

that the boundaries by which the trustee sold that lot, do not embrace the whole number of acres which they were said to contain.

I am therefore of opinion, that this purchaser has failed to sustain this claim for an allowance for deficiency; in the first place, because the land was sold to him by the tract, and not by the acre; and in the next place, because in point of fact, he has shewn no deficiency within the designated boundaries.

This purchaser, *Freeborn Brown*, however, advances still further, he prays to have the whole sale to him rescinded; and to have so much of the purchase money as he has paid, returned to him. And this he asks upon two grounds, first, that although the decree of the 10th of March, 1812, restrained the sale to so much only, as should be sufficient to satisfy the claims therein mentioned; yet the trustee made sale of the whole of the interest of the heirs of the late *William Mitchell*, by virtue of a pretended power, dated on the 29th of April, 1812, from those heirs, to sell the whole, when in truth, several of them were minors, and incompetent to give any such power to sell; and the sale was ratified by the Chancellor under a mistaken impression, that those heirs were of full age, and able to convey; so that this lot No. 11, was disposed of, which otherwise would not have been sold.

The position here assumed is in direct opposition to the terms of the decree; of the trustee's report; and of the instrument of the 29th of April, 1812. There is nothing upon the face of those documents, taken either separately or together, by which this position can be sustained. But *Freeborn Brown* must, in this respect, take upon himself one of two characters. He must stand either as a purchaser under what he calls the power of the 29th of April, 1812, or as a purchaser under the decree of this court. He cannot blend the two, and take advantage of both at the same time.

If he bought under the power, then he is a purchaser direct from the heirs of the late *William Mitchell*, and this court has no jurisdiction of the matter in any way whatever in this case. Those heirs, in that respect, were not under the control of this court; they were entirely free to sell any right or interest of theirs as they might think proper, either in person or by *James Wallace* as their attorney. But it is perfectly evident that they could not, by giving a power of attorney to *James Wallace* to sell for them, who was also at the same time acting as the agent or trustee of this court, thereby mingle any of their separate interests with the subject with