

9. *K* was trustee for sale of certain lands belonging to *M*. Two parcels were subject to a mortgage to the Bank of Upper Canada for more than the value thereof. The trustee agreed for the sale of these parcels to a purchaser; the Bank, before becoming insolvent, assented to the sale, and received the first instalment of the purchase money. The purchaser went into possession, but was in default in paying purchase money: the defendants were his assigns. By the trust deed, which the bank executed on becoming insolvent (which deed was afterwards confirmed by statute), it was made the duty of the Bank trustees to accept in payment and liquidation of any debt due to the estate the notes or bills of the Bank: on a bill by the Bank trustees for payment, it was *held* that as the money was coming to the Bank, the trustees were bound to accept payment in the notes of the Bank at par,

The Trustees of the Bank of Upper Canada v.
The Canadian Navigation Co., 479.

10. A mortgagee appointed the mortgagor one of his executors; and the mortgagor became the acting executor; the mortgagor afterwards entered into an agreement with *B*, the owner of other property, for an exchange free from incumbrances, and that *B* should pay \$2,000 for the difference in value; the mortgagor had indorsed on the mortgage certain sums as paid by him thereon after the mortgagee's death, reducing thereby the amount appearing to be due on the mortgage to \$1,600, no part of which, however, was payable: *B* satisfied the \$1,600, partly in money paid to the mortgagor, partly by a debt owing to *B* by the mortgagor, and partly by moneys which had theretofore been lent by *B* for the purposes of the mortgagee's estate, and the mortgagor thereupon indorsed on the mortgage a receipt for \$1,600 in full of the mortgage money: the contemporaneous payment of money was with the assent of the other executor. It afterwards appeared that the mortgagor was largely indebted to the mortgagee's estate at the date of all these transactions:

Held, that the contemporaneous payment was a valid payment *pro tanto*, the same having been made with the assent of the co-executor; but that the estate or the co-executor was not bound by the receipts indorsed on the mortgage; and that *B* was not entitled to credit, as against the estate, for the private debt due to him by the mortgagor, nor for his antecedent loan.

Bacon v. Shier, 485.