

It is usual, in England, at the time of bidding, or of having the biddings opened to be let in as a higher bidder, for the proffering purchaser to make a deposit of a considerable amount of the purchase money, by way of earnest. And this deposit is sometimes said to be the only hold which the court has upon the purchaser; and it is in truth, the only hold which it can have of him in that stage of the proceedings; for he cannot be quickened before the report is confirmed absolutely. (*r*) And should he turn out to be insolvent, it is the only effectual hold the court will ever be able to take of him. Consequently, the exacting of a deposit from the purchaser is there considered as a useful and proper precaution. (*s*) If the purchaser refuses to comply with his contract, the court will, if required by a party interested, inquire whether he is able to pay; and if it should appear that he is insolvent, or has not the means of complying with his contract, the sale will be annulled, the deposit forfeited, and a re-sale ordered. For, even at common law, and between party and party, if, after being requested, the vendee does not, within a convenient time, come and pay for, and take away the goods purchased, the agreement will be dissolved, and the vendor at liberty to sell them again to any other person. (*t*) If, however, the purchaser is able, and fails to comply, the court will not suffer itself to be baffled, but will, at the instance of a party interested, compel the purchaser to comply by process of attachment for contempt.

The exercise of a similar summary power of coercion by this court against a tardy or unwilling purchaser, after the confirmation of the sale, it has been repeatedly and strongly urged, is one which is not within the scope of its jurisdiction. The exercise of such an authority, it has been urged, is a very recent and equivocal extension of the power of the Court of Chancery in England. It has sometimes happened that a necessary and important power, after having been called into action, and produced all the beneficial effects required or expected, is suffered to slumber so long as to drop almost into oblivion. Such, it would seem, has been, in some degree, the fate, both in England and in this state, of this power of coercing a purchaser under a decree, to comply with his purchase.

In the year 1721 the Court of Chancery of England was pressed

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(*r*) Anonymus, 2 Ves. jun. 336.—(*s*) Anonymus, 6 Ves. 513.—(*t*) Langfort v. Tiler, 1 Salk. 113.