

The solicitors of the parties, on the 25th of July, 1829, filed an agreement in the following words: 'It is agreed, that this cause shall remain in its present state until September term; and unless some other agreement shall be entered into before that time, that such decree shall then be entered as may appear agreeable to the course of the court, upon the case made by the bill and answer now filed.' No other agreement having been entered into, the case was submitted, with a consent by the solicitors of the parties, except the defendant *McHenry*, that a decree, as proposed, should be passed.

31st October, 1829.—BLAND, *Chancellor*.—The agreement under which this case has been submitted, is conclusive upon all the adult parties to the suit, except the defendant *John McHenry*, who is not a party to it; but he, being in default for not answering, may on the proceedings and proofs, be considered as having waived all objections to the plaintiff's obtaining the relief asked by the bill.

In regard to the lunatic and the infant defendants, it is clear, that their interests cannot be bound by any special agreement; and, therefore, although a committee or guardian *ad litem*, of a lunatic or infant may, in a regular course of proceeding, in some cases, consent to a decree; (*g*) yet as to them, in this instance, the court must found its decree upon other and better ground than that of a peculiar agreement by which adult and sane persons alone are competent to bind themselves.

According to the general course of the court, all cases must be regularly set down for hearing before either party is allowed to call for a decree. But in creditors' suits the course is somewhat different. In such cases, to prevent delay, and as so much is to be done after the funds have been brought into court, and every thing may be so easily set right, by further directions, it has long been the established practice here, as well as in England, in all such cases, where the whole, or a part of the plaintiff's claim, as designated in the bill, has been distinctly established or admitted, as specified; and it is shewn or confessed, that the personal estate has been exhausted, or is insufficient, at once to pass a decree, directing the real estate to be sold, without waiting for the case to be fully prepared for a final close, or to be regularly set down for hearing. (*h*) And this being a creditor's suit, a decree for a sale may,

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(*g*) *Hammond v. Hammond*, post.

(*h*) *Holme v. Stanley*, 8 Ves. 1.—*Lloyd v. Johnes*, 9 Ves. 65.—*Birch v. Glover*, 4 Mad. 376.