

And never having subsequently assented to the deed, or recognized or acted under it, he was not estopped from denying that he had executed it.

Per *Taschereau and Patterson, J.J.*, dissenting, that though defendant had no sufficient authority to sign, yet there was an agreement to compound which was binding on plaintiff, and the understanding that he was to be paid in full would be a fraud on the other creditors, who could only receive the dividends realized by the estate.

Lawrence v. Anderson, 21/466, 17 S.C.C. 349.

7. In trust for creditors—Release of lien—Preference.]—Plaintiff conveyed all his estate to defendant in trust, (1) to satisfy all mortgages, judgments, liens, etc; (2) to pay Union Bank all bills of exchange and notes upon which plaintiff and others were liable. The bank became a party to the assignment, and released its lien on real estate, under a judgment by confession to enable the same to be sold, and received from the defendant the amount realized, being less than the amount of the judgment lien released. At the date of the assignment plaintiff was liable as the indorser on a note for \$3,000 held by the Bank.

He claimed that a rateable proportion of the amount realized from the sale of the land should be applied to the reduction of this note, and brought suit against the assignee and bank. The defence was the assignment providing in the first place for the payment of all liens, etc.:—Held, that the bank alone was entitled to the proceeds of the sale, their lien being in excess of the amount realized, also that the bank by releasing its lien did not lose its position as a preferred creditor.

Harris v. Ritchie, 22/141.

8. Release of claims in assignment—Effect of on debt not referred to—Construction of document—Summons to agent.]—On December 7th, 1886, R.B.M. executed to J.C.M., for \$600, an assignment of his expectation of a legacy from R. De cember 23rd he executed a general assignment for the benefit of creditors, pre-

ferring J.C.M. therein for \$4,000, and containing a clause whereby "the said creditors respectively hereby release the said assignor from all debts owing from the said assignor to the said creditors, respectively, in respect whereof they would be entitled to receive dividends under these presents," and another "Provided always and it is hereby agreed and declared, that nothing herein contained shall prevent the said creditors or any of them from enforcing and otherwise obtaining the full benefit of any charge or lien which they respectively now have upon any estate or effects whatsoever, or from suing" J.C.M. became a party to this general assignment.

In 1887, R.B.M. suffered a judgment on the debt of \$600 secured by the assignment of the legacy, to pass against him at the suit of J.C.M.

In 1893, R. died, and under her will a legacy of \$500 became payable to R.B.M. This being in the hands of J.C.M. as executor, R.B.M. gave him a receipt for the money, and J.C.M. applied it to the satisfaction of the judgment.

Plaintiff, as a creditor of R.B.M., having summoned J.C.M. as an agent having in his hands credits of R.B.M., who was absent or absconding, J.C.M. made a return of the above particulars, and that the whole indebtedness of R.B.M. to him was \$4,800, and was discharged. Plaintiff appealed, contending that J.C.M.'s security on the legacy was discharged by his execution of the release in the general assignment.

Held, that under the wording of the clause, the release only applied to claims in respect to which he "would be entitled to receive dividends," and as J.C.M. had only executed in respect to the amount of \$4,000 for which he was preferred, it could not apply to a debt outside the preference.

Also, on the view that J.C.M. lost any security he might have had under the assignment of the legacy, by failing to give notice of it to the other creditors, on executing the general assignment, that the contention must fail, either because the assignment of the legacy was a "charge or lien," specially excluded by the clause above quoted, or if not a