

solved. It is said, that though the credit did not expire until 1842, and the payment of the money due by the purchasers could not of course have been compelled earlier, yet still the rights of the parties might have been settled sooner, and the amount due the wards ascertained. But suppose this had been done, would the uncollected money due from the purchasers have been considered in the hands of Selby as guardian, until an order of court has passed authorizing him to receive it in that character? The Chancellor does not think so.

If, indeed, Selby had received this money, either after or before it was payable and had charged himself with it as guardian, it may be that upon the principle, that the court will sanction when done, that which upon application would have been ordered to be done, he would be regarded as holding it in that character. But he did not so charge himself, and if we are to credit his deposition taken on the part of Watkins, he did not intend so to charge himself except upon terms which have never been complied with. It seems to the Chancellor, that if the transmutation insisted upon by the counsel for the sureties in the trustee's bond, has been effected by operation of law, then it follows, that not only is the sum of \$2011 in the hands of Selby as guardian, but the residue of the purchase money must be in his hand in the same character.

There is, however, another view of the case in which I am of opinion, the sureties in the bond given by Selby as trustee, must be held responsible, at least to the extent of a fair rateable proportion of the property mortgaged to them as an indemnity. Indisputably at the date of that mortgage—the 1st of October, 1843—which was after the receipt of the money by Selby, he and the mortgagees considered him as occupying the position of trustee with reference to this property, and liable for it as such. No such idea as a legal transfer from trustee to guardian was entertained then, but both mortgagor and mortgagees thought that the risk continued; and for that risk the indemnity was provided. The object of the deed, as the court thinks, was not merely to indemnify the sureties in the bond of the trustee, but to secure the payment of the money which he had received in