

made under the decree could be in any way affected by the circumstance that the mortgagor had petitioned for the benefit of the insolvent laws after the decree and before the sale, as was probably the fact. On the contrary, it may be fairly inferred that no such consequence could be supposed to result from such a cause, or some intimation to that effect would most likely have fallen from the court.

The case of *Alexander vs. Ghiselin*, is a subsequent case, and if, by any fair construction of the reasoning of the court, when applied to the point actually decided, it can be made to embrace the question now under consideration, it must, of course, control it. But, in my opinion, this case is most clearly distinguishable from that, and there appears to me to be reasons of great weight why the principle adopted by the Court of Appeals in that case should not govern this.

This court, in the case now before it, passed a decree for the sale of a parcel of land to pay the lien of the vendor upon a bill filed by him. It was a proceeding *in rem*, and by the decree the land was condemned to pay the claim of the party who sold it, and in whom the legal title still remains. Although the court in the execution of this decree and others of a like nature employs a trustee, that officer is its agent, the court itself being the vendor, acting through the instrumentality of its agent. *Iglehart vs. Armiger*, 1 *Bland*, 527. In *Glenn vs. Clapp*, before referred to, in speaking of these sales the court say, "they are transactions between the court and the purchaser." The question, then, is, whether, after this court has undertaken itself to make sale of property within its jurisdiction, having for the benefit of all concerned assumed the character of vendor, the subsequent insolvency of the defendant shall arrest it and transfer the duty to other hands, and the subject of the proceeding to another jurisdiction?

Though near half a century has elapsed since the insolvent system was introduced, no case of the kind has occurred, or at least there is no trace of any such in the books, and it is confidently believed that none exists. The property in *Alexander vs. Ghiselin*, was to be sold by the sheriff and not by the court