

1849.

Crooks
v.
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has clothed with a fiduciary character persons who have assumed to act as trustees, guardians, or executors, it is our duty, in my opinion, to give the petitioner the opportunity he asks, of considering whether it will be for the interest of the estate to adopt these sales. And our order ought, in my opinion, further to direct the respondents to pay the costs of the application, and to deposit forthwith in the Commercial Bank the sums admitted to have been received, without any deduction.

My learned brothers dissent from the latter part of the order, which seems to me proper. They regard it as inconsistent to order the money to be paid into court prior to an election by the creditors to adopt the sales, and they look upon it as imposing unreasonable difficulties upon the respondents, having reference to their position in relation to the purchasers. These difficulties do not press on my mind. I think the prayer of the petition, that the creditors should have an opportunity of considering whether it is for the interest of the estate to adopt these sales, reasonable. And I think they have a right pending that enquiry, to claim that the moneys should be secured in court. Should the order place the respondents in a position of difficulty, that is attributable to a course of conduct which does not seem to me to merit any very tender consideration from the court.

Judgment.

JAMESON, V. C.—I entirely concur in all that has fallen from the learned Chancellor—whether as general principles or observations applicable specially to the present case—with the single exception of the *immediate* order for the payment into court of the money received by the solicitor and his agent from these irregular sales of land. I cannot but think that such payment into court should follow, and not precede, the enquiry before the Master, which is the object of the petition; as, until these sales shall be adopted as beneficial to the creditors, or rejected as injurious, we cannot be certain whether the fund belongs to the estate under administration, or to the purchasers who have been misled in these transactions. It is not probable that the estate can be damnified by the delay, because the substance of the property is still within the reach of the