

1849.

Crooks
v.
Crooks.

Judgment.

delay. In this very case the plaintiff might have compelled her to set out by her answer what she had in her hands. In these cases the plaintiff generally favours the defendant. The practice is for a favourite creditor to file a bill and snap a decree, and one solicitor is concerned for all parties. *But it is his duty to make the defendant set out what he has in his hands, for if he becomes insolvent, and an opportunity appears to have been lost, that solicitor would stand in great peril before this court.*" And in another case, where an attorney filed a bill in the name of the next of kin to a testator, making himself a defendant, in order to delay payment of money in his hands as executor, Lord Eldon said that he would commit any attorney who, to delay or evade payment of money under such circumstances, commenced a suit in that court and then delayed putting in an answer, for the purpose of keeping back moneys in his hands. — *Padete v. Lansdale*, (a) *Mootham v. Hale*. (b) In a case before Lord Langdale, an application was made to compel an attorney to pay moneys which he was said to have procured to be paid out of court to his client, with a knowledge that a stop order had been obtained, the learned judge, after affirming the principle, broadly says, "it is very rarely that such cases come before the court; I only recollect one, which came before Sir Wm. Grant, who said that the solicitor had better pay the money at once, and it was done." — *Ezart v. Lester*. (c)

To apply these principles to the case before us, though differing from my learned brothers, and feeling on that account, as I ought and do, doubtful of my opinion, yet I confess that I cannot hesitate as to the order which the court is bound to pronounce. The plaintiff, in 1840, for the safety and protection of his own estate, asks and obtains the extraordinary interposition of this court, by restraining all creditors from proceeding to realize their debts from the estate of the testator. Decrees are afterwards made, rendering the injunction perpetual. In 1842 the plaintiff, through the agency of his solicitor, behind the back of the creditors, and of course without the sanction of the court, sells a portion of the estate, and the purchase money is either retained by

(a) 2 T. & V. Ch. P. 217.

(b) 3 V. & B. 92.

(c) 5 Beav. 585.

the so
tracts
the pla
ditors,
judgme
large p
nomina
the ma
instrum
Ramsa
to the p
of the v
ing dow
creditor
which £
Now
open vic
intent of
of the c
tent to a
I have b
assume t
improper
no langu
tionable
who obtai
tors by v
tained, ou
conscience
tion, from
(whatever
junction, c
ditors, in
care and
other light
that a plain
mit any cr
the estate
ing such