

money obtained by his partner by a dereliction of duty, and that it was in law the money of the company, he might have had a good defence. But he was acquainted with the whole transaction from first to last. He knew where the money which was brought into the partnership came from, and that it could not belong to his co-partner. With all this knowledge, his liability cannot be separated from that of Coleman: *Liquidators Imperial Mercantile Credit Association v. Coleman*, L.R., 6 H.L., 189.

A similar prohibitory law applies to the dealings of officers of a corporation, especially where the officer comes within the definition of "agent."

*Secret Contracts.*—A contract was made between two companies for the laying of a cable, in which there was a condition that the work should be approved of and certified by the engineer of the cable company, who was to be paid a commission of one and a quarter per cent. on the company's outlay. It was discovered that the engineer had a secret sub-contract with the construction company that he should lay the cable himself for a fixed sum. The Court set aside the contract, and ordered a refund of the moneys paid under it: *Panama, etc., Telegraph Co. v. India rubber, etc., Works Co.*, 32 L.T.N.S., 238, 517.

*Purchases of corporate property.*—The Courts of the United States have held that the disqualifications to as applicable to directors, attach to certain officers of the company, other than the president and directors, and that purchases by them of the corporate property at an execution sale, is a purchase for the benefit of the company: *Cook on Stockholders*, s. 653.

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## COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for December are continued:

ACTION OF DECEIT—MISREPRESENTATION—FRAUD—COMPANY—MISREPRESENTATION IN PROSPECTUS.

*Derry v. Peek*, 14 App. Cas. 337, is the action which was known as *Peek v. Derry* in the Courts below, and the decision of which by the Court of Appeal, 37 Chy.D. 541, we noted ante vol. 24, p. 294. The action it may be remembered was brought by the plaintiff to recover damages against the directors of a company for misrepresentations contained in the prospectus, in consequence of which the plaintiff was induced to become a shareholder. The Court of Appeal overruling Stirling, J., held the plaintiff entitled to succeed, but the House of Lords after a very full discussion of the principles governing the case have reversed the judgment of the Court of Appeal and restored that of Stirling, J., their lordships holding that it was incumbent on the plaintiff in such an action to establish actual fraud, either by showing that the representation was made knowing that it was false, or without belief in its truth, or recklessly without caring whether it was true or false. And a statement made carelessly, though in the honest belief that it was true, is not fraudulent. The misrepresentation in this case was that the company was entitled to operate a tramway by steam power, whereas the right to do so depended on their obtaining the consent of the Board of Trade,