The plaintiffs, claiming a right by prescription to the water, commenced the action to restrain them. The Court of Appeal (affirming the Vice Chancellor of the County Palatine) held that if the making of the drain was not authorized by the lease (as to which, the court pronounced no opinion), it was made and enjoyed either under the belief of both parties that it was authorized by the lease, or under a comity between landlord and tenant, and that there was no enjoyment "as of right," so as to give the tenant a right to the water after the lease expired.

TRUSTEE—BREACH OF TRUST—FRAUD OF ONE TRUSTEE—FOLLOWING TRUST FUND—PURCHASER FOR VALUE.

In *Taylor* v. *Blakelock*, 32 Chy. D. 560, an attempt was made to follow trust moneys which had been misappropriated, into the hands of trustees who had received them innocently without notice of the breach of trust. One Carter, being trustee with the plaintiff under a will, and trustee with the defendant under a settlement, having misappropriated a portion of the settlement fund, applied an equal portion of the will fund to the purchase of stock which he transferred to the names of himself and the defendant. Both the plaintiff and defendant were ignorant of Carter's fraud, and the defendant and the *cestui qui trust* under the settlement had no notice that the stock was purchased with part of the will fund. Carter having died insolvent, the plaintiff thereupon sought to compel the defendant to transfer the stock to him; but the Court of Appeal (affirming the judgment of Bacon, V. C.,) held that the defendant having, by accepting the stock, given up the right to sue Carter for his debt to the trust, was entitled to be treated as a purchaser for value without notice, and was therefore entitled to retain the stock as part of the settlement fund. On the part of the plaintiff the doctrine that an assignee of a chose in action takes subject to all the equities attaching to it was invoked, but Cotton, L.J., as to that argument says, at p. 567:

> It is said this Caledonian Railway stock, the ransfer of which the plaintiff seeks to obtain, is a chose in action, and that anyone who takes an assignment of a chose in action takes it subject to all existing equities. But that rule applies only to a chose in action not transferrable at law; that is not the rule as regards the right to sue on a bill of exchange or promissory note.

ADMINISTRATION—FOLLOWING ASSETS.

In *Blake* v. *Gale*, 32 Chy. D. 571, the Court of Appeal affirmed the decision of Bacon, V. C., 31 Chy. D. 196, which we noted *ante*, p. 101. The case, it will be remembered, is one in which the plaintiffs as unpaid mortgagees, whose interest had been paid up to 1880, but whose security had since proved worthless, sought to make the residuary legatees of the mortgagor's estate refund the legacies paid them some twenty years ago. The Court of Appeal, in affirming the decision of Bacon, V. C., proceed upon the ground that the mortgagees were aware of the distribution of the estate by the executors, and had acquiesced in it, and that the right they sought to enforce was a mere equity, and that, under the circumstances, this acquiescence debarred the plaintiffs from recovery. Cotton, L.J., says at p. 580:

> It must be remembered that the right of the creditors to proceed against the residuary legatees is simply a right given by equity in order that justice may be done. It does not depend on any right against the executor, because, even if the executor has distributed the assets under the decree of the court, so that there is no claim against him, still creditors who come in within a reasonable time and have not in any way barred themselves, retain the right as against the legatees. Here having regard to the knowledge and assent of these creditors, in my opinion it would be wrong to give them relief against the legatees.

MORTGAGE ACTION—RECEIPTS BY RECEIVER AFTER REPORT AND BEFORE DAY FIXED FOR REDEMPTION.

The Court of Appeal in *Fenner-Fust* v. *Needham*, 32 Chy. D. 582, affirms the decision of Pearson, J., 31 Chy. 500, noted *ante*, p. 158, holding that when a receiver appointed in a mortgage action receives money in the interval between the making of the report and the day fixed for redemption, the mortgagee is not entitled to the money so received, except upon the terms of bringing it into account, and having a new day appointed for redemption. This delay may, according to the practice prevailing in Ontario, be obviated by giving notice of credit under Chy. Ord. 457.

MONEY PAID TO TRUSTEE IN BANKRUPTCY IN MISTAKE OF LAW.

Mr. Justice Kay, in *Re Brown, Dixon* v. *Brown*, 32 Chy. D. 597, by analogy to the cases of *Ex parte James*, 9 L. R. Chy. 609, and *Ex parte Simmonds*, 16 Q. B. D. 308, decided that where money had been paid to a trustee in bankruptcy in mistake of law it must be refunded by him.