

14th. Because the order or decree of sale having only directed the sale of lands and tenements of Andrew McMinn, it could not operate, there being then no lands or tenements of Andrew McMinn, they having at his death passed to the devisees under his will, nor could any title be transmitted by a sale under such an order, and the said order or decree was erroneous also in not describing the property to be sold, but leaving it to the Master to discover the property, and consequently giving him a discretionary or judicial power, and also because the decree or order of sale was not signed by the Chancellor, or his absence established, or the decree enrolled.

Chapter 52, Sec. 6, Acts 1733, vol. 2, p. 232, N. S. Statutes.

Chapter 11, Sec. 1, Acts 1758, vol. 1, page 9, N. S. Statutes.

Rorer on Judicial Sales, 109-113 and 128.

Hill on Trustees, 247.

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15th. Because if the Court had jurisdiction, it could not order the Master, in the first instance, to sell and convey, and such a conveyance could not vest a title in the purchaser or divest it out of the owner or party otherwise entitled, but should have the signature of the party in interest to have this effect.

Dan. Ch. Pr., 1032, 1031 and 1042.

2 Story's Eq. Jur., 744.

Comyn's Dig., Chancery, Y 3 and 7.

16th. Because the complainant in that suit, Mary McMinn, being administratrix of her deceased husband's estate with the will annexed, could not purchase, particularly at her own sale, but such purchase was wholly illegal and void, or resulted as a trust for the infant, and, after such a lapse of time, the legal title must be presumed conveyed.

Fox vs. Mackboth, White & Tudor's Leading Cases, 115.

Hill on Trustees, 250 note, 838.

Perry on Trusts, 205.

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17th. Because if the plaintiff is at all precluded, barred or stopped from asserting a title, it is only a title as heir at law, this being the only title in any manner alluded to in the Bill or proceedings as possessed by her.

18th. Because the Master exceeded the power assigned him by the order of sale, in conveying a more extensive title than the order directed, and the deed was consequently void in toto. See page 152, lines 13, 14, 15, and the last word in line 19.

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19th. Because the Master conveyed under a sale alleged in the deed, if any, to have been made on the 17th of December, 1842, which no report or other proceeding in the cause verifies.

20th. Because the sale was never confirmed by the Court, and the deed was therefore worthless.

Sec. 8 of Chapter 52, Acts 1733, vol. 2, page 232, Nova Scotia Statutes.

Rorer on Judicial Sales, 55 and 57, and 128.

Sugden on Vop., 110, 101 and 113.

Dan. Ch. Pr., 1275, 1276 and 1279-1281; 2 Sch. and Lef.; 1 Phil. 364.

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