

REPORTS AND NOTES OF CASES.

England.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

ROYAL BANK OF CANADA *v.* THE KING.
(9 D.L.R. 337.)

Lord Chancellor, Lords Macnaghten, Atkinson,
and Moulton.]

[Jan. 31.]

*Contracts—Money had and received—Failure of consideration—
Recovering back money—Loan under abortive scheme—
Lender's rights—Constitutional law—Functions and powers
of province—Act altering conditions of loan—Non-resident
bondholders—Situs of remedy on failure of consideration—
Act affecting extra-territorial rights.*

Held, 1. When money has been received by one person which in justice and equity belongs to another, under circumstances which render the receipt of it a receipt by the defendant to the use of the plaintiff, the latter may recover as for money had and received to his use; and this principle extends to cases where the money has been paid for a consideration that has failed.

2. Where money has been paid to borrowers in consideration of the undertaking of a scheme to be carried into effect and the scheme becomes abortive, the lender has a right to claim the return of the money in the hands of the borrowers as being held to his use.

Wilson v. Church, 13 Ch.D. 1, in appeal *sub nom. National Bolivian Navigation Co. v. Wilson*, 5 A.C. 176, referred to.

3. Where the purchase price of bonds was remitted by the lenders in London to a branch of a Canadian bank in New York, to be applied in carrying out the proposed construction of a railway upon a guarantee of the bonds by the Provincial Government of Alberta, and in pursuance thereof the bank through its head office in Montreal authorised the opening of a credit for the amount in a branch of the same bank in Alberta subject to be drawn upon only upon the terms of the scheme which the province had approved by statute and order-