

trustee makes any promise or representation to the bidder, before the sale, that the estate shall be, or is clear of all incumbrances, or that the title is better or different from that to be traced from the proceedings, and any such claims should afterwards appear, or be set up, the sale will be annulled. But this relief would be granted to the purchaser on the ground of misrepresentation or fraud, and not on that of a mere defect of title, as in cases between party and party.

After a sale has been ratified, the Court, in England, will not rescind the order, and open the biddings without strong inducements. *Sudg. Vend. & Pur.* 47. So in this State, after a sale has been made and reported, and before it has been ratified, it is open to all objections. And, if objected to, unless it should, on examination, turn out to be, in all respects, fair and proper, it will not be ratified. But, after it has been confirmed, the purchaser can only obtain relief by bill or petition; and thus calling the litigating parties to the suit again before the Court to answer, repel, and remove the objections which he may so make, if they can.

648 *It is usual, in England, at the time of bidding, or of having the biddings opened to be let in as a higher bidder, for the proffering purchaser to make a deposit of a considerable amount of the purchase money, by way of earnest. And this deposit is sometimes said to be the only hold which the Court has upon the purchaser; and it is in truth, the only hold which it can

against them by the trustees for the purchase money; and they now brought this bill, having discovered, as they alleged, that the land was deficient in quantity, and that the trustees could make no title, because there were other incumbrances not made known at the time of sale.

KILTY, C., September, 1806.—The right and title of the parties to the original suit, whatever it might be, was to be sold; and no person, whether part buyer or part seller, was bound to examine into the title of the estate, which was in *custodia legis*, and vested in the trustees, who were not competent to make the objection of any latent or obvious defect. In this State it has been repeatedly declared that, in sales under a decree of this Court, which are made subject to the Chancellor's approbation and ratification, any circumstances shewing that such sales are injurious to the complainants, or that better sales might reasonably and probably have been made, are sufficient to set them aside. This principle to be just, should be reciprocal and mutual. And the ratification that has been given, can make no difference as to the present claim. Under all the circumstances, the Chancellor vacated the sale for one of the lots, and made the injunction to stay the proceedings at law in part perpetual. And the lot, the sale of which was thus annulled, was ordered to be again sold entire, and not by the acre. It was objected, that inasmuch as a survey was made of the lands and a plot exhibited, the smallest variation would destroy the contract. The true location, however, is not so much the point in dispute as the substantial value of the land, and if that is not altered the difference forms no ground of relief. Different surveyors have made it different in quantity, and if the purchaser has an allowance for the deficiency, it is all he can require.