Of this, however, there is no clear proof. But suppose the fact to be so; it would be strange indeed if any party to a suit, after the court had decreed his land to be sold, should be able to defeat the sale; or could afford to the purchaser a sufficient reason for not paying the purchase money, by merely making a conveyance of the land to some third person, so as to give to such third person a pretext of title on which to bring suit against the purchaser from the court. It is clear, that the whole title of the heirs of the late *William Mitchell* to the lands embraced by the deed of the 14th of September, 1815, was sold by the trustee, or that it was not. If it was sold, then the subsequent purchaser from those heirs can have no title; and the title of the purchaser under this court's decree cannot, in this respect, be impeached. (*d*) If, on the other hand, their title to the lands described in that deed was not sold by the trustee to *Freeborn Brown*, then he has nothing to complain of; and the whole affair is entirely foreign to the matter now under consideration. This objection is therefore utterly groundless.

Another point upon which this purchaser rests is, that he bought by the acre, and that the trustee represented the tract which he, *Brown*, bought, called *Gover's Rupulta*, as containing one hundred and forty-three acres, when in truth it did not contain quite one hundred and twenty-seven acres; and therefore, that he ought to have a deduction to the amount of this deficiency.

It is not alleged, that the deficiency is in that part of the lot which was the inducement to the purchase; or that it is of such a nature as materially to vary the contract, it is merely a claim for an allowance on account of short measure; as if by the terms of the contract a measurement was absolutely necessary to reduce it to certainty and to ascertain the amount of the purchase money to be paid.

The position here taken rests upon an assumption of the fact, that the land was sold only by the acre; or in lots of an indefinite size at $23 per acre. But according to the trustee's report, such was not the fact; and there is no satisfactory proof that it was sold in any other manner than as there stated. In the absence of clear proof of mistake, misrepresentation or fraud, the ratified report of the trustee is the only evidence of the contract by which the court can allow itself to be governed; and unless it be so impeached, it must be considered as conclusive upon the subject. (*e*)

(*d*) Powell Mortg. 547, n. R.—(*e*) Townshend *v.* Stangroom, 6 Ves. 328; Higginson *v.* Clowes, 15 Ves. 516; Clowes *v.* Higginson, 1 Ves. & Bea. 524.