

RECENT ENGLISH DECISIONS.

ceeds of the execution (which had been brought into Court and which were insufficient to satisfy the amount endorsed on the writ) to be paid the plaintiff, and ordered the claimant to pay the plaintiff's and sheriff's costs including the latter's possession money. From this order the sheriff appealed on the ground that his costs and possession money should have been ordered to be paid out of the fund in Court and that relief over should have been given to the execution creditor against the claimant for the amount so paid. The Court of Appeal gave effect to this contention holding that the C. L. P. Act, 1860 (Imp. St. 23 & 24 Vict. c. 126), s. 17, which enacts that "The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them," did not render the order conclusive as against the sheriff, upon this point, however, Fry, L.J., dissented, and Bowen, L.J., doubted: but the Court was unanimous that the sheriff was entitled to be paid out of the fund, in priority to the execution creditor, his costs and possession money; and that the execution creditor should have relief over against the claimant, for the amount so paid the sheriff.

Cotton, L.J., thus stated the practice:—"We have consulted the other judges, and some of the officers of the Queen's Bench Division, and we find that they consider the rule to be, and we think it is a reasonable rule, that the sheriff is entitled to be made safe, that he has a right to say to the person who put him in motion:—"pay the amount of my proper charges." The strict form of order, therefore, would be when a claim by a third party fails that the charges should be paid in the first instance by the execution creditor to

the sheriff, and that the creditor should have them over against the third party."

ADVANCES TO COMPANY TO CREATE A FICTITIOUS CREDIT
—FRAUDULENT AGREEMENT.

The next case to be here noticed is that of *In re Great Berlin Steamboat Company*, 26 Ch. D. 616, C. A., in which the Court of Appeal laid down the salutary rule that when a man places money in the hands of a company merely for the purpose of giving the company a fictitious credit in the eyes of third persons, as against the creditors of the company, he cannot, after a winding up order has been granted, claim the money as his own. The company in question appears to have been a "paper" company without any paid up capital, and the directors applied to the appellant Bowden to advance £1,000 to be placed to the credit of the company "for the purpose of having a creditable balance in case of inquiries from Berlin bankers, but not for the general purposes of the company; such money to be returned intact at the expiration of a month;" on these terms the money was advanced. Subsequently the appellant consented to payment out of the greater portion of the money for the purposes of the company, and only a balance of £99 15s. *od.* remained at the company's credit when an order to wind up the company was granted. Bowden claimed the £99 15s. *od.*, but the Court of Appeal, affirming Bacon, V.C., held that he was not entitled thereto. Lindley, L.J., said:—"I am not satisfied that this was not a case of loan as distinguished from trust, and if that is the true view it is fatal to the appellant's case. But if it was a case of trust, the appellant must show what the trust was. He does so, and shews an illegal trust, since the purpose of the advance was to give a fictitious credit to the company." Baggallay and Lindley, L.L.J., were of opinion that when the purpose for which the money was advanced failed the appellant might