

ROBERT M. GIBBS ET AL. }  
 vs. } JULY TERM, 1847.  
 WILLIAM C. CUNNINGHAM ET AL. }

[TRUSTEE'S SALE—OBJECTIONS TO.]

AN advertisement for sale of lands by a trustee, stated that, "By virtue of a decree of the High Court of Chancery, there will be sold certain real estate," naming the tracts and giving their locality, "of which J. C. died seized and possessed;" but did not state the names of the parties to the suit in which the decree passed, nor the several incumbrances upon the property. HELD—That the sale would not, on this account, be vacated in the absence of proof, that competition in the purchase was prevented, or the sale in any respect prejudiced thereby.

The objection that the trustee did not sell the interest of the parties to the suit, but only the interest and title of which J. C. died seized and possessed, is an objection which only the purchasers themselves could take, as they, and they alone, are injured by it.

Where a sale is objected to on the ground of inadequacy of price, resulting from doubts about the title, which doubts could have been removed by reasonable efforts on the part of the trustee, his neglect to do so may effect the question of ratification.

Inadequacy of price will not induce the court to vacate a sale, in other respects unexceptionable, unless such inadequacy is so gross as to indicate a want of reasonable judgment and discretion on the part of the trustee.

The sale, in this case, was made for \$3000. HELD—that an offer of \$4000, made subsequent to the sale, and after the value of the property had been enhanced, could have but little weight in determining whether the property previously sold at a price so much below its value, as to indicate a want of reasonable judgment in the trustee.

The validity or invalidity of a sale must depend upon the state of circumstances existing at the time it was made. In sales made by trustees, acting under the decrees of a court of chancery, the court is the contracting party on the one side, and the bidder on the other—the trustee being regarded as the mere agent or attorney of the court.

A trustee after making fruitless efforts to sell the lands, according to the terms of the decree, sold them at *private sale*, at a price greatly exceeding the best offer he could get for them at public sale. HELD—

That, upon the principle that chancery will always ratify an act when done, which upon previous application would have been authorized, the objection to the act of the trustee founded upon the *form of the sale*, cannot prevail.

Whilst the court will vacate sales, by trustees, made under the influence of error, fraud, misrepresentation or injurious mistake, it would, nevertheless, be a fatal policy to be astute in finding out objections to them.

It was objected to the sale that the trustee's bond was not upon stamped paper, as required by the act of 1845, ch. 193, which went into operation on the 1st