

*kings v. Check* (1825), 2 Sim. & St. 199, at p. 205, "from the executor of a part of the personal property of the testator has a right of infer that the executor is, in the mortgage or sale, acting fairly in the execution of his duty, and is not bound to inquire as to the debts or legacies."

Although prior to the Land Transfer Act, 1897, realty did not devolve on the executors, yet if the land was devised to executors charged with debts there was an implied power of sale for the purpose of raising the debts. In such a case as this a purchaser from the executor could not insist on proof that debts remained to be paid. He had to assume it; and unless he had notice to the contrary he was amply protected, unless the sale was more than twenty years after the testator's death, in which case he was put on inquiry: see *Re Tanqueray-Willaume and Landau*, 46 L.T. Rep. 542; 20 Ch. Div. 465. Again, in purchasing from an executor leaseholds specifically bequeathed, the purchaser is entitled to assume that the executor is selling for the purpose of administration, as *e.g.*, for the purposes of raising money to pay the debts and expenses incurred in the administration. He cannot compel the executor to answer a requisition whether any debts remain to be paid: *Re Whistler*, 57 L.T. Rep. 77; 35 Ch. Div. 561; and the fact that twenty years have elapsed since the testator's death does not alter the position: *Ibid.*; *Re Venn and Furze's Contract*, sup.

These convenient rules, however, do not touch the question of assent. If an assent has in fact been given before the executor purports to deal with the subject-matter of the bequest or devise by sale or mortgage to a third party, the title of that third party is defective. Property in the subject-matter of the bequest—the legal estate, in the case of realty—passed from the executor on the assent, and any subsequent purported disposition must necessarily be ineffectual, for *Memo dat quod non habet*.

Third parties dealing with personal representatives may, however, be consoled by the following reflections: That the implied assents (the most dangerous of all) are not, as a rule, con-