been doubted in Lord Erskine's time, that purchase money will not be ordered into court, even when the purchaser neglects to attend the motion, unless the title has been either accepted or approved, (2 Daul. Prac. 1 Eng. Ed. p. 919, and cases cited; *Rutter* v *Marriott*, 10 Beav. 33,) and it is equally clear that the vendor's solicitor may move for a reference as to title when the purchaser neglects to take that step on his own behalf. (Sugd. V. & P. 11th ed. p. 71.) The practice is stated by Sir Edward Sugden in this way: "If the purchaser neglect to complete his purchase, the practice is for the seller to confirm the report, and then if the purchaser is supposed to be responsible, to get an order to enquire whether the party can make out a good title, and if he can, to obtain an order upon the purchaser to complete his purchase."

Now as the vendor has a right to an enquiry whether he can make out a good title, but has no right to an order for payment of the purchase money into court until the title has been either accepted or approved, it would seem to follow that the present motion is, under the circumstances, irregular. It cannot be regular to ask that which it would be clearly irregular to grant And the books in ordinary use would seem to shew that view of the practice to be correct, although Mr. Smith would seem to state it differently. In Ayckbourn's Practice it is said, 3rd ed. p. 482, speaking of the order to pay in purchase money, "an order for such purpose, however, cannot be obtained until the purchaser has either accepted the title, or the master, upon a reference as to title, has reported that a good title can be made." And in Jarman's Practice it is said at page 310: "But before this motion can be made he must have accepted the title; or it must have been certified that a good title can be made."

The motion, therefore, must be refused, but, under the circumstances, without costs.

IN RE KENNEDY.

Infants and the statute 12 *Vic., ch.* 72.

In applying for the sale of real estate settled upon infants, the mother, by whom the application was made, was required to join in the conveyance for the purpose of surrendering the life-interest vested in her under the settlement.

This was an application by *Leith* on behalf of Mrs. Ferrie, for an order to sell a portion of the real estate settled upon her children by a former husband.

ESTEN, V. C.—I think I may fairly consider that Mr. Kennedy died insolvent, and that nothing is coming to the children from his estate. I think that Mrs. Ferrie should make an affidavit, or that it should be shewn to my satisfaction that the property she holds is hers absolutely, and that the children have no interest in it. It will then appear that the only property these children have is that mentioned in the petition. Mrs. Ferrie or her husband is not bound to maintain them. I think, therefore, that a proper case will then be presented for a sale of the Mountain property, as the produce of the Hughson-street property is wholly insufficient for the purpose, and the Mountain property being likewise exposed to waste and dilapidation. I should, however, see the settlement. It may be necessary for Mrs. Ferrie to make an appointment in favour of the children. Mrs Ferrie must join in the sale, and must surrender her life-interest for the maintenance and education of the children.

RE MCDONALD.

Infants and the statute 12 *Vic., ch* 72.

In directing the sale of infants' real estates the court is not governed by the consideration of what is most for their present comfort, but what is for their ultimate benefit The court will order a sale of a portion of an infant's estate to save the rest when it is made to appear to be for the benefit of the infant.

This was also a petition presented for the purpose of selling a portion of an infant's real estate to pay off a mortgage existing on another portion thereof, known as the Homestead.

ESTEN, V. C.—I think it may fairly be considered within the scope of the act to sell part of the infant's property to save the rest, when it appears to be for the benefit of the infant. In the present case the Homestead, consisting of 70 acres, is exposed to loss by reason of the mortgage to Beattie, who will be entitled to recover on it, I presume, whatever it may be necessary to pay to the government in respect of the 55 acres purchased by him from McDonald, and which appears to be part of the lot C., of which therefore the family appear to retain about 150 acres. The mortgage is evidently intended as an indemnity against the deed for the fifty-five acres not being forthcoming, and if the government would not accept a separate sum for the 55 acres, and the whole lot C. became lost through the default in payment of the government price, no doubt Beattie could recover the whole amount of his mortgage and interest. It may be expedient and for the benefit of the infants that the residue of lot C should be sold in order to prevent the foreclosure or sale of the 70 acres, but it is impossible not to see that the mother who presents this petition is looking rather to the present comfort of herself and her children than to their eventual good. The interest of the infants, however, is the only thing that this court can consider, and in making the enquiries which I am about to direct, the master must bear this fact in mind, namely, that he is not to consider the present comfort of the family so much as the ultimate good of the infants. The evidence is very imperfect, and has not been properly taken, as it ought all to be taken by the master. I shall therefore refer it to the master at Sarnia to enquire and state what property real and personal Angus McDonald possessed at the time of his death, and what has become of it; what debts were due to him, and what debts he owed; to enquire into and state the particulars of the transactions with Beattie, and whether the 55 acres sold to him is not part of lot C mentioned in the petition, as still belonging to the family; and to enquire into and state the condition of the 70 acres and of lot C. respectively, and how much is due on lot C., and the respective values of lot C., or so much of it as still belongs to the family, and of the 70 acres, and how much lot C., or so much as still belongs to the family, would probably produce on a sale; and how much money would be required to procure a patent to be issued for the 55 acres purchased by Beattie, and whether a patent could be procured for such 55 acres without procuring a patent for the whole lot C.; and if the master shall be of opinion that it is expedient, and for the benefit of the infants, that the residue of lot C should be sold in order to exonerate the 70 acres from the mortgage to Beattie, he is to state his reasons; and in making the foregoing enquiry he is to consider only the interest of the infants, and he is not to take into account the comfort or welfare of any person or persons, and he is to examine the infants separately and apart as to their consent to a sale of their interest in lot C., for the purpose before mentioned, and he is to explain the matter to them.

SIMPSON V. THE OTTAWA AND PRESCOTT RAILWAY COMPANY.

Receiver—Appointment of.

A receiver, though an officer of the court, stands in the position of trustee to all interested in the estate or fund. therefore in making the appointment the court will endeavour to select a person unexceptionable to all parties, not only on the score of fitness and competency, but also as regards the feelings of friendship or dislike between the person proposed and those with whom he, in the discharge of his duties, will be likely to be brought into frequent communication.

In this case the receiver of the revenues of the railroad had been ordered, in consequence of the company having made default in payment of the interest due upon certain bonds of the company, and the plaintiffs having submitted the name of a person, his appointment was opposed on affidavits, setting forth that as between himself and the president of the company, a strong feeling of antagonism existed, and although perfectly fit and competent in all other respects, the consequence of his appointment would probably be that the interests of the company would sustain injury by reason of the want of friendly intercourse between the receiver and the persons interested.

The facts are more fully stated in the judgment.

Read and *Strong* for the plaintiff.

McDonald, contra.

SPRAGGE, V. C.—When a receiver is appointed it is on behalf of all interested in the estate or fund which he is appointed to receive; and, therefore, though an officer of the court, he stands in the position of trustee to all.

The case of *Wilkins* v. *Williams*, (3 Ves. 588.) contains a strong expression of opinion by Lord Loughborough in favour of the appointment of a person proposed as receiver by a mortgagee; but