that after the consecration of the church, no alteration could be made by the donor in the trusts of the fund provided for and devoted to its endowment.

Mr. Wickens, *contrà*, argued that "a strict and literal accordance with the order of the Book of Common Prayer" required the incumbent to perform divine service daily, and that on non-compliance with the requirements of the deed, the income was no longer, by the very terms of it, payable to the incumbent. That the donor of the fund had power to control the trusts of the application of the income.

THE MASTER OF THE ROLLS [Sir John Romilly]. I must order the income to be paid to the incumbent. The trusts are these: "to pay," &c. [See *ante*, page 131.]

It is for those who say that the incumbent has not complied with the terms, and who resist the payment, to shew that the Petitioner has not performed his duty. I do not think the terms of the deed require daily service. Any proceedings to enforce that object must be instituted before the Ordinary in the manner pointed out by the deed.

[135] I doubt whether it was in the power of Mr. Lowe, after the consecration, to impose any additional particular trusts on the fund.

As the case stands, the dividends must be paid to the Petitioner until further order.

[135] MATHEWS *v.* CHICHESTER. *July* 25, 1861.

Plaintiffs, resident abroad, being ordered to give security for costs, afterwards came to reside within the jurisdiction. The order was thereupon discharged, the Plaintiffs paying the costs of the application.

The Plaintiffs, being resident abroad, an order was made for security for costs. The Plaintiffs having returned to and being resident within the jurisdiction,

Mr. Selwyn and Mr. Babington now moved to discharge the order.

They relied on *O'Conner* v. *Sierra Nevada Company* (24 Beav. 435).

Mr. Lloyd and Mr. Bird, *contrà*.

THE MASTER OF THE ROLLS [Sir John Romilly]. I think I must discharge the order, but the Plaintiffs, coming for an indulgence, must pay the costs. (Reg. Lib. 1861, B. fol. 1797.)

[136] EAVES *v.* HICKSON. *July* 23, 24, 1861.

[S. C. 5 L. T. 598; 7 Jur. (N. S.) 1297; 10 W. R. 29. See *Hopgood* v. *Parkin*, 1870, L. R. 11 Eq. 77.]

Trustees who paid over the trust fund to wrong persons, trusting to a marriage certificate which turned out to be a forgery, made responsible for so much of the trust fund as could not be recovered from those who had wrongfully received it. The father of the recipients, who had sent the forged certificate of his marriage to the trustees, was also made responsible for the money.

The testatrix, Mary Babington, devised some real estate to Joshua Siddeley and Peter Hickson, upon trust to sell, and to hold one-half on certain trusts for the children of John Knibb, with remainder over, and the other one-half, in trust for the children of William Knibb, and if there should be no such children, then in trust for the children of John Knibb. The testatrix also bequeathed the residue of her personal estate to the same trustees, in trust as to one-half for John Knibb for life, and afterwards on the same trusts as those declared concerning the first moiety of the produce of her real estate, and in trust, as to the other one-half, for William Knibb for his life, and afterwards on the same trusts as those of the second moiety of the produce of her real estate. And she appointed her trustees her executors.

The testatrix died in 1843, and her will was proved by Siddeley and Hickson.

They sold the real estate, and in 1851 duly distributed one moiety of the produce amongst the children of John Knibb. The other moiety, which was invested in the names of the two trustees, was sold out in 1856, under a joint power given by both,

and the produce was (improperly as it turned out) distributed by Siddeley alone amongst the five children of William Knibb, the youngest having attained twenty-one. This was done on the production of a certificate, sent to the trustees by William Knibb himself, of his marriage with Joice **[137]** Muddiman on the 14th of March 1826, and of the baptismal certificates of their children of subsequent dates. The marriage certificate was as follows:—

"Page 265. No. 793. The year 1826.

"William Knibb, of this parish, bachelor, and Joice Muddiman, of this parish, widow, were married in this church by banns this Fourteenth day of March, in the year One thousand eight hundred and twenty-six, by me, M. W. Foye, curate. This marriage was solemnized between us.

"The mark of × William Knibb.
"The mark of × Joice Muddiman.

"In the presence of
"The mark × of Joseph Draper.
"The mark × of Elizabeth Draper.

"This is a true copy of the register kept in the parish church of St. Martin, in Birmingham, in the county of Warwick.

"ROBERT POWELL, Parish Clerk."

This document turned out to be a forgery, the figure "2" in the year 1826 having been written on an erasure, and the word "twenty," in the subsequent part of the certificate, appearing to have been altered from some other word, and to be written on an erasure.

The marriage between William Knibb with Joice Muddiman in fact took place at St. Martin's, Birmingham, on the 14th of March 1836, and the five children having been born prior to that date were all illegitimate. The certificate was sent to the trustee by William Knibb, who was present when the money was paid over to his children.

