

the Court to withhold its ratification from this sale without imputing bad faith to the purchaser, which I do not mean to impute. I do not set aside this sale because of the inadequacy of price *per se*, though I do not altogether agree with the counsel for the purchaser that inadequacy of price is no stronger objection to a private than to a public sale, when the decree directs a public sale. Inasmuch as the price of \$17 per acre would have been satisfactory at the public bidding, I should probably have been unwilling to disturb the private sale for that sum, simply because a few dollars more per acre could have been obtained for the property. The fact, however, that more can be had for the property, is certainly a consideration, and when to this is added the circumstance that there was a misapprehension between Herbert and the trustee, it seems to me, at least in the case of a private sale, sufficient to defeat it. It has been argued that the purchaser had nothing to do with this misapprehension, and should not be affected by it. It is true he had not, but the agent of this Court had; and if in consequence of such misapprehension injury is done to the parties interested in the act of the Court, through its agent, it is its duty to apply the proper remedy.

It has been likewise insisted that as the decree passed in this case was to pay a creditor, Herbert, the mortgagor, had no right to interfere with the sale one way or the other. The answer to this is to be found in the statement in the exception, which is admitted to be true by the answer of the trustee, Mr. Latrobe, that in all matters relating to the sale, the latter advised with and consulted Herbert. It is very certain that Herbert had no right to forbid the sale, but as the trustee, in the exercise of his discretion, had thought fit to counsel and advise with him, he cannot be regarded as intruding himself in a matter in which he had no concern, even if his relation to the case, as mortgagor, would not exempt him from any such imputation.

The principles settled by the Court of Appeals, in the case of *Johnson vs. Dorsey*, 7 *Gill*, 269, are inapplicable to this. That was a public sale, in precise conformity with the terms of the decree, and I am not at all to be understood as saying that if