

of the executor to collect moneys due the deceased, and it was certainly not the design of the legislature to interfere, in any way, with the performance of that duty. But the transaction now under consideration is very different from a mere collection, by the executor, of moneys due his testator. In dealing with Miller and Mayhew, by assigning them this mortgage, he was not collecting the mortgage debt due his testatrix—that debt was then in the hands of an attorney for collection, and, by the assignment of it to Miller and Mayhew, as security for money advanced by them to him, he was disposing of the property of the deceased for his own private use. Now, if the act of assembly condemns and invalidates the sale of the property of the deceased, by an executor or administrator, without the previous authority of the Orphans Court, even though the purchase money be duly applied to the purposes of the estate, (and such would seem to be the effect of the act,) how much more liable to objection is a transfer of the assets, when, upon the very face of the transaction, the party receiving them could not fail to know that the consideration paid for them would be misapplied.

But the court, in this case, is not asked to compel these parties, Miller and Mayhew, to deliver up a security placed in their hands by the executor; but they are here, asking the court to give them the benefit of it, by directing a payment to be made them, out of funds raised upon a bill filed by the executor, in that capacity, against one of the debtors of his testatrix. The aid of the court, then, is asked to consummate a *devastavit* on the part of the executor. That is, to divert the assets of the estate from their legitimate purpose, to the payment of a debt contracted by the executor for an object having no connection with the affairs of his testatrix, and under circumstances which must, upon the face of the transaction, have informed the parties with whom he was dealing, that the money which they loaned him would be applied to objects foreign from his duty as executor.

But there is a material difference, as was said by Lord Eldon in *McLeod vs. Drummond*, 17 Ves., 167, “between direct-