

There is, moreover, very pregnant evidence to show, that even if these assignees, knew of the actual existence of the release, they also knew that the money had not in fact been paid.

The house of Williamson, Sutton & Co., of which Williamson, the executor, was a partner, and for whom the money was borrowed, was known by Miller and Mayhew to be greatly embarrassed, and raising money upon the most disadvantageous terms. The negotiations with them must have fully apprised these assignees, of the desperate condition of the affairs of the house of Williamson and Company : and with this knowledge, even if they had known of the account settled in the Orphans Court, and the release, they would have been disposed to regard them more as matters of form than substance.

It would have occurred to these gentlemen, as strange, that Williamson, should in October, 1848, advance his wife in money on account of a mortgage not then paid, \$5761 90, and, in February following, should come to them, and on the security of this same mortgage, propose to borrow of them, nearly the same amount which he had four months before paid his wife ; and to borrow upon terms, which none but parties in failing circumstances will submit to.

I am, therefore, of opinion, that Miller and Mayhew did not know of the existence of this release, when they took the assignment in February, 1849, or if they did know of it, they also knew or had the strongest grounds for believing that it was a mere formal transaction and nothing more, and that seeing that the executor was about using the assets of the estate, in flagrant violation of his duty, by using the money raised upon a pledge of them, in supporting or attempting to support a failing commercial firm, they cannot come here and ask this court to give efficacy to the pledge, against the parties entitled under the will.

But it is also contended by the solicitor of the assignees, that there is no evidence that the executor did not, in point of fact, pay the money to Mrs. Williamson, as expressed upon the face of the release : and I am certainly prepared to admit that if he did so pay, she can have no claim to ask to be paid a second