EVIDENCE—*Continued.*

by parol, yet it is indispensably necessary that it should be made out by plain, direct, and unequivocal evidence. *Ib.*

See PRIVILEGED COMMUNICATIONS.

EXCEPTIONS TO ANSWERS.

See PRACTICE IN CHANCERY, 12, 28, 29.

EXECUTOR AND ADMINISTRATOR.

1. A party who was executor and devisee, acting in those capacities, assigned a mortgaged debt, part of the assets of his testatrix, to certain assignees, to secure the payment of his own debt, due to the latter. HELD—

   That the assignees, by taking such an assignment, were aiding the executor in committing a devastavit, and acquired no title thereby. *Williamson* vs. *Morton*, 94.

2. In order to defeat the title of the alienee of an executor, in a court of law, it is necessary to show actual collusion between the executor and the purchaser, or creditor. *Ib.*

3. But in equity, an executor or administrator can make no valid sale or pledge of the assets, as a security for, or in payment of his own debts; because the transaction itself, gives the purchaser or mortgagee notice of the misapplication, and necessarily involves his participation in the breach of duty. *Ib.*

4. Though the courts are less disposed to disturb the title of an assignee, when the assignment is made for money advanced at the time, than when made for an antecedent debt, yet, if it appears in the transaction itself, that the executor is about to misapply the money raised upon the assets of his testator, the mere circumstance that the advance of the money was cotemporaneous with the assignment, will not protect the lender. *Ib.*

5. When a person dealing with an executor, must, from the very nature of the transaction, necessarily know that the executor was applying the assets to objects in conflict with his duty, he deals with him at his peril; and a transfer, or an assignment, made under such circumstances, will, in equity, be set aside at the suit of a creditor, a specific, residuary, or general legatee. *Ib.*

6. *Quere*, is not such a disposition of the assets prohibited by the act of 1843, ch. 304? *Ib.*

7. A party dealing with an executor, as such, has notice of the existence of the will, and of its contents; the will, in this state, being open to inspection upon the public records. *Ib.*

8. Where a sole executor is at the same time guardian, the law will adjudge his ward's proportion of the estate to be in his hands, as guardian, after the expiration of the time fixed by law for the settlement of the estate, whether he has passed a final account or not. *Lark* vs. *Linstead*, 162.

9. But it does not, therefore, follow, that the authority of the executor to dispose of the estate of his testator terminates in every case on the expiration of the period limited for the passage of the final account. *Ib.*