

A resurvey was ordered, by which it appears that there is an excess of 42 acres and 8 perches ; and the question is, whether the purchaser shall be made to pay for this excess, at the price per acre bid by him at the trustee's sale.

The application of the petitioner is resisted upon several grounds, and counsel have been heard on both sides.

It is the established doctrine in Maryland, that a sale made by a trustee, under a decree of the Court of Chancery, is a transaction between the court and the purchaser, and the report of the trustee, and the order of the court ratifying the sale, must be regarded as the evidence of the contract between the parties. In this case, the trustee's report states the terms of sale, and the quantity of acres contained in the tract, and this report, after notice in the usual form was duly ratified and confirmed.

The petitioner alleges, that in this contract, thus solemnly ratified, there was a mistake, injurious to her, and that the tract, instead of containing the number of acres mentioned in the report of the trustee, contained in fact upwards of six hundred acres ; and her counsel insist, that the mistake must be rectified, and the purchaser compelled to pay for the excess.

The imputed error in the first survey is denied, or, at all events, is not admitted, and of course must be proved, the *onus* being on the party alleging the mistake.

The proof offered is the plat and certificate of the resurvey, made under the order of this court. But this plat and certificate differ from the survey which the trustee caused to be made, preparatory to the sale, and which the court, to some extent, adopted, by ordering the expense of it to be defrayed out of the purchase money ; for it is impossible to suppose the court would have charged the estate with the cost of this survey, if it had not been regarded as made by proper authority, and as furnishing a proper basis upon which to settle with the purchaser of the property. That this survey was in fact the basis of the contract between the purchaser and the court, is shown beyond all controversy.

Now, before a party can be relieved in the case of a written contract, upon the ground of mistake, the evidence of the mis-