

MORTGAGE—EQUITABLE DERIVATIVE MORTGAGE BY DEPOSIT—NOTICE—PRIORITY.

Hopkins v. Hemsworth, (1898) 2 Ch. 347, was a case in which a conflict arose between two derivative mortgagees, under the following circumstances. Hill being a mortgagee by deposit of certain title deeds of land, on Dec. 7, 1875, made a derivative mortgage by depositing the same deeds with Mrs. Walker. Hill subsequently fraudulently got possession of the deeds, and on Sept. 24, 1892, deposited them by way of equitable mortgage with the defendant Hemsworth. On March 20, 1895, Hemsworth gave notice of his claim as mortgagee to the original mortgagor. No notice was ever given of Mrs. Walker's mortgage, and the simple question was whether Hemsworth had by virtue of the notice given to the mortgagor, acquired priority over the Walker mortgage. Kekewich, J., answered this question in the negative, being of the opinion that the effect of the mortgage was to create an equitable estate in land, and that, as to equitable estates, the doctrine of obtaining priority by notice did not prevail.

WILL—CONSTRUCTION—HOTCHPOT CLAUSE.

Wheeler v. Humphreys, (1898) A.C. 506, is a case arising upon the construction of a hotchpot clause in a will. In the court below the case was known as *In re Cosier, Humphreys v. Gadsden*, (1897) 1 Ch. 325 (noted, ante, vol. 33, p. 425), and the decision there reported is affirmed by the House of Lords, (The Lord Chancellor and Lords Macnaghten, Morris and James), but they reach their conclusion by a different process of reasoning to that adopted by the Court of Appeal. The facts may be stated briefly thus: A testator had in his lifetime entered into a covenant to pay to the trustees of his son's marriage settlement, £10,000 six months after the testator's death, to be held in trust for the husband and wife for their respective lives, and then for the issue of the marriage, and in default of issue, in trust for the testator. By his will he provided that all sums which he had covenanted to give to or with any child on his or her marriage should, in default of any direction to the contrary, be taken in or towards satisfaction of his or her share, and should be brought into hotchpot