returned an evasive answer, and E. said he was not aware of any. Without making further inquiries, the mortgagees advanced their money and gave formal notice of their mortgage to both trustees. This action was brought to carry out the trusts of the will, whereupon a contest for priority arose between the trustees of the marriage settlement and the mortgagees, and the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.), affirming Stirling, J., held that the trustees of the settlement were entitled to priority. There was the further question raised on appeal, whether the notice given to S. died with him, and whether on E. becoming by S.'s death sole trustee his want of notice of the settlement would give the mortgagees priority; but the Court of Appeal held that the death of S. could not have that effect, inasmuch as at the time the mortgagees took their security there was a trustee in existence who had notice of the settlement, and from whom, by proper inquiry, they might have obtained information of it.

EXECUTOR—LEGATEE—SPECIFIC APPROPRIATION OF ASSETS TO PAYMENT OF LEGACY—INCOMPLETE TRANSACTION.

In re Lepine, Dowsett v. *Culver* (1892), 1 Ch. 210, the action was brought to compel a residuary legatee to whom an executor had handed over a mortgage in part payment of his share of the residue to account for it to the other residuary legatees, part of whose shares in the residue had subsequently been lost through misappropriation by the executor. The will directed the residue to be converted and divided into sixth shares, but contained no express provision authorizing the executor to divide the assets in specie, or appropriate any part thereof in payment or part payment of shares. One of the residuary legatees agreed with the executor to accept a mortgage for the £700 belonging to the estate as part satisfaction of his share of the residue, and the mortgage was accordingly handed over to him, but no formal transfer made of it. He received the interest on it for ten years prior to the action. The residue of what appeared to be his share was paid in cash. At the time of the transaction, the amount paid, including the mortgage, was no more than what then appeared to be the true amount due to him as his share of the residue. Owing to a subsequent misappropriation of the assets by the executor the other residuary legatees were unable to recover their full shares, and some of them brought the present action to compel the holder of the mortgage to account for it as being still a part of the outstanding assets of the estate. Kekewich, J., was of opinion that the plaintiffs were entitled to succeed, but the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) reversed his decision, holding that an executor may validly make such an agreement with a legatee, and that the mere fact that no formal transfer was executed of the mortgage could not defeat the right of the legatee to hold the security; and that when the transaction was fair and *bonâ fide* at the time it was entered into, it could not be afterwards impeached on the ground of a subsequent failure of assets.

CONFLICT OF LAW—COMPANY—UNPAID CAPITAL—DEBENTURES CHARGING UNPAID CAPITAL—NOTICE—PRIORITIES.

In re Queensland Mercantile Agency Co. (1892), 1 Ch. 220, is an appeal from the decision of North, J. (1891), 1 Ch. 536, noted *ante* vol. 27, p. 264. The question