

The subject was discussed by Mr. Justice Fry, in the recent case of *Boswell v. Coaks*, 23 Chan. Div. 302. The suit was one for administration, and the solicitor of the defendant, the executor, had leave to bid, the conduct of the sale being given to a firm of solicitors, on their undertaking not to communicate any particulars to him, and to carry out the sale wholly independent of him. The property was offered subject to a reserved bidding, and was not sold. Coaks afterwards, jointly with another person, agreed to purchase at a sum which was only two-thirds of the reserved bid. It was sought to set this purchase aside on the ground that a fiduciary relation still existed notwithstanding the leave given to bid, but the learned judge held otherwise and refused the application. In both these cases the conduct of the sale was taken from the party allowed to bid and given to another.

The case of *Ricker v. Ricker* was carried to the Court of Appeal (7 Ont. App. R. 282), when the order of V. C. Proudfoot dismissing the infant's petition was reversed. It was held that the liberty to bid accorded to the plaintiff was given him for the purpose of protecting his interests as mortgagee, but did not absolve him from the duty which, as trustee, he owed to the infant; and that the conduct of the plaintiff prior to and at and about the sale, by means of which he had been enabled to make a profit at the expense of the infant *cestui que trust*, was such as would have rendered the sale invalid if the land had remained in his hands; but as it had passed into those of an innocent purchaser the plaintiff should be charged with the outside selling value of the estate at the time of the sale, or should pay to the defendant the amount due to him under the will, with interest from the date of the sale, together with the costs in the court below subsequent to the petition, and also the costs of appeal. The remarks of Vice-Chancellor Proudfoot which I have quoted were referred to by Chief Justice Spragge in terms of disapprobation.

In *Crawford v. Boyd*, 6 Ont. Pr. R. 278, it was held that where the person having the conduct of the sale bid, and was the highest bidder, an application by him to be confirmed as purchaser will not be granted if any of the parties to the suit object.

*Ramsay v. McDonald*, 8 Ont. Pr. R. 283, was a case in which the plaintiff, on the settling of the advertisement, made a tender.