whether the note is still running, or whether it is overdue and unpaid; but that it is overdue and unpaid appears by the replication, and so there is no defence on that ground: *Price* v. *Price*, 16 M. & W. 232. Then it is said that the note is outstanding in the hands of third persons; but it was put there by the assent of both parties, for it was put there by the defendant at the request of the plaintiffs, and it is still held by those third persons in the same capacity. Taking, therefore, the replication with the plea, the replication is perfectly good both at law and in equity. As Mr. Holl said, suppose the note outstanding in the hands of the plaintiffs themselves, because that would be the same thing as handing it to trustees for the plaintiffs, with notice to the defendant of that fact. Our judgment must, therefore, be for the plaintiffs.

Willes, J.—I am of the same opinion. On the question of pleading I think it is better to follow the rule in *Price* v. *Price*. The replication adds to the averments of the plea that the note was put into the hands of the third persons as trustees for the plaintiffs, with no right of their own, and that the defendant had notice of the whole transaction, and that the note was due and unpaid; the parties agreed that the third persons should hold it under the same circumstances as if the plaintiffs held it. Then, if the note is overdue and unpaid, there is no answer to this action. It was agreed under the existing circumstances that an action should lie for the original consideration, and that I think is the true construction of what the parties have done.

Montague Smith, J., concurred.

Judgment for the plaintiffs.

CHANCERY.

Lloyd v. Banks.

Incumbrancer—Priority—Notice to Trustees.

In order to secure priority to an incumbrancer on a settled estate, actual notice of the incumbrance must be given by the party to be benefitted by such notice, to the trustees, and knowledge of the incumbrance acquired by them *aliunde* is not sufficient notice

A trustee of a settlement read in a newspaper an advertisement of an application by the tenant for life for his discharge under the Insolvent Court.

Held, that the knowledge so acquired did not give the assignee in the insolvency priority over a subsequent incumbrancer, who on application to the trustee was not informed of the insolvency, though the trustee had in another matter acted upon this knowledge.

[15 W. R. 1006. June 26; July 1.]

This was a summons to vary the chief clerk's certificate.

A settlement, dated the 21st of December, 1852, was made on the marriage of Thomas Lloyd with a Miss Cheese, under which the husband took the first life interest. The defendant, Richard Banks, was one of the trustees of the settlement.

Thomas Lloyd, subsequently to the marriage, became insolvent, and on the 27th of January, 1859, a vesting order was made against him under the Insolvent Debtors' Act. An advertisement was published in a country newspaper of his intention to apply to the Court for his discharge under the Insolvent Debtors' Act. This advertisement the defendant Banks admitted in his cross-examination to have read early in the year 1859.

On the 22nd of April, 1859, Thomas Lloyd obtained his discharge, under the Insolvent Debtors' Act. No formal notice of the insolvency was at this time given to the trustees of the settlement, but it was admitted that Banks, who was a solicitor, had for another purpose, upon the knowledge acquired by reading the advertisement, treated the insolvency as a fact

On the 8th of October, 1861, Mrs. Lloyd died; and on the 4th of November, in the same year, Thomas Lloyd executed a mortgage of his life interest to the defendant Shepherd. On the 1st of March, 1862, formal notice of the mortgage was given by Shepherd to the trustees of the settlement, and in a reply to an inquiry made by the mortgagee at the same time the defendant Banks on the 12th of March, 1862, stated that the trustees had not had notice of any incumbrance prior to Shepherd's mortgage.

On the 25th of February, 1864, formal notice of the insolvency was given to the trustees of the settlement by the assignee under the insolvency. The chief clerk in his certificate gave the assignee under the insolvency priority over the mortgagee, and the present application was to vary the certificate by declaring that the mortgagee was entitled to priority over the assignee.

Jessel, Q. C., and *Kingdon*, for the mortgagee, contended that the advertisement was not notice A trustee was not bound to recollect what he saw in a newspaper. *Non constat* that it was true. Anyhow, it was not notice of a discharge, or of a vesting order. It only professed to be notice of a petition to the Insolvent Court. They cited *Spratt* v. *Hobhouse*, 4 Bing. 173; *Meux* v. *Bell*, 1 Hare, 73; *Re Barr's Trusts*, 6 W. R. 424, 4 K. & J. 219; *Re Atkinson*, 2 D. M. G. 140; *Foster* v. *Cockerell*, 3 Cl. & Fin. 456.

Pearson, Q. C., and *H. B. Miller*, for the assignee in insolvency, contended that it was the duty of the trustee upon reading the advertisement, to have ascertained the facts as to the insolvency, and it must be presumed that he did so. He did in fact act upon it for another purpose, and he could not say that he had not notice. If knowledge had been actually acquired, formal notice was immaterial. The advertisement was of a petition for the insolvent's discharge, which could not be made till after the vesting order. They cited *Tibbits* v. *George*, 5 Ad. & Ell. 107; *Browne* v. *Savage*, 7 W. R. 511, 4 Drew. 635.

Jessel, in reply—Information acquired *aliunde* is neither knowledge nor notice; *Foster* v. *Cockerell*; *Re Atkinson*, Sudg. Ven. and Pur 11th ed., 1006.

July 1.—Lord Romilly, M.R., after stating the facts, continued:—The question is whether the fact of Banks having seen the advertisement in the newspaper, and believed it to be true, constitutes notice of which the assignees can take advantage. I think it does not. He certainly had knowledge of the fact, and acted upon it. But that is not the same thing as notice It is clear that belief or disbelief of what he saw in the newspaper cannot affect the question of notice. It cannot depend upon his recollecting or not what he saw. He was not bound to believe or recollect what he saw in a newspaper Information by a stranger would be clearly in-