

RECENT ENGLISH DECISIONS.

tion of the proceeds, which, if they are in the hands of the criminal or of an agent, who holds them for him, it should be granted. If the person holding the proceeds does not hold them for the criminal, it should not be granted.

The question came before the court, upon motion for a *certiorari*, and it was objected that the order in question was wrong in point of law; but the learned Chief Justice points out that that is an objection which can only be taken by way of appeal, and not upon application for a *certiorari*, on the ground of excess of jurisdiction.

A discussion of some other questions affecting the restitution of stolen property will be found *ante*, vol. 19, p. 198.

PRIORITY BETWEEN EQUITIES—NEGLIGENCE—SEAL.

Turning now to the cases in the Chancery Division, *The National Provincial Bank of England v. Jackson*, 33 Chy. D. 1, demands a passing notice. This action was a contest for priority between a mortgagee by deposit and the beneficial owner of the estate, who had, through the fraud of the mortgagor, been induced to execute a conveyance to him of the property affected by the mortgage, and the Court of Appeal held that the mortgagees, having had constructive notice of the fraud, were guilty of negligence, and that they must, therefore, be postponed. It was also determined, that although a legal mortgage cannot be postponed to a subsequent equitable mortgage, on the ground of any mere carelessness or want of prudence, yet this rule does not apply as between two equitable claims. A question also arose, whether a deed of reconveyance executed by the mortgagor to the defendants was a valid deed, it having only a ribbon to which the seal is usually affixed, but not any seal or impression; and it was held that the deed was invalid for want of a seal.

COMPANY—CONTRACT WITH TRUSTEE FOR INTENDED COMPANY—RECTIFICATION.

In re Northumberland Avenue Hotel, p. 33, Chy. D. 16, a written agreement was entered into between W of the one part and C as trustee for an intended company to be called the N. Company of the other part, whereby it was agreed that W, who was entitled to a building lease, would grant an under-lease to the company, and that the company should erect buildings. The company was registered

on the following day. The articles of incorporation adopted the agreement made by W with C, and provided that the company should carry it into effect. No fresh agreement with W was signed or sealed on behalf of the company, but the company took possession of the land, expended money in building on it, and acted on the agreement which they considered to be binding on them. The company having failed to complete the buildings, the original lessors of W re-entered, and the company went into liquidation. In these liquidation proceedings W claimed damages against the company for breach of the agreement; but it was held by the Court of Appeal (affirming Chitty, J.) that the agreement having been entered into before the company was in existence, was incapable of ratification by the company, and that the acts of the company having been done under the erroneous belief that the agreement between W and C was binding on the company, were not evidence of any fresh agreement having been entered into between the company and W on the same terms as the agreement between W and C, and therefore, W could not succeed.

RECTIFICATION OF AGREEMENT—MONEY PAID UNDER PROGRESS OF LAW—RES JUDICATA.

Caird v. Moss, 33 Chy. D. 21, is a case deserving attention. The plaintiffs had built a ship for B, and a considerable sum had remained due to them for the price, for which they had a lien on the ship. The defendant made advances to B, and an agreement was entered into between the three parties that the plaintiffs should sell the ship, and pay the defendant and themselves the amounts due out of the proceeds. The agreement was obscure, and left it doubtful whether or not the plaintiffs were entitled to pay themselves in priority to the defendants. The ship was sold, and the defendant sued the plaintiffs for an account of the proceeds; in this action the plaintiffs made no claim for a rectification of the agreement, and it was held that, according to its proper construction, the defendant was entitled to be first paid. The plaintiffs paid the defendant in accordance with the order of the court, and then brought the present action to have the agreement re-formed. The defendant pleaded that the agreement had been executed, and the money paid, under the order