

sale, subject to the ratification of the sale by the Court, after public notice given to show cause why it should not be confirmed. And even in these cases, when an ineffectual attempt has been made to sell according to the decree, and the property is then sold upon terms varying from it, objections to its ratification will prevail which would be disregarded if made to a sale in all respects in conformity with its requirements. And this, for the reason stated by this Court in the recent case of *Latrobe vs. Herbert et al.*, in which, upon full argument, it was held, that the faith of the Court was never pledged to ratify a sale made upon terms or in a mode varying from the decree, even though the property had once been put in the market in exact conformity with it, and the attempt so to sell had been unsuccessful. The principle of the decision being, that when the trustee, who is the agent of the Court, has sold the property in the mode and upon the terms specified in the decree, the Court has, by anticipation, bound itself to make good the sale, and will always do so, unless fraud, accident, surprise, mistake, or some cause is shown, manifesting a gross want of discretion in the trustee. Whilst in the case of a sale upon different terms, or in a different mode, inasmuch as no previous authority was given, the Court may, without any imputation of bad faith, refuse to give its sanction to it. In the one case, the agent having acted within the scope of his authority, and according to the mode prescribed for him by his principal, the latter, unless for some one or more of the reasons which have been suggested, is bound in good faith to give validity to his act; whilst in the other, the act derives its validity, if valid at all, from the subsequent adoption and ratification of it by the principal.

In the case now under consideration, the agent of this Court no doubt, from inadvertence, has departed from one of the most important directions of the decree, that of the public notice to be given of the time, place, manner, and terms of sale, and it would, as I conceive, be establishing a precedent full of danger, to ratify a sale under such circumstances in the face of an objection for that cause.