

it. *Savile v. Savile*, 1 P. Will. 745. Hence it may be inferred that the Court considered itself as having the power to proceed against the purchaser, but that it did not think proper to do so in that case.

One of the most accurate of the English reporters, gives us the following, as the words of Lord Hardwicke, delivered in the year 1748, in relation to this subject: "the present," says he, "is a judicial sale of the estate, which takes it entirely out of the Statute of Frauds. The order of the Court was not interlocutory, but made part of the decree; as it always is on the matter reserved, though made at another day; and it includes as well the carrying the purchase into execution, as the establishment of the charity; amounting to a decree for the conveyance of the estate on one side, and payment of the money on the other; who might be prosecuted for a contempt in not obeying that order. And it is stronger than the common case of purchasers before the master, who are certainly out of the statute, nor should I doubt the carrying into execution against the representative, a purchase by a bidder before the master, without subscribing, after confirmation of the master's report, that he was the best purchaser; the judgment of the Court taking it out of the statute. But even in common cases, this question may arise; as if the authority of an agent, who subscribed for the bidder, not being admitted, cannot be proved. Yet, if the master's report could be confirmed, it should be carried into execution, unless some fraud; for this is all exclusive of any defence that may still be set up on the other side." *Attorney-General v. Day*, 1 Ves. 218.

650 * In this case, the testator had bequeathed a certain sum of money to be invested for charitable purposes, and on a reference to the master to propose a scheme of investment, he had reported, that the money should be laid out in the purchase of certain lands. The report has been confirmed, and the object then was, to obtain the specific performance of the order confirming the master's report. As to which point, Lord Hardwicke is reported to have said, "the material consideration is, whether, as circumstances now stand, considering the events and alteration of rights thereby, the Court ought to carry it into execution? The general rule certainly is, that this is discretionary in the Court, but will not hold in the present; for that is generally in cases, where there may be an election of two remedies, by coming here for a specific performance, or by action at law; whereas, here, there can be no remedy at law; all arising under the acts of this Court, from that order amounting to a decree. So, that if this Court does not carry it into execution, it cannot be at all; yet, whether other remedy or not, if there are strong and material objections against it, the Court ought not to do it."