares of the New York Central Railway Co. For these shares the company issues to the registered shareholders share certificates on the back of which there is a blank form of transfer, and a blank form of power of attorney to execute a surrender and cancellation of the certificate. The mode of transfer was as follows: The registered shareholder signed the transfer and power of attorney, leaving the name of the transferee blank, and when this blank transfer reaches the hand of some holder who desires to be registered, his name is filled in by himself, or on his behalf, and the certificate, on being left with the company, was cancelled by them, and the transferee registered as owner, and a new certificate issued in his name. In August, 1883, the defendant employed Thomas & Co., a firm of brokers, to buy him 240 shares of this stock, which they accordingly did, and he left the certificates in their hands with directions to get him registered as owner. Thomas & Co. subsequently, unknown to the defendant, fraudulently deposited these share certificates with the plaintiff as security for a loan to themselves. At the time of the deposit the name of the transferee had not been filled in. Fearing that their fraud would be