

JOHN H. B. LATROBE, TRUSTEE,
 vs.
 THOMAS T. HERBERT ET AL.

} MARCH TERM, 1851.

[EXCEPTIONS TO TRUSTEE'S SALES.]

WHEN a trustee deviates from the terms of the decree, objections to the ratification of the sale will be allowed to prevail, which would be disregarded if urged against a sale in conformity with the decree; and no deviation is more obnoxious to objection than selling at private sale when the decree directs a public sale.

The trustee is the mere agent of the Court, and if he does not conform to the authority delegated to him, it is for the Court to say whether it will ratify his acts as such agent.

His instructions are contained in the decree, open to the inspection of all parties, and if he does not follow them, no one dealing with him has a right to complain if the Court should refuse to ratify his acts.

After he has put the property in market agreeably to the terms of the decree, and has failed to get an acceptable bid, he may sell at private sale, and if no objection be made, the Court will, after notice in the usual way, ratify the sale.

Objections merely capricious or arbitrary to such a private sale will not be allowed, but it is open to objections which would not prevail against a public sale.

The decree directed a public sale, and after one ineffectual effort to sell at such sale, the trustee sold the property at private sale at \$17 per acre. It was proved that this sale was the result of a misunderstanding between the trustee and the mortgagor, whom the former had consulted and advised with in relation to the sale, and that \$20 per acre could then and now be had for the property. HELD—

That the sale ought not to be ratified.

Inadequacy of price is a stronger objection to a private sale than to a public one, when the decree directs the latter; and though the inadequacy in this case might not be sufficient, *per se*, to set the sale aside, yet this, added to the misunderstanding between the trustee and the mortgagor, is sufficient to defeat it.

[The facts of this case are stated in the Chancellor's opinion.]

THE CHANCELLOR:

This case is brought before the Court upon exceptions to