This suit was instituted by the children of John Knibb against Hickson, the representatives of Siddeley, **[138]** and against William Knibb and his five children, to make them replace the moiety of the produce of the real estate so improperly paid over. The trustees, amongst other things, relied on the trustees' indemnity clause contained in the testatrix's will, whereby she declared that the trustees "should be answerable and accountable for such moneys only as he or they respectively should actually receive, by virtue of the trust thereby in them reposed, notwithstanding their or any of them giving or signing a receipt or receipts for the sake of conformity, and that one of them should not be answerable or accountable for the other of them, but each for his own acts, deeds and defaults only, or be answerable or accountable for any bankers, broker, or any other person with whom any of the said trust moneys might be deposited for safe custody or otherwise, nor for the insufficiency of any securities in or upon which the said trust moneys might be invested, *or for any other damage that might happen in the execution of the said trusts, unless through their, his or her own wilful neglect.*"

Mr. Southgate and Mr. Marten, for the Plaintiff. The trustees were guilty of a breach of duty in paying the money on such evidence. There was no marriage certificate at all, the document was a mere statement signed by the parish clerk.

The trustees were bound to pay over the fund to the persons entitled to it, and ought to have seen to the genuineness of the authority to receive the money; Lewin on Trusts (pp. 365, 366, 372); *Doyle* v. *Blake* (2 Sch. & Lef. 243); *Harrison* v. *Prys* (Barnardiston, 324, 326); *Ex parte Jolliffe* (8 Beav. 168); *Sloman* v. *Bank of* **[139]** *England* (14 Sim. 475); *Taylor* v. *Midland Company* (28 Beav. 287); *Cotlam* v. *Eastern Counties Railway* (1 John. & Hen. 243). There has been no acquiescence to bind the Plaintiffs; *Life Association of Scotland* v. *Siddall* (9 W. Rep. 541).

Mr. Surrage, for Hickson the trustee. Siddeley alone paid over the fund, and Hickson, who had no knowledge of the matter, is not responsible for the acts of his co-trustee.

[THE MASTER OF THE ROLLS. But he executed the conveyance and signed a power of attorney to sell out the fund. It is a joint and several liability.]

Mr. Selwyn and Mr. Fischer, for the representatives of Siddeley. The trustee gave ample notice in a conversation with the *cestuis que trust* that he should pay over the money, and they allowed him to do so, though they knew there was no marriage; he thus threw the *onus* of objecting on them. If this trustee was not justified in this case, every trustee must necessarily pay the trust money into Court; *Neale* v. *Davies* (5 De G. M. & G. 263).

This is like those cases in which a trustee has been robbed of trust property, and has been held not responsible for the loss.

A trustee is only bound to take the same care of the trust property as a prudent man would take of his own; *Attorney-General* v. *Dixie* (13 Ves. 534); *Massey* v. *Banner* (1 J. & W. 247); *Morley* v. *Morley* (2 Chanc. Cas. 3); *Jones* v. *Lewis* (3 De G. & Sm. 471); *Ex parte* **[140]** *Belchier* (1 Amb. 218). The trustees are protected by the indemnity clause.

Mr. Shebbeare, for the Defendant William Knibb, argued that he had only been made a Defendant as tenant for life of the personal estate, and as no case had been made against him by the bill, he ought to have his costs. [THE MASTER OF THE ROLLS. But he supplied the forged certificate, knowing it to be so: he can have no costs.]

Mr. Follett and Mr. Shebbeare, for the illegitimate children of William Knibb. These Defendants were infants in 1843 when the certificate was sent, they knew nothing of it, the decree should be without costs against them.

THE MASTER OF THE ROLLS. It is clear that I must secure the fund, and order the trustees and the children who have received it to repay it. I am satisfied that if any children of William Knibb should come into existence hereafter, they would be entitled, and the fund must, therefore, be secured for them. I only wish to hear a reply as to the costs of the suit.

Mr. Southgate, in reply.

THE MASTER OF THE ROLLS. I shall give the tenant for life no costs, as he sent the document to the trustee, which he must have known was forged.

[141] *July* 24. THE MASTER OF THE ROLLS [Sir John Romilly]. This is a very hard case on the trustees who were deceived by the forgery of the date in the marriage certificate, which had been altered in a manner which deceived them, and would have deceived anyone who was not looking out for forgery or fraud. The question is, where a forgery is committed, and a person wrongfully gets trust money which cannot be recovered from him, on whom is the loss to fall? I am of opinion, that it falls on the person who paid the money. Here the loss falls on the trustees, and the persons to whom the fund really belongs are not to be deprived of it. The trustee is bound to pay the trust fund to the right person.

