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. 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. (*l*)

In this case the administratrix has not sold or pledged the assets of her intestate for money advanced to her by *Salmon;* but she has mortgaged them to indemnify *Salmon* for any loss he may sustain, in the manner described, from *Thomas Clagett*. *Salmon* has advanced no money to this administratrix which she might, or might not have applied to the uses, and for the benefit of the estate of her intestate. On the contrary, this mortgage is, on the part of the administratrix, a voluntary pledge of the assets of her intestate, to insure the payment of the debt of another. It is upon the face of it, and in terms an application of the assets in a manner wholly inconsistent with her duty as administratrix; and *Salmon*, as the grantee, is a party to this breach of trust. This mortgage must, therefore, be considered, at least *prima facie*, in equity as a fraudulent application of the assets, as against all those who have a claim upon them as creditors, or next of kin of the intestate.

But there is here no creditor, nor any one of the next of kin of the deceased who makes any objection to this mortgage, or who asks to have it set aside, on the ground of fraud, to let in his claim. There is no such person now here attempting to follow these assets for any such purpose. And if there be any one who has an interest in the personal property so pledged independently of, and superior to those bound by, or who claim under this deed, they are not now before this court. And it is very clear, that none of these defendants can be suffered to impugn their own deed for the benefit of others not parties to this suit.

Administration was granted to this defendant *Elizabeth Clagett*, so long ago as the year 1816, and she executed this mortgage on the 22d of September, 1827, then having this property in her possession. It is not intimated, that there are any outstanding debts due from the intestate; and if these his children, who are here as

(*l*) Keane v. Robarts, 4 Mad. 357; Downes v. Power, 2 Ball & Bea. 491.