

RECENT ENGLISH DECISIONS—MERCHANTS' BANK V. MONTEITH.

cuted a blank transfer of the same shares, and deposited it with the appellants as security for a debt; he excused the non-production of the certificate by pretending it was lost. The appellants applied to the company to register their transfer, and offered to indemnify the company against the loss of the certificate—the production of which was required as a condition of registration. The company refused the indemnity and declined to register the appellants as transferees, and subsequently the company received notice of the claim of S. The appellants then brought the action to obtain a declaration that they were entitled to the shares as against S. But the Lords (affirming the Court of Appeal) held that S. was entitled to priority, and that the appellants' first giving notice to the company of their transfer gave them no priority over S. whose claim was prior in point of time.

RAILWAY COMPANY—NUISANCE.

In *The London, Brighton and South Coast Ry. v. Truman*, 11 App. Cas. 45, the House of Lords reversed the decision of the Court of Appeal (29 Chy. D. 89), which we noted *ante*, vol. 21, p. 266. It may be remembered that the appellants, in pursuance of their Act, had purchased property for a cattle yard, and that the action was brought by adjoining proprietors who were annoyed by the bellowing of cattle, and the noise of the drovers, to restrain the defendants from continuing the nuisance. The Courts below held the plaintiffs entitled to the relief, but the Lords were of opinion that as the purpose for which the land was acquired was expressly authorized by the Act, and being incidental and necessary to the authorized use of the railway for the cattle traffic, the company were justified in doing as they had done, and were not bound to choose a site more convenient to other persons, and therefore dismissed the action.

PAYMENT OF MONEY BY MISTAKE—LIABILITY TO REFUND.

The Colonial Bank v. Exchange Bank, 11 App. Cas. 84, was an appeal from the Supreme Court of Nova Scotia, in which the right to recover money paid in mistake was in question. The plaintiffs having instructions to remit R.'s moneys to a bank in Halifax, through mistake of their agents paid them to a New York bank for transmission to the defendants, who, on

being advised thereof, debited the New York bank and credited R. in account with the amount thereof; and on being afterwards advised of the mistake claimed the right to retain the moneys and apply them in reduction of R.'s account with them.

The Supreme Court was of opinion that the plaintiffs, under the circumstances, had no *locus standi* to bring the action, but the Lords of the Privy Council were unanimously of opinion that the plaintiffs had a sufficient interest in the moneys to entitle them to recover them as moneys received to their use.

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

MASTER'S OFFICE.

MERCHANTS' BANK V. MONTEITH.

Evidence of accomplices—Conflict of evidence—Executor bound by testator's fraud.

There is no presumption of law against the evidence of an accomplice; but it is the general practice of judges to caution juries not to respect the unsupported testimony of accomplices.

This practice applies in civil cases, to the evidence of a *particeps fraudis*, as much as in criminal cases to the evidence of *particeps criminis*; and to all cases where witnesses are allowed *suam allegare turpitudinem*.

There is a difference between evidence corroborative of a fact, and evidence of the probability of a transaction; and the latter is not corroborative evidence.

In a case of doubt, arising on the conflict of testimony, the decision should be in favour of written documents; of fair dealing instead of forfeiture; and of the lawful, instead of the unlawful, act.

A fraudulent instrument is void against creditors; but not against the party to it or his executors. An executor cannot avoid a fraudulent instrument, but only when he is a principal creditor.

[Mr. Hodgins, Q.C.]

This was a proceeding on a reference back after an appeal from the Master's report. The particu-