

charge on land. *Young v. Purvis*, 597.

6. *Will—Power to sell—Power to mortgage—Estate getting benefit of unauthorized loan—Position of mortgagees in such cases—General charge of debts on residue—Priority of mortgage of specific devisee.*—A testatrix by her will devised and bequeathed all the real and residue of her real and personal estate unto R. G. "upon trust to sell my real estate and to call in and convert into money the remainder of my personal estate, with power to demise or lease * * any portion thereof, for any term or years. * * And I declare that the said trustee shall, out of the moneys arising from such sale, calling in and conversion * * pay off the incumbrance, if any, existing on the F. property, and shall divide the balance of the said moneys among my four children."

The remaining property, not included in the residuary estate, was specifically devised by the will among the children of the testator in certain shares.

R. G. mortgaged a certain portion of the residuary real estate to one T. and applied the proceeds of the loan in part in liquidation of the outstanding mortgage on the F. property, and in part otherwise for the benefit of the estate. The property

comprised in this mortgage was sold by the Court on proceedings by T., but did not bring enough to pay off the whole mortgage debt.

Held, on administration of the estate by the Court, that the trust of the residue was a mere trust for conversion out and out, and R. G. had no power to make the mortgage in question, nevertheless to the extent to which the estate got the benefit of the loan, the executors of T. were entitled to rank against the estate for the balance of their mortgage debt, but only subsequent to certain mortgages placed by specific devisees since the death of the testatrix on portions of the estate devised to them, including the F. property, without knowledge, so far as appeared, of the source from which the money discharging the F. mortgage came.

Held, also, that the mortgage to T. being invalid, it could only carry interest at 6 per cent., although it provided for interest at 12 per cent.

London and Canadian Loan Co. v. Wallace, 8 O. R. 539, distinguished. *Gordon et al. v. Gordon et al.*, 611.

See DEED.

WINDING-UP.

See COMPANY, 2.