

not undertake to sell these lands at private sale, until a fruitless effort had been made to dispose of them according to the terms of the decree; and that even after he had failed in this effort, they were constantly kept in the market by advertisement offering them at private sale. It is not the case, therefore, of a trustee who has undertaken to depart from the terms of the authority under which he acts, without first making an effort to comply with them; but it is the case of a deviation from the terms, after an effectual endeavor to conform to them. It is also a circumstance very material to be considered, that the price at which the trustee has contracted to sell these lands greatly exceeds the best offer he could get for them when exposed to public sale; and another very strong recommendation of the sale made, is to be found in the circumstance, that the property was never withdrawn from the public eye, but kept always before it and in the market by advertisements in the newspapers.

In *Tyson vs. Mickle*, 2 Gill, 383, a private sale made by a trustee was confirmed by the court, though the amount of the private bid was considerably less than had been offered for the same property when exposed publicly; and the court in that case, say, that Chancery will always ratify an act when done, which upon a previous application would have been authorised. It is true that in the case of *Tyson and Mickle*, the parties interested consented to the sale, but one of those parties, and one largely interested, was a minor, and, therefore, incompetent to consent. Adopting the principle of the Court of Appeals, that an act when done will be ratified, which the court, if applied to beforehand, would have authorised, I am of opinion that the objection to the act of the trustee in this case, founded upon the form of the sale, cannot prevail; as it seems to me, that upon an application, setting out all that has taken place, prior to the sale, to Mr. Markell, the trustee would have been authorised to accept his offer.

Whilst the Chancellor would consider it his duty to vacate sales made by officers of his appointment, under the influence of error, fraud, misrepresentation, or injurious mistake; he,