Ferguson, J.] [October 5.

RE CROWTER, CROWTER v. HINMAN.

Executors—Misappropriation by co-executor.

When D. H., an executor under the will of P. S. C., by tacit consent of his co-executors took the actual management of the estate, and received all the moneys arising from it, including the purchase money of certain of the real estate sold pursuant to the will, and misappropriated the latter,

Held, that a co-executrix, who had joined in the conveyance to the purchaser, but who was not shown to have known that there was a balance of the purchase money in the hands of D. H. after the purposes of the will had been satisfied, viz., the payment of debts and incumbrances; or that he was misappropriating in any way, was not liable to make good the moneys so misappropriated by D. H.

Held, also, that even if she had been liable for the principal of such moneys, she would not have been liable for the interest, as the money never came into her hands at all.

McCarter v. *McCarter*, 7 O. R. 243, distinguished.

Moss, Q.C., for appellant.

J. Kerr, for respondents.

Boyd, C.] [October 14.

EASTMAN v. THE BANK OF MONTREAL ET AL.

Assignment—Proof of claims—Collateral securities—Giving credits for amounts received on collaterals—Up to what time.

F. agreed with the Bank of M. for a line of credit to be secured by the discount of certain bills and notes which he had himself discounted, and which he endorsed and delivered to the Bank. He also arranged with the M. Bank to discount his notes to be secured by the deposit of his customers' notes as collaterals. F. then failed, being largely indebted to both banks, and made an assignment for the general benefit of his creditors. In proving their claims on his estate before the assignee, the banks contended that they were only bound to give credit on the amount of their claims for sums received on the collateral securities up to the date of the assignment. In an action by another creditor on behalf of himself and all other creditors entitled to share under the assignment against the banks and the assignee, it was

Held, following *Rhodes* v. *Moxhay*, 10 W. R. 103, that a creditor is entitled to prove for the whole amount of his debt, and to take a dividend upon the whole without prejudice to his rights against securities he may hold, subject, of course, to this qualification that he must not ultimately receive more than twenty shillings on the pound; to hold otherwise would be virtually to deprive the secured creditor of any advantage from his security. The state of the accounts at the time the claim is put in is that which forms the basis of the dividend sheet, and the amount is to be fixed by the assignee as at that date; any moneys received prior to that from collaterals are to be credited; those received after from such sources need not be taken into account, unless they, with the dividend, bring up the amount received by the creditor to 100 cents on the dollar.

That substantially both banks were in the same position as to the securities in their hands.

That there was a distinct contract for a line of credit to the debtor by the Bank of M., and as long as that line was not exceeded the bank could prove on the footing of that contract as the original debt and hold the customers' notes discounted in pursuance of that contract as securities.

Meredith, Q.C., for the plaintiff.

Street, Q.C., for the Bank of Montreal.

Gibbons, for the Merchants' Bank of Canada.

Moorhead, for defendant, Lucas, the assignee.

Boyd, C.] [October 14.

BURNS AND LEWIS v. MACKAY ET AL.

Fraudulent preference—Necessity of intent to defraud on both sides.

The weight of authority greatly preponderates in favour of the view that in order to work a fraudulent preference of a creditor under R. S. O. c. 118 there must be a concurrence of intent so to do on the part of both debtor and creditor, and the rule of the Court is not to act upon mere suspicion in the absence of affirmative evidence of fraud, or of controlling