

approved of by Lord Justice Mellish in *Rogers v. Ingham* (35 L.T. Rep. 667; 3 Ch. Div. 357), where he refers to it and explains it thus: "That is to say, if there is any equitable ground which makes it, under the particular facts of the case, inequitable that the party who received the money should retain it." The principle was also followed and applied by Lord Justice Stirling (then Mr. Justice Stirling) in *Allcard v. Walker* (74 L.T. Rep. 487; (1896) 2 Ch. 369). As long ago as *Livesey v. Livesey* (2 Rus. 2) it was decided by the then Lord Chancellor (affirming a decision of the Master of the Rolls) that an executrix who had, by mistake, made payments in respect of an annuity for two years before A. attained twenty-one was entitled to retain them out of the future payments of the annuity. But in *Re Horne; Wilson v. Cor Sinclair* (92 L.T. Rep. 263; (1905) 1 Ch. 76) Lord Justice Warrington (then Mr. Justice Warrington) decided that, where a trustee, who was himself one of the beneficiaries, had inadvertently overpaid the other beneficiaries their shares of income, and died before any adjustment had been made, the executors of such deceased trustee were not entitled to recover from the other beneficiaries the amount so overpaid or to have accrued or future income impounded till the shares were equalised, as their testator himself was the person responsible for the mistake that had been made. In *Re Ainsworth; Finch v. Smith* (113 L.T. Rep. 268; (1915) 2 Ch. 95) Mr. Justice Joyce, while not disapproving of the decision in *Re Horne*, thought that the judgment therein went beyond anything required for the purpose of the decision. In *Re Ainsworth*, where executors had paid the legacy duty payable in respect of a life interest out of a wrong fund, the decision was that what had in this way been overpaid to the tenant for life must, upon all proper adjustments being made, be retained out of future payments of her income. The point has recently come before Mr. Justice Neville in *Re Musgrave; Machell v. Parry* (115 L.T. Rep. 149). There the testator gave certain annuities, which he directed to be paid "without deduction." The trustees, by mistake, paid them for some time without deducting income tax. Mr Justice Neville held that this was not in the ordinary sense a mistake of public law, but an