The payment in question was made under the following circumstances: An estate was devised to nine persons as tenants in common, with a power to three of them to sell the whole, to obviate the difficulties of making a partition. W., one of the three, conducted certain sales under the power and retained more than his share of the purchase moneys, and went into liquidation. Further sales were made, and out of the proceeds a further sum was paid to W.'s trustee, in respect of, and in excess of his share, taking into account what W. had previously received. Kay, J., held that W. was not entitled to any part of the purchase money of the subsequent sales until he had made good the sum he had received in excess of, his share, of the proceeds of the previous sales, and therefore his trustee had no right to the money paid on account of the subsequent sales, and he was ordered to refund it.

POWER — TESTAMENTARY APPOINTMENT — REVOCATION.

The question submitted for the decision of Kay, J., in *Re Kingdom, Wilkins* v. *Pryer*, 32 Chy. D. 604, was whether a will made expressly in exercise of a special power of appointment contained in a settlement, had or had not been revoked by a subsequent will. The will made in exercise of the power of appointment was made by a married woman in 1866, during coverture. After her husband's death she made three other wills, in the first and second of which she said: "I revoke all other wills," and in the third "I hereby revoke all wills, codicils and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament," and then disposed of all her estate, "including as well real estate as personal estate, over which I have or shall have a general power of appointment"; but she did not in any way exercise or affect to exercise the power in the settlement, nor did she refer to it, nor to the property the subject of the power. For the parties interested in upholding the will of 1866, *In the Goods of Joys*, 4 Sw. & Tr. 214, and *In the Goods of Merritt*, 1 Sw. & Tr. 111, were relied on. But the learned judge considered those cases not to be exactly in point and, relying on *Harvey* v. *Harvey*, 23 W. R. 478, and *Sotheran* v. *Derring*, 20 Chy. D. 99, held that the testamentary appointment of 1866 had been revoked.

ADMINISTRATION SUIT—CREDITOR—COSTS.

Owing to the method of paying costs in administration by an *ad valorem* commission, the point decided in *Re McRea, Norden* v. *McRea*, 32 Chy. D. 613, is not of so much importance as it otherwise might have been in this Province The action was brought by a separate creditor on behalf of himself and all other the creditors of a testator who was one of a firm of traders, for a general administration of the testator's estate. The estate proved sufficient to pay the separate creditors in full, but insufficient to pay the joint creditors. Under these circumstances it was held by Kay, J., that the plaintiff was entitled to costs out of the estate as between solicitor and client.

ADMINISTRATION ACTION—PURCHASE OF CREDITORS' CLAIM BY PLAINTIFF'S SOLICITOR.

The only remaining case we think it necessary to notice is *In re Tillet, Field* v. *Lydall*, 32 Chy. D. 639, which was an administration action in which the usual accounts had been directed, and upon proceeding before the Chief Clerk it appeared that the plaintiff's solicitor had purchased several creditors' claims for less than their face value. The Chief Clerk reported that the solicitor was a trustee of the creditors for any profit which might be made on the purchase; but North, J., held on appeal, that in the absence of any direction in the order of reference, the matter was not open for the decision of the Chief Clerk, and his certificate was therefore varied accordingly. North, J. says at p. 641:

> The question is one between W. H. Tillett (the solicitor) and the other creditors of the testator, and does not affect the estate. It is an equity subsisting between the parties, which any one of them has a right to say should, if dealt with at all, be decided in a formal way. I think that as the objection is taken and persisted in, the question raised can only be decided properly in a separate proceeding.