to the breach of trust by buying, or receiving as a pledge, for money advanced to the executor at the time, any part of the personal assets, whether specifically given by the will or otherwise, because this sale or pledge is held to be *prima facie* consistent with the duty of an executor. **588** Generally speaking, *he does become a party to the breach of trust by buying or receiving in pledge any part of the personal assets, not for money advanced at the time, but in satisfaction of his private debt, because this sale or pledge is *prima facie* inconsistent with the duty of an executor." But in Williamson v. Morton, 2 Md. Ch. Dec. 94, Chancellor Johnson, after observing upon the difference in this respect at law and in equity, that, at law, actual collusion must be shewn, but that, in equity, an executor cannot make a valid sale or pledge for his own debt, and that the transaction is itself notice of misapplication, and involves the purchaser as participator in the breach of duty, doubted whether the Courts were less disposed to interfere with the title of the assignee of the executor, where the assignment was made for money advanced at the time; see Burt v. Trueman, 29 L. J. Chan. 902, where fifteen *per cent.* of the sum loaned was taken out in wine, and it was held that the circumstances of the transaction were enough to shew that the money was not borrowed to pay debts, and a security for it was avoided. The subject is discussed at some length in Allender v. Riston, 2 G. & J. 86, and in Albert v. Savings Bank, 2 Md. 159,[19] where an executor and trustee transferred stock, standing in his name as trustee, to a bank of which he was a director, as a security for a loan made to him; the charter of the bank prohibited the loan of its funds to directors, and it was held that the bank therefore took no title to the stock, but otherwise its title would have been good. It should seem, however, that an executor ought to be treated as an agent of a bank of which he was director, so far as to affect it with notice of his inability to pledge assets for his own debt, and that the bank therefore ought to stand in no better position than he does. In Williamson v. Morton *supra;* S. C. *sub nom.* Miller v. Williamson, 5 Md. 219, a mortgage had been devised, *inter alia,* to the wife of the executor for her separate use for life, remainder to the executor, remainder to the children of the wife. The executor settled his account, in which he charged himself with the mortgage debt, and took credit for the payment to his wife of the whole balance of the estate, and obtained a release from her. He then, "as executor and devisee," assigned the mortgage to Miller & Mayhew, the Appellants in the Court of Appeals, as security for a debt due them by a firm of which he was a member. He then foreclosed the mortgage, and the assignees claimed the proceeds, as did the wife also, who insisted that her release was without consideration. The transactions were after the Act of 1843. The Chancellor doubted whether under that Act, assuming the law would otherwise sanction such a disposition of the assets, it could be then supported. He did not, of course,

---

[19] In Marbury v. Ehlen, 72 Md. 216, the court said that Albert's Case should not be followed in any case which was not "precisely analogous in all its facts." See Grafflin v. Robb, 84 Md. 455.