

RECENT ENGLISH DECISIONS.

judgment against him prove a bar to an action on the joint note?" As to the second ground, he says: "The doctrine of election or waiver applies only where the person having the cause of action is put to elect between two inconsistent remedies, as in the case of the right to sue either the agent or the principal when disclosed; . . . or in the case of the right to sue for a tort or to waive the tort and sue for the proceeds in the hands of the wrongdoer. In these cases the plaintiff may elect which remedy he will have, but when he has elected one remedy he has thereby waived his right to the other. In this case, on the contrary, it is admitted that if the respondents could have proved a fraudulent misappropriation by the partners, they might have had both a joint and separate judgment, and consequently there was no election and no waiver."

COMPANY—FORGERY OF SHARE CERTIFICATE OF OFFICER—ESTOPPEL.

The next case requiring notice is *Shaw v. The Port Philip etc. Mining Co.*, p. 103, where it was decided that a certain company were estopped by a certificate issued by their secretary, stating that the plaintiff had been registered as the owner of the shares, from disputing the plaintiff's title to the shares, although the signature of the director appended thereto was a forgery, and the seal of the Company had been affixed without the authority of the directors, it being proved that it was the duty of the secretary to procure the execution of and to issue certificates of shares in the company with all requisite and prescribed formalities. Mathew, J., at p. 108, says:—"It is stated to have been the duty of the secretary to procure the execution of the certificate with the prescribed formalities, and to issue it to the person entitled thereto. It is obviously indispensable in the ordinary course of business that the secretary should perform these duties, and

it never could have been contemplated that the purchaser of shares should himself ascertain that each of the prescribed formalities had, in fact, been complied with. It seems to me, therefore, that the secretary is held out by the company as their agent to warrant the genuineness of the certificate. It was argued by the counsel for the defendants that the fact that the certificate was a forgery prevented their being liable for the act of their agent, but he failed, as it appeared to me, to establish any difference for this purpose between a fraud carried out by means of forgery and any other fraud."

RIGHT TO PROTECTION AGAINST FLOOD—ADJOINING LAND OWNERS.

In *Whalley v. The Lancashire and Yorkshire Railway Co.*, p. 131, we have perhaps one of the most interesting judgments, both from a legal and ethical point of view, which have appeared in the *Law Reports* for some time, in the judgment of Brett, M.R. It may be said to ring the changes on the maxim *sic utere tuo ut non lædas alienum*. The facts of the case were these: the defendants were the owners of a railway standing at the place in question upon a slight embankment, which they were authorized by Act of Parliament to make and to use as a railway embankment with a railway on it. That embankment at that place was upon sloping ground, so that on one side of it the ground was higher than on the other side. An extraordinary storm of rain arose, by which the land on the upper side was flooded; and the water, being stopped by the embankment, rested against it in a body, so that people might reasonably suppose it would endanger the safety of the embankment. Under these circumstances, the defendants cut trenches or openings through the embankment, the necessary effect of doing which was, that the water passed through these openings on to the plaintiff's land in a different way from what it would have done if it had