

The next question has reference to the disposition which must be made of the money in court pending the appeal. One side asks that it may be invested so as to be productive, whilst the other objects, and denies the authority of the court to make an investment without consent. The amount is large, amounting to near twenty thousand dollars, and as some time may elapse before the appeal is decided, it would be a subject of regret if by the objection of any one of the litigating parties the whole body of creditors shall be made to suffer the serious loss which would result from keeping idle so large a sum of money for the period which is likely to intervene before the controversy is brought to a close.

If by the objection of several of the creditors, or those who appear to be creditors, the fund must remain unproductive, and the doctrine established that consent is necessary, then it would seem to follow that the consent of all must be obtained, and that if any one refuses his assent, all the rest must be made to suffer. This I do not understand to be the rule of this court. The money is in its care, and I consider it bound in justice to those who may be ultimately entitled to receive it not to permit any one of the contesting parties to say it shall remain locked up and unprofitable until some future and indefinite period, or until he gives his assent to its investment. In the present state of the case it is impossible to say who may be entitled to this fund. The very object of the appeal is to settle that question, and it would therefore seem strange to allow any one of the claimants, whose title is controverted, to say, authoritatively, nothing shall be done with the money without my consent.

The court, therefore, will order an investment, but as the amount is large, and it would be satisfactory to receive the suggestions of those who appear to be entitled to it, as to the character and mode of the investment, a short time will be allowed to hear from them upon the subject.

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[On the 30th of the same month, November, 1850, the Chancellor passed the following order in the cause.]