

No. 6410. Equity.

Our ruling is in conformity with the doctrine in 1. Story's Eq. 778, and adopted in *Elliot v. White*, 43 Md. 153, "where there is a substantial defect with respect to the nature, character, situation, extent or quality of the estate, which is unknown to the vendee in regard to which he is not put upon inquiry, a specific performance will not be decreed." The Case of *Davis Stewart (Purchaser) vs. Christian Devries of P. Trustee*, decided at the Office Term 1895, of the Court of Appeals and not yet reported, fully settles the questions now before us. In that case the trustee under a decree of Court sold a lot of ground in the City of Baltimore to Davis Stewart, who filed objections to the ratification of the sale on the ground that the trustee could not give good merchantable title on account of the interest of the Rutter estate. The Court of Appeals in its opinion, by Boyd, J. says, "It is well settled in this State that a trustee appointed by a Court of Equity is the agent of the Court, and hence if the question be raised in due time, the Court will see that no undue advantage is taken of the purchaser, and he will not be compelled to comply with the terms of sale if it would be inequitable for him to do so, especially if there has been any misrepresentation, intentional or otherwise by the trustee. That rule is necessary for the purposes of justice, as well as to encourage bidding at trustee sales, but when purchase is made by one who is cognizant of all the essential facts necessary to enable him to understand what the trustee is selling, the Court should be equally zealous in protecting the right of those interested in the proceeds of the sale of the property."

and in not permitting its agent, the trustee, to be trifled with "++" As an attorney-at-law he must have known that the trustee could, under the power vested in him by the decree, only sell the interests of the parties to the suit and those claiming under them, "++" Nothing was done by the trustee which was calculated to mislead any one, particularly the purchaser who was familiar with all the facts, as was said in *Shuffham v. Walker*, 9 Md. 240. Judicial sales were not to be set aside for cases that the parties in interest might with a reasonable degree of diligence have obtained, every intendment will be made to support them.

We have seen from the proof, that Mr. Eichelberger, the purchaser at this sale, had ample knowledge of all the alleged defects in the title to the property, and that he was not misled or imposed upon in any way. The Court will, therefore, reject the exceptions, and ratify the sale. It is, therefore, this 30th day of July A.D. 1895, by the Circuit Court for Frederick County, as a Court of Equity, and by the authority thereof, and decree that the objections to the ratification of the sale in this cause, be, and the same are, hereby rejected, and it is further ordered and decreed, by the authority aforesaid that, the sales made and reported, in this case, by the assignee, be, and the same are hereby ratified and confirmed, and the costs arising under the exceptions to be paid by the exceptants.

James D. Cherry
John A. Lynch
Judge of the Circuit Court

Filed July 30 1895.