REPORTS.

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MASTER'S OFFICE.

MONTEITH v. MERCHANTS BANK.

Estoppel—Evidence of an accomplice—Evidence against the assigns of a deceased person—R. S. O. c. 62 sec. 10—Acts constituting an executor de son tort.

The letters of administration to an administrator were revoked after judgment in an action brought by him as plaintiff to recover certain assets of the estate, and new letters were granted to one P. who thereupon obtained an order of revivor in such action directing the further proceedings to be carried on by P. This order of revivor was subsequently discharged; and the plaintiffs (who were defendants in such action) applied to have it ruled in this action that the judgment obtained before the revocation of letters was *res judicata* against P.

Held, that by the discharge of the order of revivor the action was without a plaintiff, and could not operate as an estoppel against P.

Where certain creditors and the administrator were parties to an order authorizing the compromise of an action respecting certain assets of the estate, they were held to be bound by it in an action for the administration of such estate.

An accomplice in a criminal act is not estopped from giving evidence that certain securities given by him were void by reason of his criminal act; but such evidence should not be held sufficient to invalidate such securities in a civil suit, unless materially confirmed by other evidence, and especially where the holder of such securities was no party to the criminal act.

A decision against the assigns of a deceased person should not be given unless the evidence of the witness against such assigns is corroborated to the material evidence. R. S. O. c. 62 sec. 10.

The party who gives or sells the goods of a deceased person to another, is subject to the liability of an executor *de son tort*. If it were not so there would be no end to the number of persons who might be charged.

Where a person takes the goods of a deceased person under a fair claim of right, though unable to establish such title completely, he is not liable to be charged as executor *de son tort*.

[Mr. Hodgins, Q.C.—January 26.

In an administration suit certain unsecured creditors of the testator sought to attack certain warehouse receipts, given by the testator to the plaintiffs and others, on the ground that they were invalid and therefore void against such unsecured creditors. The Master ruled that he had no jurisdiction to try any such an issue, but on appeal BOYD, C., held that he had. The reference then proceeded under the state of facts set out in the present judgment.

Rae and *Miller*, for the banks.

W. Barwick, for Walsh

J. A. Paterson, for the unsecured creditors.

J. Macgregor, for the administrator.

THE MASTER IN ORDINARY:—The order on appeal from my judgment in this case declares that any creditor or set of creditors, or the administrator is at liberty to attack or resist any claim sought to be proved against the estate in any way whatever; and directs that "the said Master is to try and determine any issues that may be raised thereon."

I had ruled that neither under this Chamber Order for administration, nor under General Order 220 had I jurisdiction to try the validity of the statutory securities called warehouse receipts given by the testator in his lifetime, nor whether such securities were fraudulent and void against the general creditors of the testator.

But under the broad terms of the order on appeal, evidence has been received on all the issues raised by the unsecured creditors and the administrator against the claims of the Merchants Bank, the Dominion Bank, and James Walsh.

The litigation respecting these warehouse receipts has been going on for some time in each of the Divisions of the High Court. About the time the infant defendant, then claiming to be administrator, obtained the *ex parte* order for administration, he instituted suits impeaching these warehouse receipts against the three parties named. The proceedings in these suits have been proved before me, and they furnish some original illustrations of legal procedure not to be found in our authorized books of practice.

Monteith v. *Merchants Bank* was a suit in the C. P. D. by the infant as administrator to compel the bank to account, as executor *de son tort*, for the proceeds of certain goods received and sold by the bank after the testator's death.

The bank claimed title to the goods under the warehouse receipts given by one Herson to the testator in the usual form, and which the testator had endorsed to the bank as collateral security for certain discounts.

The action was tried at the Toronto Winter Assizes, 1884, before ROSE, J., without a jury, whose findings were as follows:—

"I find as a fact that the goods claimed were covered by the warehouse receipts produced by the bank, and were taken by the bank under and by virtue of such receipts.

"I find that the bank advanced the moneys secured by the receipts.

"I find that Herson who signed the receipt was lessee of the cellar where the goods were stored and warehoused.