

authority, as well in this state as in England, that the Court of Chancery, and not its trustee, is in all cases to be considered as the party contracting, or as the real vendor. (*f*)

- ✓ The manner of sending property into the market, as well as the mode of sale, generally adopted in this state, differs, perhaps, in some particulars, from that of other countries. (*g*) The form of ordinary sales of merchandise by auction is the same in this state as in England. But the mode of making a sale of property under the authority of the Court of Chancery in England is different.

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declare his opinion, that the sale ought to be vacated. It is undoubtedly one object of each decree for a sale, to obtain the best price that can be obtained, consulting at the same time justice to all persons concerned, and attending to their wishes as far as may be consistently with justice. The Chancellor, as has been already intimated, passed the order for confirmation, merely because it appeared to be the wish of the only party entitled to receive the net money arising from the sale. The circumstances since disclosed to him, make the case appear very different.

It seems that there are concerned several persons who have not given their approbation, and it is doubtful whether the complainant is entitled to receive any part of the money aforesaid. It is certain, that when Semple's Manor was sold entire, a sale in that manner had not been announced before the day of sale. It is most probable, that the trustees had not before that day contemplated such a sale, and were determined by circumstances that then took place. But if they then discovered that a sale in parcels, agreeably to their advertisement, was impracticable, or would not be advantageous to the persons who were to receive the money, it would have at least been prudent for them to advertise, or give notice of a future day, when they would sell the whole together, or divided into large parcels laid off by the surveyor. It cannot be supposed, that any person went to the place of sale with an expectation of having the whole body of land set up. The Chancellor, however, thinks it his duty, in mere justice to the trustees, to declare, that in his opinion there is no ground for concluding that they were guilty of fraud, corruption, or undue combination, in making the sale. He believes from a careful examination of all the proofs, that they acted according to their judgment as faithful trustees; but he cannot for a moment doubt, that their judgment was erroneous, even if the land hereafter should not command a higher price than they sold it for.

It is accordingly *Ordered*, that the sale made by Philip Barton Key and William Marbury, of the aforesaid tract or body of land called 'Keep Trieste,' or 'Semple's Manor,' be, and it is hereby declared to be set aside, vacated, and annulled.

The Chancellor, for the present, declines to pass any decree or order relative to another sale of the land; but he is anxious to make, without delay, such arrangements as may do complete justice to every party concerned. Let the counsel, if they think proper, agree upon another sale, to be prescribed by a decree. He conceives that, notwithstanding the statement of the report, the land may conveniently be laid off in parcels from one hundred to one thousand acres; and that payment may be as directed by the original decree. That the land, if the legal title thereto be vested in the state, ought to be sold, he thinks unquestionable. But, strange it is, that persons having a claim superior to Lawson's, should not come forward in a regular proper manner. Should it appear that any person, not a party to the suit, has a legal title to the land itself, assuredly it ought not to be sold.—*M. S.*

(*f*) Gibson's Case, 1 Bland, 138.—(*g*) Sugd. Vend. & Pur. 18, n.