Court Opinion + Ratification of Sale.

No. 6410. Equity.

The Court's opinion and order ratifying the sale made by assignee

Lydia A. Benty assignee of mortgage
on
Petition

No. 6410. Equity.
In the Circuit Court for Frederick County
July Term 1895.

On the 14th day of September A.D. 1893. J. Grahame Johnson, Ezra L. Kemp and Florence V. Kemp, his wife being indebted to Elmira Johnson in the sum of eighteen hundred dollars, the latter to secure the payment thereof, executed to said Elmira Johnson a mortgage of all their undivided interests in certain town lots in Walkersville in said County described in said mortgage. That on the same day Elmira Johnson and her husband J. Grahame Johnson assigned the mortgage to said Lydia Benty. In the mortgage there is a proviso that if default be made in the payment of the mortgage debt, then Elmira Johnson ×× or her assigns may sell the mortgaged premises, ××× default having been made in the payment of the debt, Lydia Benty, the assignee, sold the mortgaged property, on the 11th day of May A.D. 1895, to Edward C. Eichelberger Esq. at public auction, for the sum of Seventeen hundred and thirty five dollars. ($1735). To the ratification of this sale, Elmira Johnson, J. Grahame Johnson and Edward C. Eichelberger have filed objections.

The substance of the objections is that the assignee, Mrs Lydia Benty, cannot give a "good and complete title to the property sold, because "Mrs Johnson has an inchoate right of dower in the premises "she not having joined with her husband in the execution of the mortgage; and because "the title to said property is complicated by not having an inlet from the Frederick and Woodsboro turnpike road, or from the street in Walkersville. These lots lying on Maple Avenue in said town, In one of the exceptions it is stated that the "mortgagee (meaning the assignee Solicitor Mr Morrow) announced to purchasers at the sale that a clear, good title would be given for the property sold" As to this there is much conflict in the evidence.

Be this as it may, it should not vitiate the sale, because the purchaser, being a lawyer in full practice and great experience knew the assignee could not sell or convey any greater or better title than the mortgagors had conveyed to the mortgagee, and what their title was, the purchaser perfectly understood.

There is no question as to the manner and fairness of the sale, and no objection on the ground of inadequacy of price.

As to the inlet into Maple Avenue, the Court may say although it does not decide, that the proof tends very strongly to show that the whole of said Avenue has been dedicated to the public use. Maple Avenue on which all these lots lying, extends from the Frederick and Woodsboro Turnpike Road to Public street in the town of Walkersville. This Avenue was opened through its entire length, for public use in the month of November or December in the year 1889, according to the testimony of Jacob S. Perry. There is, therefore hardly a reasonable probability that the purchaser of these lots will be put to