

modern usage of allowing biddings to be opened within eight days next after the signature of the judge's certificate of sale.

The first point has been productive of many discussions, the second and third must be viewed within a much narrower circle. Under the first head, a reasonable proposal of augmentation was generally deemed sufficient to warrant the success of the application for a new sale, as in the case of a price wholly inadequate to the value of the estate (a). There is no rule as to 5 per cent. or 10 per cent. The discretion of the judge under each peculiar concern is employed. Where a sum of £350 was offered as an addition to £5,300, it was not accepted, being too small, and the judge took occasion to observe that the court does not confine itself to a particular rate per cent., although 10 per cent. is a sort of general rule. (b) But £500 added to £12,010 were permitted. (c) So £500 on £8,950 (d) Under any circumstances, an advance of less than £40 will not be received. (e)

A larger sum seems to have been expected from a person present at the sale than from a stranger; (f) indeed a struggle was made to hinder a person present at the sale from any interference, as to future views upon the estate. The principle enunciated by Sir John Leach was, that the sales by the court would not in that case have the full benefit of the spirit of competition, and the cases were *Sumner v. Charlton* (g) and *McCulloch v. Colbatch* (h) and another case, as it seems, before Lord Kenyon. (i) But these authorities have not survived in that character, although Lord Eldon was much disposed, using his own words, "To discourage a person present at the sale, and lying by, speculating upon the event, and afterwards coming forward with an advance." (j) Yet he gave way, upon being informed that in the only case to the contrary the person seeking to open the bidding was a party to the cause. (k) Lord Loughborough had previously sanctioned such an opening, although it was said that the estates had been sold above the value. (l) It does not follow, nevertheless, that a chancellor considers himself bound by the decision of another chancellor. And the second bidding was allowed, at the instance of a person who had attended the former sale by an agent (m). So again, the only doubt was as to the amount of the advance in such a case: and that amount having been increased, the order was made. (n) It is no objection that a party interested as a residuary legatee, seeks to have a second sale; (o) still, the right rule is, that the opening of biddings is not so much intended for the purchaser or persons desirous of a fresh sale, as for the owners of the estate, especially creditors, infants, and persons who are not acquainted with the value of property. (p)

After the confirmation of the report of the sale by the master it was certainly most unusual to interfere. (q) Mere overbidding was not deemed sufficient. (r) There was some collusion in Gower's case; (s) and, on that ground, the biddings were re-opened, but after the second sale, an advance of £2,000 in order to a third sale was rejected, for this was overbidding alone. This denial, however, as to overbidding, must not be

confounded with overbidding alone before the confirmation of the report or the certificate. The principle is quite different.

A fault on the part of the purchaser will produce this alteration, as fraud. So fraudulent negligence in another person, an agent, for example, would have the same effect, for it is against conscience that the purchaser should take advantage of such misbehaviour. Yet so precarious were the proceedings of courts of equity, that in cases where Lord Eldon would decline to interfere, Lord Loughborough, even after the confirmation of the report, hesitated simply upon the amount of advance, "They must bid more," said the chancellor. They bid more, and the offer was accepted. (t)

Upon one occasion the vendor was in prison, and before the confirmation of the report, he had a promise from two persons that they would instruct their agents to open the biddings, but they failed in their engagement. There was an overbidding of £4,000, the largest sum ever known in that character. Nevertheless, the lords commissioners would not have accepted that sum as an overbidding without more, but they yielded to the circumstance of duress, requiring from him, the vendor, a deposit of the full sum of £4,000. (u) Yet, strong as this case appears, Lord Eldon said he never would have made these orders. He disapproved strongly of *Watson v. Birch*. There was neither fraudulent conduct in the purchaser, nor fraudulent negligence in any other person. (v)

Fraud, therefore, is decisive upon the point. A survey was made of an estate, and by collusion with the tenants (who would pay so much less rent), the value and quality of the estate were underrated. It was then sold for the benefit of creditors, and fetched £27,500. £800 were then offered in advance, the report not having as yet been confirmed, and a second sale took place. The sum of £28,500 was then offered, and the master reported in favour of the bidder. The report was then confirmed, upon which all these facts of collusion and depreciation were revealed, and £2,000 more being tendered, the sale was again opened, it being positively affirmed by the chancellor (Lord Northampton) that the overbidding alone would not have sufficed. The estate brought £38,000 and £2,000 still in increase being pressed forward, the court declined to interpose after the confirmation of a fresh report. (w) Thus the principle of overbidding and fraud were clearly distinguished.

