BRETT, J.—We must take it now that the defendant delivered the horse to the plaintiff for a particular purpose—viz., to be kept in a stable with another horse of the plaintiff, and that the defendant induced him to take it for that purpose. If the defendant did so, and knew that his horse was glandered, and knew that it was a contagious and fatal disease, that would raise a duty on his part to tell the plaintiff of it, and it averred, not only that he did not tell the plaintiff, but that the plaintiff did not know it. The case is distinguishable from *Hill* v. *Balls*, because there was no averment there that the horse was delivered to be put near any other horse at all, and, as Martin, B., pointed out, allegations were wanting of the plaintiff's ignorance.

Rule refused.

CHANCERY.

FREEMAN v. POPE.

Voluntary deed—Intent to defraud creditors—Deed set aside at the instance of subsequent creditor—Decision of Lord Chancellor.

A voluntary deed, executed by a person indebted at the time of its execution, may be set aside as against creditors on bill filed by a subsequent creditor, if any portion of the prior debt continue due at the time of the filing of the bill, although the deed may have been executed without any express intention to delay, hinder, or defraud creditors.

A Vice-Chancellor, in deciding a case, is bound by a previous decision of a Lord Chancellor applicable to the case, whether he assents to it or not.

[18 W. R. 399.]

This was a creditor's suit for the administration of the estate of the late Rev. John Custance, rector of Blickling with Erpingham, in the county of Norfolk, who died on the 21st of April, 1868, considerably indebted to several persons, and, among others, to the plaintiff, Edward Joshua Freeman, who claimed the sum of £62 12*s.* 8*d.* for grocery and other goods supplied by him to the deceased.

The bill was filed by the plaintiff on behalf of himself and all other unsatisfied creditors of the deceased, against (1.) the Rev. George Pope; (2.) A. R. Chamberlin, administrator and one of the creditors of the deceased; (3.) Robert Tucker, Secretary of the Pelican Life Assurance Company.

The bill prayed, among other things, that an indenture of the 3rd of March, 1863, executed by the deceased, might be declared fraudulent and void as against creditors. By the indenture in question the deceased assigned a policy on his own life for the sum of £1,000, effected by him with the Pelican Life Assurance Company, to trustees, in trust for such person or persons as Julia Thrift (then the wife of W. J. Thrift, and afterwards the wife of the defendant George Pope) should appoint. At the time of executing the deed the defendant was indebted to his bankers in a sum of about £500, of which about £100 remained due at the time of the filing of the bill. The income of the deceased was about £1,000 a-year. The debt due to the plaintiff was contracted *after* the execution of the deed sought to be set aside. The further facts of the case were somewhat complicated, but the inference drawn by the Vice-Chancellor from the evidence, which may be assumed as true for our present purpose, was, that the deceased had not, in executing the indenture of the 3rd of March, 1863, any express or deliberate intention to delay, hinder, or defraud his creditors.

By deed-poll, dated the 3rd day of June, 1868, Julia Pope (in pursuance of the power reserved to her by the indenture of the 3rd of March, 1863) appointed the money assured by the policy to her husband, the defendant George Pope.

Kay, Q.C., and *Cozens Hardy*, for the plaintiff, referred to *Taylor* v. *Jones*, 2 Atk. 600; *Richardson* v. *Smallwood*, Jac. 556; *Jenkyn* v. *Vaughan*, 4 W. R. 214, 3 Drew. 425; *Stockoe* v. *Cowan*, 9 W. R. 801, 29 Beav. 637; *Spirett* v. *Willows*, 13 W. R. 329, 3 De G. J. & S. 293; *Adams* v. *Hallett*, 16 W. R. Ch. Dig. 99, L. R. 6 Eq. 468.

Fellows, for Chamberlin, in the same interest as the plaintiff, referred to *French* v. *French*, 4 W. R. 139, 6 De G. M. & G. 95.

Osborne Morgan, Q.C., and *H. A. Giffard*, for the defendant, George Pope, referred to *Skarf* v. *Soulby*, 1 Macn. & G. 364; *Holmes* v. *Penney*, 5 W. R. 132, 3 K. & J. 90; Lewin on Trusts, 5th ed. p. 63. In *Spirett* v. *Willows*, 13 W. R. 329. 3 De G. J. & S. 302, it is laid down by Lord Westbury, that "if a voluntary settlement or deed of gift be impeached by subsequent creditors whose debts had not been contracted at the date of the settlement, then it is necessary to show either that the settlor made the settlement with express intent 'to delay, hinder, or defraud creditors,' or that after the settlement the settlor had no sufficient means or reasonable expectation of being able to pay his then existing debts, that is to say, was reduced to a state of insolvency."

That *dictum* carries the authority of Lord Westbury with it. [JAMES, V. C.—Lord Westbury gave that judgment as Lord Chancellor; and the judgment of a Lord Chancellor is binding upon this Court, whether I assent to it or not.] It is true that a subsequent creditor may file a bill to set such a settlement aside, but this rule has reference simply to the *locus standi* of a subsequent creditor, which must not be confounded with his right to a decree.

JAMES, V.C.—Had there been no authority on the point before me, I should have thought that the question was whether there was any intention on the part of the settlor to delay, hinder or defraud his creditors. I am satisfied that the deceased gentleman had no such intention. But I am bound by two authorities. First, by the judgment of Vice-Chancellor Kindersley in the case case of *Jenkyn* v. *Vaughan*, 4 W. R. 214, 3 Drew. 424; whose decision is, that if there be a creditor subsequent to the deed, and also an unpaid creditor prior to the deed, the subsequent creditor has the same right to file a bill as the prior creditor had.* That is, I must try the case as if the

* The reader's attention is requested to the following extracts from the judgment of Vice-Chancellor Kindersley, here referred to:—"It is not in dispute that a *subsequent* creditor is entitled *to participate*, if the instrument is set aside by *any* creditor; and I am not aware that *in that case* there is any distinction between the two classes of creditors, those who were so before and those who became so after the deed. I believe they all participate *pro rata*. It is clear, therefore, that a subsequent creditor has an equity *to some extent*, viz., a right to participate in the division of the property, if the settlement is set aside. *Prima facie* then, if a subsequent creditor has an equity, *one would suppose* there could be no reason to prevent him from filing a bill to enforce it.

"In cases where a subsequent creditor files a bill, it occurs to me that much may depend on this (supposing there is no evidence of anything to show the fraudulent intent, but the fact of the settlor being indebted to some extent)