

ing an instrument to be delivered up when upon the circumstances under which it was deposited, that would be too much, and in equity, calling upon that person and others to make it effectual." In the latter case, the court might very properly say, it would not interfere actively in behalf of the party holding the security and asking to have it made effectual, when the circumstances might not be strong enough to induce it to compel him to surrender it.

The title of these parties, however, it is said, does not rest upon the mere assignment of Charles A. Williamson as executor and devisee. It is also insisted, that he had at the time of the assignment, become the absolute owner of the thing assigned (the mortgage,) by settling a full and final account in the Orphans Court, and making a complete, and final distribution of the estate according to law, and according to the provisions of the will of the testatrix. And a copy of the account so settled by him, and the release of Mrs. Williamson is exhibited, and relied upon in support of this view of the case.

It is manifest, however, upon an inspection of the account, that the executor did not charge himself with the amount due on this mortgage: because he is only charged with the principal thereof, when it is evident from the proceedings, and upon the face of the mortgage itself, that there was then due, nearly, or quite five years interest, which would have considerably swelled the cash balance apparently in his hands, and which, by the release of Mrs. Williamson, he appears to have paid over to her as the residuary legatee for life, of the testatrix.

But although the account is in this respect clearly erroneous and prejudicial to the legatees: still it is most plausibly urged, that as Mrs. Williamson, by executing this release, had admitted herself to be fully satisfied, it would not be just to permit her to say the contrary, as against a party who had dealt with the executor, in the confidence that she was so satisfied. And it is likewise insisted, that there is no competent proof in the cause to show, that she did not receive from the executor, the money specified in the release.

The release is dated on the 7th, and was recorded in the