

RECENT DECISIONS ON THE EQUITABLE DOCTRINE OF NOTICE.

and died, and the plaintiffs were his assignees. The Secretary of the Victoria Company gave evidence that a verbal notice would not be recognized by the Company; that a notice to be recognized, and to be of any avail or protection, must be in writing; that up to, and for a long time after, the bankruptcy, Glenn appeared by the books of the Company to be the absolute owner of the policy. He recollected however, having heard Glenn mention, in conversation, that the policy was in the hands of his bankers; but the statement was a merely casual one in the course of conversation. The secretary of the Britannia Company gave similar evidence.

Under these circumstances V. C. Stuart held that no sufficient notice of the deposit had been given to the Companies concerned, and that therefore the right of the bankrupt's assignees to the proceeds of the policies had not been displaced.

In *Ex parte the Agra Bank (limited) re Worcester*, L. R. 3 Ch. App. 555, 16 W. R. 879, Mr. J. R. Worcester deposited with the Agra Bank the certificates of various shares, among which were 400 fully paid up shares in a company called the San Pedro del Monte Silver Mining Company, by way of security for the repayment of £1,300 advanced by the bank. At the same time he handed over a blank transfer of the shares. On August 26, 1867, Mr. Worcester became bankrupt. At that time the shares in question still stood in Mr. Worcester's name in the books of the company, the transfer not having been registered therein, nor any notice of the transaction given by the bank to the company. It appeared, however, that in the year 1867, before the bankruptcy, the directors of the company were engaged in making inquiries as to the shares of persons who were defaulters to the company. In the course of those inquiries it came to the knowledge of the directors, through the verbal information of Mr. Worcester, that the 400 shares in question had been pledged to the Agra Bank. Was this information then sufficient to affect the Company with notice? Under these circumstances Mr. Commissioner Winslow held that the shares in question were in the order and disposition of the bankrupt at the time of the bankruptcy, and therefore belonged to the assignees.

But on appeal from this decision the Lords Justices held it to be immaterial in what manner the directors became acquainted with the fact of the transfer, provided they did so become acquainted; and accordingly held that they had effectual notice of the transfer, on the ground that the directors would not, with the knowledge which they had, have been safe in permitting any dealing with the shares.

In *Lloyd v. Banks*, L. R. 3 Ch. App. 488, Mr. T. Lloyd, being entitled to a certain interest in a trust fund of which R. W. Banks was trustee, presented his petition in insolvency on January 19, 1859, and on the 22nd the usual vesting order was made. In Novem-

ber, 1861, he mortgaged his interest to Mark Shephard, and in March following the usual notice of the mortgage was given by Mr. Shephard to Mr. Banks. No formal notice of the proceedings in insolvency was given to Mr. Banks until February, 1864; but he stated that he had read in a newspaper of February 16, 1859, a notice that Mr. Lloyd's petition in insolvency for discharge would come on to be heard on the 4th of March. From that time he had dwelt with Mr. Lloyd on the footing of the insolvency being a fact, and had not paid him his annuity.

Under these circumstances Lord Chancellor Cairns, reversing the decision of the Master of the Rolls (reported L. R. 4 Eq. 225), held that the trustees' knowledge of the insolvency from the advertisement of the newspaper, especially when coupled with the fact that he had practically acted upon the information so gained, constituted notice sufficient to give the assignee in insolvency priority over the subsequent mortgagee.

In giving judgment in this case Lord Cairns observed (p. 490).—

"There is no doubt, with regard to property of the kind in question here, that an equitable incumbrancer, if he has any regard for his own interests—any desire to make his position secure—will take very good care himself to give direct and distinct notice, and that in writing, to the trustees of the property on which he has obtained his incumbrance; and if he does not do that, he will be at very great peril, because he will have to encounter, first, the danger of the trustee being left in entire ignorance of the security, and next, if he attempts to prove knowledge of the trustee *aliunde*, the difficulty which this Court will always feel in attending to what are called casual conversations, or in attending to any kind of intimation which will put the trustee in a less favourable position as regards his mode of action than he would have been in if he had got clear and distinct notice from the incumbrancer. At the same time I am bound to say that I do not think it would be consistent with the principles upon which this Court has always proceeded, or with the authorities which have been referred to, if I were to hold that under no circumstances could a trustee, without express notice from the incumbrancer, be fixed with knowledge of an incumbrance upon the fund of which he is the trustee so as to give the incumbrancer the same benefit which he would have had if he had himself given notice to the trustee. It must depend upon the facts of the case; but I am quite prepared to say that I think the Court would expect to find that those who alleged that the trustee had knowledge of the incumbrance had made it out, not by any evidence of casual conversations, much less by any proof of what would only be constructive notice—but by proof that the mind of the trustee has in some way been brought to an intelligent apprehension of the nature of the incumbrance which has come upon the property, so that a reasonable man, or an ordinary man of business, would act upon the information and would regulate his conduct by it in the execution of the trust."