

and execution sooner than the other creditors—this constituted an “undue preference” of the first creditor within the Bankruptcy Act, 1883, s. 28. This case seems somewhat to conflict with the decisions of our own court in *Young v. Christie*, 7 Gr., 312, *McKenna v. Smith*, 10 Gr., 40, and *Labatt v. Bixel*, 28 Gr., 593.

COMPANY—SALE OF SHARES—MISREPRESENTATION BY COMPANY—ESTOPPEL.

In *Bishop v. Balkis Consolidated Co.*, 25 Q.B.D., 512, the Court of Appeal (Lord Esher, M.R., Lindley and Bowen, L.JJ.) affirmed the judgment of Williams, J., noted *ante* p. 427; but dissented from the reasons on which he based his judgment. It may be remembered that the action was brought against the company to recover the damages which the plaintiff had sustained in consequence of his having carried out a purchase of shares of the company on the faith of a representation by the secretary of the company that the certificates of the shares for the purpose of the transfer had been lodged with the company. The certificates had been lodged on a prior transfer of the same shares, and not for the purpose of the transfer to the plaintiff; the secretary simply certified in the transfer to the plaintiff, “certificate lodged,” which, in the ordinary course of business, would mean, and was intended to mean, that the certificate had been lodged for the purpose of the transfer to the plaintiff. On the plaintiff applying to complete his title, the fact of the prior transfer was discovered, and the company refused to register the plaintiff as owner. Williams, J., held that the certificate of the secretary was a representation as to credit and ability within Lord Tenterden’s Act (R.S.O., c. 123, s. 7), and was therefore void, because not under the seal of the company. He also considered it *ultra vires* of the company. But the Court of Appeal differed with him on both these grounds, and held that the certification was not *ultra vires*, and not within Lord Tenterden’s Act, but that no action would lie against the company because the representation, though made carelessly, was made without fraud, and therefore not actionable, according to *Peck v. Derry*, 14 App. Cas., 337. They were also of the opinion that the certificate did not amount to a warranty of the transferor’s title, but was only a representation that a document had been lodged with them apparently in order, and showing *prima facie* that the transferor was entitled to the shares; but that the company were not estopped thereby from disputing the title of the plaintiff’s transferor. When the result of *Peck v. Derry* is stated in the bold and naked way in which Lindley, L.J., states it, one cannot help doubting the accuracy of that case, which has been assailed by much adverse criticism. But for that case the plaintiff would have been entitled to succeed in this action, and where one of two innocent parties is to suffer, it certainly does seem more in accordance with natural justice that the one who has by his carelessness brought about the loss should be the one to suffer, rather than the other, who, through his carelessness, has been misled.

PROBATE—TWO WILLS.

In *re Grane de la Rue*, 15 P.D., 185, is a similar case to *Re Callaway*, 15 P.D., 147, which was noted *ante* p. 455. Here the testator had made one will confined