

## RECENT ENGLISH DECISIONS.

is plainly impossible, or else it is an attempt on the part of the principal to confiscate the property of his agent, on some ground which, I confess, I do not understand."

Dealing with the claim to recover the profits as having been made surreptitiously, he says:—

"It appears to me that the answer to that is this, that whatever the profits are, and however they are to be measured, those profits result, not from the original contract, but from the affirmation of the contract by the principal, and that therefore the profits which are made by the agent are neither clandestine nor surreptitious."

**BILL OF EXCHANGE—SPECIFIC APPROPRIATION OF GOODS  
—STOPPAGE IN TRANSITU.**

In *Phelps v. Comber*, 29 Chy. D. 813, we have a decision of the Court of Appeal affirming the judgment of Bacon, V.-C., on a question of mercantile law. A firm at Pernambuco received orders from persons there, to purchase goods in New York. They instructed a Liverpool firm to procure the goods, and the Liverpool firm employed B. as their agent at New York. B. purchased the goods and shipped them to Pernambuco, and sent the bills of lading to the firm there, and he drew bills on the Liverpool firm to pay for the goods, but not for the precise amounts of the shipments. B. advised the Liverpool firm of the bills, and with the advice forwarded a statement of his account. To each bill was attached a counterfoil headed, "Advice of draft," and containing particulars of the bill with the words, "Against shipments per (naming the vessel) please protect the draft as advised above." The Liverpool firm accepted the bills and detached the counterfoils which they retained. The plaintiffs were holders of the bills for value. On the 10th June, 1879, the Liverpool firm having stopped payment, B. telegraphed the Pernambuco firm, "Having pledged documents and shipments (naming vessel) hold proceeds for P. & Co. (the plaintiffs)." The ship arrived on the 11th, but the bills of lading had been previously delivered to the purchasers of the goods. The plaintiffs brought the action against the Pernambuco firm, claiming to have the bills paid out of the proceeds of the goods, as having been specifically appropriated to meet the bills, and also relying on the telegram as amounting to a stoppage *in transitu*. But Bacon, V.-C., held that there had been no specific appropriation of the goods to the pay-

ment of the bills, and that the telegram was not effectual to stop the goods *in transitu*, and the Court of Appeal affirmed this conclusion, distinguishing the case from *Frith v. Forbes*, 4 D. F. & J. 409, on the ground that the memorandum attached to the bills was not sent to the consignees of the goods, and the Court of Appeal adopt the language of James, L.J., in *Robey v. Ollier*, L. R. 7 Chy. 698, where he says:—

"I am not prepared to say that merely because a bill of exchange purports to be drawn against a particular cargo it carries a lien on that cargo into the hands of every holder of the bill."

The telegram was held to indicate no intention on the part of B. to stop the goods *in transitu*, but merely a direction to deal with the proceeds, which he had no right to give.

**ALTERATION OF ORDER AFTER ITS ISSUE.**

*Blake v. Harvey*, 29 Chy. D. 827, which involves a question of practice, is a decision of the Court of Appeal, reversing Kay, J. A motion having been made before a chief clerk, who occupies a position somewhat analogous to that of our Master in Chambers, he pronounced the usual order for an account and foreclosure. The defendants objected to the direction for foreclosure, and the plaintiff assenting, the order was drawn up for an account only, and was passed and entered in that form. When the parties came before the chief clerk to proceed with the reference, he refused to proceed, because the order was not drawn up as he had pronounced it, and subsequently the registrar, at the instance of the chief clerk, without any order or summons, altered the order by adding the usual direction for foreclosure. The defendants then moved to strike out the additions. Kay, J., held the order wrong in either form, and stayed all proceedings under the order as altered, and gave the plaintiff leave to make further application to a judge in chambers for a proper order. The defendants appealed, and the appeal was allowed. Fry, L.J., says:—

"I think the course taken as to this record was entirely irregular. The records of the Court ought not to be altered, except in the manner provided in the Rules. Mr. Justice Kay thought he should do justice by staying proceedings under the order, but as the record was altered in an unauthorized way, the right course, in my opinion, would have been to