

share of the fund as trustees for the plaintiffs, and were estopped from alleging or setting up any prior encumbrance thereon. The ground of the alleged estoppel was the fact that the trustees had prior to the advance being made by the plaintiffs signed a memorandum to the effect that they had not received any notice of any prior claim. The trustee who first signed the memorandum did so at the request of the mortgagee's solicitor, who failed to inform him that the memorandum had been submitted to the trustees' solicitor and was then under consideration. The other trustee signed it, relying on the signature of his co-trustee, and also without being informed that it had been submitted to the trustees' solicitor. On the same day it was signed the solicitor of the trustees wrote to the mortgagee's solicitor informing that they never advised their clients to sign any such memorandum. As a matter of fact notice of a prior claim had been given and lost sight of. Under these circumstances Eady, J., came to the conclusion that the suppression of the information, that the propriety of giving the required memorandum was under the consideration of the trustees' solicitor, was so material that the trustees were not estopped by the memorandum signed under such circumstances from setting up the prior charge.

LEASE—ASSIGNMENT OF LEASE—COVENANT BY ASSIGNEE OF LEASE “TO PERFORM AND OBSERVE” COVEVANT OF LEASE—NEGATIVE COVENANT—RIGHT OF ASSIGNOR OF LEASE TO ENFORCE NEGATIVE COVENANTS IN THE LEASE AGAINST HIS ASSIGNEE—INJUNCTION.

In *Harris v. Boots* (1904) 2 Ch. 376, the plaintiffs were lessees of leasehold premises under a lease which contained a covenant by the lessees not to make alterations in the premises without the lessor's consent. The plaintiffs assigned the lease to the defendants, who covenanted with the plaintiffs "to perform and observe" the covenants of the lessee in the lease. After the assignment the defendants made certain structural alterations in the premises without the consent of the plaintiffs or of the lessor, and the present action was brought claiming a mandatory injunction to restore the premises to the condition they were in prior to such alterations. Warrington, J., who heard the action, held that the plaintiffs had no cause of action, and that the effect of defendant's covenant was merely to indemnify the plaintiffs against any damages arising from any breach of the covenants in the lease on the part of the lessees, but did not entitle the assignors of the