I am therefore of opinion that the payment to the children of William Knibbs cannot be justified.

The consequence is clear, William Knibbs may yet have a legitimate child by his present or any future wife, who would be entitled to the fund in question; it must, therefore, be invested and properly secured in this suit.

There must be a decree against the five children who have received the fund, to pay the sums received by them respectively into Court, with interest at £4 per cent. There is no joint liability, but each must repay the sum received by him. I am also of opinion that William Knibbs, who sent the certificate with the forged date on it to the trustee, and which he must have known was false, must pay into Court so much of the trust fund as shall not be recovered from his children. Then Peter Hickson personally, and the representatives of Joshua Siddeley, out of his assets, must pay into **[142]** Court so much of the trust fund as shall not be recovered from the former Defendants. I also think that the Plaintiffs are entitled to their costs of the suit from all the Defendants, none of whom ought to have resisted this demand.

The fund, when paid in, must be carried to the contingent account of the children of William Knibbs, and under the trusts of the will of Mary Babington, and it must be invested and accumulated.

Another point arose in this case, under the following circumstances:—

Some of the Plaintiffs, in 1859, on receiving their shares of the residuary estate after the death of their father, gave receipts in the following form:—

"April 25th, 1859.—Received of Mr. Joshua Siddeley and Mr. Peter Hickson, executors of the late Mrs. Mary Babington of Knitsford, the sum of £274, 9s. 11d., being the share of the residue of the estate of the said Mrs. Mary Babington due to me on the death of my father John Knibbs (who died on the 12th of February 1859), *and in full discharge of all claims upon the estate of the said Mrs. Mary Babington.*"

The trustees set up these documents as releases.

THE MASTER OF THE ROLLS. I stopped counsel as to the release. A receipt in full discharge of all claims means of all those which were known; therefore, I am of opinion, that there was no **[143]** release. A receipt in the ignorance of the real facts would not affect the rights of the Plaintiffs; it must be shewn that, with a knowledge of the circumstances, they assented to the payment to the children of William Knibbs.

[143] BUDD'S CASE. *Re* THE ELECTRIC TELEGRAPH COMPANY OF IRELAND. *July* 25, 27, 1861.

[S. C. affirmed on appeal, 3 De G. F. & J. 297; 45 E. R. 892; 31 L. J. Ch. 4; 5 L. T. 332; 10 W. R. 51. See *Master's case*, 1872, L. R. 7 Ch. 294 (n.).]

A shareholder, believing the company insolvent, may get rid of his liability by a *bonâ fide* sale before the winding up. But where after the company is manifestly and publicly declared to be insolvent, and in order to get rid of his liability, a shareholder transfers his shares to a pauper, the transaction cannot be supported, and he will be held to be a contributory.

A company being in difficulties, A. B., a shareholder, twelve months before it was ordered to be wound up, transferred his shares to his farm bailiff, and the transfer was entered in the company's books. The Court, considering the transfer not *bonâ fide*, held, first, that A. B. was a contributory; and, secondly, that the transfer in the company's books, under "The Companies Clauses Act, 1845," did not prevent his being made a contributory.

The company was formed in 1852, and in 1852-3 Mr. Budd took 1000 shares in it, and executed the deed of settlement, and paid £1 per share. On the 4th of August 1853 an Act of Parliament passed incorporating the company. It incorporated "The Companies Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Act, 1845."

The undertaking proved unsuccessful, and on the 30th of April 1855 the company being then in difficulties, Mr. Budd assigned and transferred his 1000 shares to John Crocker, his farm bailiff, nominally, in consideration of £50. It was admitted that Crocker was a man of no property, and that the £50 had never been paid. This transfer was registered in the register of transfers on the 1st of January 1856; but there was no entry of the transfer in "the numerical register of shares" nor in "the register of shareholders."

In May 1856 an order was made to wind up the company, and the name of John Crocker was, at first, **[144]** placed by the official manager on the list of contributories for 1000 shares. Inquiries were, however, instituted as to the nature of the transfer to him, and Mr. Budd was examined *viva voce* on the subject. Being asked to explain the transaction, Mr. Budd stated as follows:—

"The transaction was simply this:—That I had entertained great fears that the company was in a very bad condition, and I desired to get rid of my liability, and I applied to Crocker (who was a man who was under obligations to my family, independently of his being my servant) to accept a transfer of my shares. I pointed out to him what I believed to be the condition of the company, that they would probably break up, and that I wished to get rid of my liability, and would he take that liability off my hands, that is, would he take the shares off my hands? He consented to do so." "I recollect being very strongly impressed with a report that was made, I cannot tell exactly in what year, but not a great while before I transferred