

fits of the real estate descended; (r) probably, because those rents and profits were allowed to the heir as a support during his minority; and as a means of preparing for his defence when he should attain his full age; or, because, upon feudal principles they were to be otherwise disposed of. (s) And therefore, after lands here had been made liable to the payment of debts, by the statute of 1732, no decree for the sale of it could be obtained for that purpose

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court in taking off the interest from the debt which they contracted; nor is there sufficient evidence to entitle the petitioners to a partial relief; their claim to which cannot, with any certainty, be said to arise from the situation in which they were placed. The circumstance of the loss falling on Hollingsworth and wife, and not on the creditors, does not appear so material as to outweigh the objections which have been stated. And their conduct, in instituting the suit, not having been accompanied with any actual disturbance of the possession, could not, with justice, make them liable to so considerable a loss. The loss or injury to the purchasers was, in some degree, occasioned by their own fears, which, the event has proved, were not well founded; and they ought not to have the benefit, as far as it is such, of retaining their purchases without paying interest on the sum contracted to be paid. It is to be observed, also, that they might have paid, or offered to pay, the money into court; and that, notwithstanding the evidence respecting the readiness of the purchasers to make payment, it is not shewn that they kept the money dead by them; and it is presumed that the use of money is generally, if not always, worth the interest of it.

It is, therefore, adjudged and ordered, that the said petition be dismissed, but without costs.

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On the next day the case was again brought before the court for further directions.

13th July, 1803.—KILTY, *Chancellor*.—The said petition being decided on, the auditor is directed to proceed in stating the accounts. The order of the 8th of March last was predicated on the ground of a further sale being necessary for the payment of the claims; but it being represented that the sum paid in, on account of the personal estate, will be sufficient to satisfy the creditors, in addition to the sale already made, that circumstance may, possibly, make some difference; and the auditor is, therefore, not restricted to the form or to the principles laid down in the order of the 8th March, in stating the accounts; except that the account No. 5, which was stated by desire of the counsel for the defendants, is to be rejected. The auditor will state the claims excepted to by Mr. Hollingsworth, in the same manner as if passed, for the present; because there will be a sufficiency to pay all the other creditors; and those claims can be hereafter decided on. The auditor will take into the account the money paid in by James Carey, as executor of McKenna, observing that the interest on so much of the claims must cease at the time of that sum being paid in, which will appear in the proceedings. The accounts, when stated to be reported to the court, for further orders.

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The auditor reported accordingly. Some matters appear to have been adjusted by compromise, and the case seems to have soon after terminated.—*Chancery Proceedings*, 1803, fol. 699 to 577; S. C. 1 H. & J. 469.

(r) *Creed v. Colville*, 1 Vern. 172; *March v. Bennett*, 1 Vern. 423; *Waters v. Ebrall*, 2 Vern. 606; *Ward v. Cecil*, 2 Vern. 712; *Scarth v. Cotton*, Cas. Tem. Tal. 198.—(s) *Markal's Case*, 6 Co 4; *Plasket v. Beeby*, 4 East. 435; *Chaplin v. Chaplin*, 3 P. Will. 368.