

its conditions and qualification, cannot be regarded as an offer ; and yet it is the only one which has been made for the property, except such as may be found in the correspondence of the same party, and his son, with Wayman ; and in the contract of the 9th June, 1847, between Wayman and Green, which, besides containing stipulations which render it totally inadmissible, is in effect withdrawn by the letter of the 19th August last. In fact, though this property has been in the market by advertisement in the newspapers, with very little intermission from August, 1846, to May, 1847, the offer of Mr. Markell is the only one to which any substantial character can be assigned, besides the almost nominal bid on the 8th September, 1846.

It is true, Mr. Wayman, by a paper filed on the 7th instant, [Sept. 1847,] agrees to give four thousand dollars for the property, on the terms reported by the trustee ; but this offer, in my opinion, cannot be allowed to have much weight in determining whether the property sold previously at a price so much below its value, as to indicate a want of reasonable judgment in the trustee.

It is made after an event has happened, subsequent to the reported sale, which, in the opinion of many persons, has enhanced the value of the property. The Chancellor thinks, as was said by the Court of Appeals, in the case of *Tyson vs. Mickle*, 2 *Gill*, 384, that the validity or invalidity of the sale must depend upon the state of circumstances existing at the time it was made. The clear equity of such a principle seems undeniable.

The sixth ground relied upon for not ratifying this sale, is founded upon the manner in which it was made. It was a *private sale*, though the decree, which is in common form, directs a public one. For this deviation from the decree, it is supposed, the sale must be condemned.

It is an admitted principle, that in sales made by the agency of 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 and attorney of the court. I say, this is the principle, though