

and that premises held by the present owner subject to a restrictive covenant as to building may be sold for the purpose of satisfying such charge, free from such restrictive covenant.

CONFLICTING EQUITIES—NOTICE—PRIORITY.

*In re Richards, Humber v. Richards*, 45 Chy.D., 589, is a case which could hardly arise under our system of registration as regards the transfer of real estate; and yet it is interesting as illustrating the manner in which the court deals with the rights of parties where there are conflicting equities. It is the old story of two parties being defrauded by a third party and a contest between them as to which is to bear the loss. The facts were that a solicitor received in 1883 a sum of money from a client for investment, and represented to the client that he had invested it on a specified mortgage, whereas in fact the mortgage specified was one which had been previously taken by the solicitor in his own name. The solicitor paid interest on the amount of the specified mortgage to his client down to his client's death in 1885, and to his representatives down to his own death in 1888. Shortly before the solicitor's death he had deposited the title deeds of the mortgaged property with a bank as security for an overdraft of his account; and he died leaving his account overdrawn to an extent exceeding the value of the mortgage property. Immediately after the solicitor's death the bank notified the mortgagors of the deposit of the title deeds with them, and at the date of the deposit the bank had no notice of the claim on behalf of the client, and their notice was prior in point of date to any notice given by the executors to the mortgagors. Under these circumstances Stirling, J., decided that the solicitor had constituted himself trustee of the mortgage for his client, and that the latter and his representatives had not been guilty of any negligence which would deprive him or them of the prior equity, and that the bank had not acquired any priority by reason of their notice to the mortgagors being prior in time to that of the executors.

COMPANY—IRREGULAR FORFEITURE OF SHARES FOR NON-PAYMENT OF CALL—REALLOTMENT OF SHARES  
—DAMAGES.

*In re New Chile Gold Co.*, 45 Chy.D., 598, Stirling, J., holds that when a board of directors of a company by resolution of the board declared certain shares, then at a premium, to be forfeited for non-payment of a call, without having previously given the holder notice in accordance with one of the articles of association, that if he failed to pay the call by the day appointed for payment, they might forfeit his shares; and where, after such irregular forfeiture, they reallocated the forfeited shares among numerous other shareholders—that on a winding up of the company the shareholder whose shares had thus been forfeited, and who was, by another article of association, restricted to a claim for damages for the irregular forfeiture, was entitled to prove in the liquidation for the damages, and was entitled so to prove his claim in competition with other creditors or the company; and he also held that a clause of the Companies' Act, 1862, which declared that "no sum due to any member of a company, in his