

driven so to purchase; such suspicions fade away entirely, or at least become very faint.

No sort of objection was made before or at the sale by or on behalf of the plaintiffs to the conditions of sale or to the proceedings at the sale, in regard to which so much is sought to be made now. No attempt seems to have been made, by them or in their behalf, to get a higher bid, or better price, for the property; indeed, the whole of this litigation seems to me to have arisen out of the fact that the purchaser eventually bought for a sum several thousand dollars less than he at one time bid for it; but, as that bid was forced by one who was unable to carry out his purchase when the property was knocked down to him, and was really not a bid in good faith, it is difficult for me to find any fair ground for holding the purchaser to the bid so forced up, and which was retracted before acceptance, or to any other loss on that account.

The admissions said to have been made by both vendor and purchaser, after the sale, are quite subject to a reasonable and innocent interpretation. The purchaser's interest required that the business of the hotel should be carried on and that he should have some sort of a "tie" upon it. Keepers of such hotels are not as easily found "as stumps in a field;" and the mortgagee might fairly and properly be looked upon as a possible future keeper, manager, tenant, or even purchaser, without any offence against any rule of law or equity on the part of the real purchaser, who had bought in good faith, for himself, and in his own interests.

There is no reason, in my opinion, for disturbing the conclusion of the Divisional Court; the case is not one in which much depended upon the demeanour of the witnesses; and the learned trial Judge erred in principle in treating the vendor as if he were nothing but a trustee for the sale of the property for the mortgagor's benefit.

MOSS, C.J.O., gave reasons in writing for the same conclusion.

GARROW, MACLAREN, and MAGEE, J.J.A., concurred.

*Appeal dismissed with costs.*

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