

1849.

CROOKS V. CROOKS, LESLIE ET AL.

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IN RE H. J. BOULTON AND R. J. TURNER, ON THE PETITION
OF JAMES LESLIE, ONE OF THE DEFENDANTS.*Practice—Statements in petition framed under 163rd order—Payment of money
by solicitors into court—Entitling affidavits—Agency—Lien for costs.*

Dec. 8 & 14.

W.C., having filed a bill to administer the estate of his father, obtained from the court an injunction enjoining several judgment creditors, who had placed executions against the lands of the deceased in the hands of the sheriff, from proceeding thereon, until a decree for administering the estate could be obtained. After the injunction had been obtained, W.C., by the advice of his solicitor, sold part of the estate, and the greater portion of the purchase money was retained by the solicitor, upon which he claimed to have a lien for his costs.

A decree was afterwards obtained in the cause, making the injunction perpetual; after which the solicitor advised the conveyance of a large portion of the estate to his (the solicitor's) partner, upon certain trusts, whereby the eldest judgment creditor was entirely excluded from all benefit.

The agent of the solicitor advised a conveyance of another portion of the estate to one of the creditors, and obtained from this creditor a power of attorney to sell, under which he contracted to sell several portions of the lands so conveyed, and received several sums of money on account thereof, which he had also applied to his own use, with the exception of certain parts paid to his client.

The defendant, *Leslie*, upon these facts, filed a petition under the 163rd order, praying that it might be referred to the Master, to enquire and report if the sales have been beneficial to the estate; and if the Master should be of that opinion, then that the proper parties might be ordered to pay the amounts received into court.

Held per cur. that the proper order to make would be for a reference to enquire and report; and if the sales be adopted, then that the money remaining in the hands of the solicitors should be forthwith paid in without prejudice to the creditors' rights to get rid of the contracts.

Blake, Chancellor, *dissentiente*—who considered that the proper order to make was for the immediate payment of the money, whatever might be the ultimate disposition thereof.

But *held also, per cur.*, that had the petition given notice to the parties that that relief would be asked, sufficient appeared on the affidavits to warrant the court in making an order for immediate payment, pending the enquiry before the Master, and that the solicitors could not claim to have any lien for costs.

Held, also, that there did not appear sufficient either in the petition or in the affidavits to enable the court to pronounce any judgment as to the liability of the principal for the acts of his agent.

The affidavits and petition were entitled in the causes of *Crooks v. Crooks*, omitting any mention of the solicitors. *Held*, that the entitling was sufficient.

Semble—that where, from the nature of the facts, upon which a petition to the court is founded, they cannot be sworn to, it is not sufficient to make use of the short form given in the 163rd order, but that such facts should be stated in the petition, so that the respondents may be made aware to what extent and on what grounds relief is sought against them.

The facts of this case are so fully stated in the judgment pronounced by the court, as to render any statement here unnecessary.