say $200,000, on the railway, to be executed in favour of the officer of the bank or his nominee as collateral security for the notes, which Brooks agreed to give for the iron as delivered, such mortgage to be first and only first security or charge on the road until discharged; and which mortgage was to create a lien on the railway as such security, but was not to contain any covenant for payment by the company.

Brooks did accordingly sign a request for the company to execute a power of attorney and mortgage, and the same was accordingly executed to the officer of the bank. In pursuance of their contract, Bickford & Cameron did deliver at Belleville the amount of iron agreed for.

To enable them to do this, the Bank of Montreal had advanced money to Bickford, he assigning to the Bank the bills of lading for the iron, of which fact both Brooks and the president of the company were aware, and the legal ownership of the iron remained in the bank thereunder; but all the iron was delivered at Belleville for the purpose of fulfilling the contract. Brooks gave notes for the amount, but he having failed to complete his contract, Bickford sued for the notes and recovered judgment against Brooks. The Company and Brooks being both insolvent, the Bank, under the power in their mortgage, duly advertised a quantity of the iron which remained at Belleville for sale, and did offer the same for sale by public auction, when Bickford became the purchaser thereof at $33.50 per ton, and he subsequently sold the same to another railway company, to whom he was about delivering it when the present bill was filed seeking to restrain the removal of the iron.

Under these circumstances, on the 2nd of October, 1875, an application for an injunction was made before Proudfoot, V.C., when an order was made restraining such removal. On the 9th of October a motion was made for an order to continue the injunction, but this Proudfoot, V.C., refused to grant. Subsequently, and on the 18th of January, 1876, the cause came on by consent, to be heard by way of motion for decree, when by consent a decree was made referring it to the Master, to take an account of what was due to Bickford & Cameron under the contract. On the 9th of February the Master made his report, finding $46,841.10 due the defendants in respect of the iron laid on the track; but that nothing was due in respect of the iron delivered at Belleville and subsequently removed. The defendants claimed that they were also entitled to be allowed the sum of $13.50 per ton on the whole of the iron sold, being the difference in price agreed to be paid under the contract and the price realised for the same by auction, together with interest, and therefore appealed from the report of the Master; which appeal was argued before Vice-Chancellor Proudfoot, who, after looking into the authorities, dismissed the appeal with costs.

The case has since been carried to the Court of Appeal and argued, but a re-argument on certain points was directed.

James Bethune and *Moss* for plaintiffs.

Hector Cameron, Q.C., *J. A. Boyd* and *Crombie*, contra.

Re Robbins.

(April 27, 1876.)

Executors—Evidence Act—Compromising claim—Corroborative evidence.

This was an administration suit. In proceeding in the Master's office at Brantford, a charge was made in the accounts of the executors of $250 paid to one Millard, who had claimed to be a creditor of the testator to an amount exceeding $1,000. It appeared that Millard had presented an account to the executors for the latter sum, which they declined to pay; and after some negotiations and several attempts at a settlement, the executors agreed to pay this creditor $250 in full of this demand against the estate, and which he accepted. In passing the executors' accounts Millard was the only witness to prove the claim, which was alleged to be for money lent, and the Master disallowed the amount to the executors, adding to his conclusions from the evidence an additional reason for so doing, that "sufficient corroborative evidence to support it should be given under the statute, as there is no admission by the testator's books nor in any writing of his, and the legatees, who are interested and should have been consulted, repudiated the claim."

The executors appealed from this, amongst other findings of the Master.

Blake, V.C., said he thought the Master should not have found that the claim could not be allowed because there was not corroborative evidence, as in his opinion the act did not apply to such a case. He did not find his report wrong, and he did not actually dissent from his finding on the question; but the reason given would in effect prevent any executor compromising a claim made against the estate, which he was clear they had a right to do under the act as to executors, and therefore sent the matter back for the purpose of enabling the Master to reconsider his finding on this point.

Wilson and *Cassels* for appeal.

W. H. Kerr and *G. Kerr* contra.