

notice of the mortgage to the plaintiff, or of the pending action, or of the appointment of a receiver, or of the injunction.

On seeking to enforce his mortgage, B. first became aware of these facts, and thereupon took out a summons in the action pending between the plaintiff and the defendant, claiming priority over the plaintiff's mortgage.

Held (1) that B., being the first to give notice to the book debtors, was *prima facie* entitled to priority over the plaintiff; and (2) that such priority was not prevented by the fact of the registration of the plaintiff's action against the defendant as a *lis pendens*, nor by the appointment of a receiver and the granting of an injunction in that action, B. being no party to that action and having no notice of these facts.

The facts in this case are for our purpose sufficiently set out in the head note above. The judgment in the Lower Court delivered by Mr. Justice Chitty, was in favor of the plaintiff, the first assignee of the book debts, on the ground that because of his action and *lis pendens*, the subsequent assignee did not acquire any right to the property in litigation which would be prejudicial to the claim of the plaintiff. This decision was reversed on appeal, the view of the Court being set out in the judgment. This was delivered by Lindley, L.J., concurred in by the Chancellor, as follows:

It was not disputed that if the plaintiff's action had not been registered as a *lis pendens*, and if there had been no injunction or receiver, the banking corporation, having no notice of the plaintiff's title, would have acquired a better title than the plaintiffs to the debt assigned to them, although they were comprised in the plaintiff's earlier security. This was conceded on the authority of *Dearle v. Hall*, and is not open to controversy. But the plaintiffs contended, and the learned judge held, that, as the debts were the subjects of an action to recover them, and such action was registered as a *lis pendens* and a receiver of those debts had been appointed, and the defendants had been restrained from dealing with them, the title of the defendants could not be allowed to prevail over that of the plaintiffs. The doctrine involved in this decision is very far-reaching, and is of great practical importance to business men, and it requires very careful examination. For the reasons which I will state, I am clearly of opinion that the doctrine is unsound and cannot be supported.

The learned judge then discussed at length the practice with regard to *lis pendens* in respect to actions affecting real estate, and reaches the conclusion that so far as goods and chattels are concerned the doctrine that no title can be made to