BOYD, C.] [Jan. 9.

Re POLTON, *et al*, *and* SWANSTON.

Vendor and purchaser—R.S.O. (1887), *c.* 112—*Production of deeds—Evidence of trusts by recital in memorial twenty years old—Discharge of mortgage—Mortgage in fee by tenant for life—Necessity of discharge after death of life tenant.*

In an application under the Vendor and Purchaser Act, R.S.O. (1887), c. 112, in which the contract of the sale provided that the vendors should not be bound to produce any deeds or evidence of title, except such as they might have in their possession, but should show a good title, etc., it appeared that A. P., by an indenture of January 16th, 1858, conveyed the lands in question to trustees on certain trusts, which deed was registered by memorial not containing the trusts; by deed of appointment, dated July 4th, 1862, made in pursuance of the deed of 1858, also registered by memorial, which purported to contain a full copy of the deed in which were recitals which set out what purported to be the trusts of the former deed, and showed a life estate in A. P. with power of appointment after; A. P. appointed to trustees who were represented by the vendors, with directions to sell after his death, which had recently occurred; neither of these deeds was in the possession or power of the vendors, the trustees.

Held, that the vendors were not bound to produce the two deeds of January, 1858, and July, 1862; and that the production of the memorial of the latter being twenty years old, reciting the trusts of the former was sufficient evidence of what those trusts were, and as there was an absolute trust for sale the purchaser should take the title.

A. P., in 1873, assumed to mortgage the lands in fee, and died in 1887.

Held, that the mortgage only bound his life estate, and that the vendors were not bound to procure a discharge thereof. The objections of the purchaser were therefore overruled, and the vendors held to have shown a good title.

E. D. Armour, for vendors.

No one for purchaser.

ROBERTSON, J.] [Jan. 25.

Re CENTRAL BANK: CAYLEY'S CASE.

Winding up—Proof of claim—Cheque accepted by Bank after suspension—Set off—Subsequently accrued liability of drawer of cheque—Fraudulent preferences.

On November 15th, 1887, Donovan gave his cheque on the Central Bank, payable to Cayley, for $3,440. Cayley forthwith deposited the cheque in the Dominion Bank, and the latter advanced him $3,000. The Central Bank suspended payment on November 16th, 1887; and, in afterwards filing their claim in the winding up proceedings, the Dominion Bank included the amount of this cheque. On November 23rd, 1887, the Central Bank had marked the cheque good, and charged it against Donovan's account, leaving a balance of $30 in his favor, and crediting the Dominion Bank with the amount of the cheque. Meanwhile Donovan became indebted to the Central Bank on some promissory notes, and the liquidators objected to allow the item of the above cheque for $3,440 in the Dominion Bank claim as filed; thereupon the Dominion Bank withdrew this part of their claim, and the Master disallowed it. Cayley never heard of this withdrawal by the Dominion Bank of their claim on the cheque till after the first dividend was declared and made payable, and only filed his claim against the Central Bank on the cheque on September 13th, 1888. The liquidators claimed the right to set off the amount of Donovan's notes.

Held, that they were not entitled to do so. The fact of the Central Bank having accepted the cheque, and credited the amount to the Dominion Bank, and charged the amount to Donovan, showed conclusively that at that time the Central Bank was not a creditor of Donovan's, nor did the clauses in the Winding Up Act, concerning fraudulent preferences, help the liquidators.

Beck, for Cayley.

Meredith, Q.C., for the liquidators.

ROBERTSON, J.] [Jan. 25.

Re CENTRAL BANK (HENDERSON'S CASE).

Banks and banking—Winding up—Contributories—R.S.C. 120, *ss.* 45, 77.

The appellant, having been placed on the list of contributories in the winding up of the