

The trustee immediately after represented by his petition, that Elizabeth Murdock had not paid the purchase money as stipulated, &c.

BLAND, C., 22nd January, 1829.—Ordered, that the said Elizabeth Murdock forthwith bring into Court the purchase money now due for the property in the proceedings mentioned, together with legal interest thereon, or shew good cause to the contrary, on the 5th day of February next; provided, that a copy of this order, together with a copy of the foregoing petition be served on her on or before the 26th day of the present month.

The plaintiff, William Brewer, by his petition, stating that Elizabeth Murdock had failed to pay the purchase money as ordered, prayed that he might be considered as the purchaser of the forty-four acres of land according to the terms of the sale as reported by the trustee; and that his claim might be set off against the net amount of the purchase money.

BLAND, C., 9th February, 1828.—It appears that Elizabeth Murdock has been served with copies, as required, and yet has shewn no cause. It is true that a trustee, or any one acting as such is not allowed, without divesting himself of that character, to purchase at a sale made by himself. But the policy of the
468 *law which forbids that; because of the strong temptation to fraud, where there is such a conflict of duty and interest; and because one man should not be permitted to take advantage of the necessities of another, is not infringed by allowing a plaintiff, a creditor, or a mortgagee to purchase at a sheriff's sale, or at a sale made by a trustee of this Court; as, in such case, the party is proceeding adversely against his debtor, not by any private dealing, but by the public process of the law, in which he himself is not the seller, but an impartial executive officer or agent of the Court. *Stratford v. Theynan*, 4 *Cond. Cha. Rép.* 193. With regard to the discount asked for, it is certain, that the trustee, appointed by the decree to make the sale, can dispose of the purchase money in no way, without the express authority of the Court. *Bennett v. Hamill*, 2 *Scho. & Lefr.* 581. But, as the mortgage debt, the recovery of which is the sole object of this suit, has been established by the decree for a sale, there can be no impropriety, after first deducting the commissions, expenses and costs, in ordering the proceeds to be, at once, applied in satisfaction of that debt by discount, with the mortgagee as purchaser, or in any other way. And Elizabeth Murdock having failed to comply with the terms of the contract of sale, William Brewer, the plaintiff and mortgagee, must be received as the purchaser, and be allowed the discount as prayed accordingly.