

ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

This application has been assailed as a novelty, altogether without precedent here, and having few even of English origin, and those few of very late date, and long since our revolution. It has also been opposed upon the ground that the parties interested can only obtain redress, if, indeed, they are really entitled to any, by a bill in equity or a suit at law; in which, as it is said, the whole case can be fully investigated, the rights of the parties conclusively established, and complete justice done to both.

The defence taken in this case, if sustainable in all its consequences, appears to be destructive of some of the most valuable and important powers of this court. Controverted points, arising between the court's trustee for the sale of property and the purchaser have frequently been brought before me, since I came here; but in each instance they have been treated as insulated matters of mere practice, and have passed off in that way. This case has assumed a more grave aspect. I shall, therefore, now review the subject more at large, and upon general principles.

On considering the nature of sales under the authority of the Court of Chancery, the first inquiry which suggests itself is, who are the real parties to the contract? This very idea of a contract, implies that there is one party able and willing to contract, and another to be contracted with. It implies a perfect capacity and free will, in each of the parties to the agreement. To a contract of sale, made under a decree of this court, neither of the litigating parties can be considered as the vendor; although they, with others, such as creditors, who may be allowed to come in afterwards, may be very materially interested in the sale. The plaintiff cannot be considered as the vendor; because, oftener than otherwise, he has no title, always states his inability to sell, and prays the court to decree that a sale be made. The defendant cannot be the vendor; because he always positively refuses to part with his property, unless forced, or sanctioned in doing so by the power of the court. If then, neither of the litigating parties can be separately deemed to be the vendor, it is clear, that they cannot both together, be so considered.

But such sales are always made by an agent; in England, by a master, in this state, by a trustee. Private contracts may be made and executed in person, or by attorney; but the attorney is never considered as one of the contracting parties, he exercises no will