

of a private sale is far from being stated to follow as a matter of course. It will be ratified, say the Court, "in the absence of proof showing the inexpediency and injustice of so doing." So that, even when the Court has given specifically its authority to make a sale upon terms and conditions previously communicated to it, there rests upon it no absolute obligation to confirm the sale when made.

But the case now before this Court is totally unlike that of *Tyson vs. Mickle*. Here there was but a single effort to sell according to the decree, and in a little more than one month afterwards the private sale was made. It may be that the Court, if it had been previously applied to, would have authorized the trustee to close with the offer; but it does not follow as a matter of course that it would have done so, as was observed in *Tyson vs. Mickle*. There was nothing so discouraging in one fruitless effort to get an acceptable bid, as to induce the Court to catch eagerly at the first offer of the minimum price; and there can be no doubt that if an application had been made, and the exceptant had been notified of it, no such authority would have been given, because the Court would have been informed by him that a better price could be had, as clearly appears to be the case. That there was a misapprehension between Dr. Herbert and the trustee there appears to be no reason to doubt, and there is as little doubt that the sale in question was the result of that misapprehension.

Arguments have been addressed to the Court to show, on the one side, that Herbert has been guilty of negligence, in not communicating with the trustee, and on the other, that the purchaser was guilty of duplicity and bad faith, in closing the contract before the trustee could confer with Herbert. I do not propose to express any opinion with regard to these criticisms of the counsel, or to say whether, in my judgment, negligence or blame is to be imputed to these parties. Because, though Dr. Herbert may not have been vigilant in looking after his interest, there is no reason on that account for inflicting injury upon his infant children; and because there appears to me to be enough in the circumstances of this case to induce