Surprise was scarcely held to be an ingredient upon the discussion of the master's report, nor is it now under the certificate. At all events, where the applicant was present at a sale, and was informed, in common with the rest of the company, by the auctioneer, that any one might come within eight days after the report, but failed to appear, no allegation of surprise was allowed to be entertained, (x) and a mistake as to the day of sale will require a strong advance. (y)

We have said that the certificate of eight days is equivalent to the old confirmation of the report by the master, therefore within that time the biddings will be opened, (z) and it is worthy of remark that the modern judges of the Court of Chancery are quite prepared to support the practice which is now under discussion, notwithstanding the force of prior decisions. Very special circumstances might even induce them to yield to an application made at the end of eight days from the certificate of sale. There appears to be some colour for this in a case where the purchaser bought a lot for £2,770, and signed the contract. It was on the 2nd of August. On the 4th the certificate was settled, and was approved on the 9th by the judge. Eight days clear were then allowable for any one to apply for an order to open the biddings. That period having expired during the long vacation, the purchaser required the

(a) By Lord Langdale, 17 L. Ch. 486, in *Manners v. Furne*.

(b) 1 Sim. & Sta., 20, *Cursons v. Edwards*. 2 Madd. Ch. Pr., 666, *Bridges v. Phillips*, M. B.

(c) 2 Russ. 606, *Lefroy v. Lefroy*. (d) 1 M'Ct. 82, *Parsons v. Collett*.

(e) 4 Madd. 460, *Flint v. Wheldon* and *Gilbert v. Withers* was cited, S. P. Ibid. See some Irish cases. £40 at the least, £10 per cent. in advance. He refused over. *Eller v. C.* 2 Noll. 810, *Leland v. Griffiths*. See *Ibid.* 808, *Aubrey v. Denney*. £10 per cent. required upon a larger sum. Ibid. 808, *Chester v. Gorges*. Costs of former purchaser to be paid. See several other cases. *Dart's Vend. & Purch.* 3rd ed., 55.

(f) Jac. Rep. 826, *Tyndal v. Warre*. (g) 5 Ves. 665. (h) 3 Madd. 314, *Ibid.*

(i) 18 Ves. 140, by Baron Amicus curia, Lord Eldon apparently acc. in *Freeman v. Barker*.

(j) 6 Ves. 117 *Kyby v. Macnamara*.

(k) 2 Jac. and W. 347, *Thornhill v. Thornhill*, 1 Ch. P. Coop. 380, *Shallcross v. Edworthy*.

(l) 5 Ves. 656, *Tait v. Ld. Northwick*. (m) *Ibid.*

(n) 5 M'Clelland 82, *Parsons v. Collett*.

(o) G. Coop. 96, *Hopier v. Godwin*. (p) 2 Russ. 606, *Lefroy v. Lefroy*.

(q) 3 Bro. C.C. 475, *Scott v. Nesbit*. 1 Ves., Jun 27, *Pridmore v. Pridmore*. 11

Ves. 57, *Morse v. Bishop of Durham*. 14 Ves. 151, *White v. Wilson*. 1 Kay & J. 28.

(r) 3 Anstr. 666, *Boyer v. Blackwell*.

(s) 2 Eden. 348.

(t) Ves. 86, *Chatham v. Grugem*. (u) 2 Ves. Jun., 51, *Watson v. Birch*.

(v) In *Morse v. The Bishop of Durham*, 11 Ves. 57.

(w) 2 Eden. 348, *Gower v. Gower*.

(x) 2 Jac. & Walk. 347, *Thornhill v. Thornhill*.

(y) 1 Ves., Jun. 453, *Anon.* (z) 1 Kay & J., 25, *Bridger v. Pinfield*.