

or only so much thereof as upon which the city hall is literally situate, there being no specific reference to that portion occupied by the market-place, or whether the corporation is authorised to sell the land free from any right of the public to a passageway over the said land from Richmond street to the market, and whether, if the corporation is not entitled to do either, the plaintiff has any status to maintain this action, are questions upon which I do not need to express an opinion, because I think, upon the second ground of this motion, the plaintiff has made out a case entitling him to have the injunction continued to the trial.

As to the duty of a municipal corporation in selling land belonging to the corporation, I adopt the language of the learned Chancellor in *Phillips v. Corporation of Belleville*, at p. 746: "It is not advisable in dealing with a corporate (trust) property to dispose of it in a private way, but some steps should as a rule be taken to insure competition, whether by inviting tenders or exposing to auction (with, it may be, a reserve bid). This method is recognised by legislation in recognising the municipal power to dispose of 'wet lands.' When it is deemed expedient to sell, part with, or dispose of the same, it is to be by public auction in like manner as they may by law sell or dispose of other property." See sec. 556 of the Consolidated Municipal Act, 1903.

In *Downes v. Grazebrook*, 3 Mer. 200, at p. 208, in speaking of the duties of trustees for the sale of land, Lord Eldon says: "A trustee for sale is bound to bring the estate to the hammer under every possible advantage to a cestui que trust." And in *Mathie v. Edwards*, 2 Coll. 465, the Vice-Chancellor, in speaking of the duties of a mortgagee selling under power, says: "I apprehend that a mortgagee having a power of sale cannot, as between him and the mortgagor, exercise it in a manner merely arbitrary, but is, as between them, bound to exercise some discretion, not to throw away property, but to act in a prudent and businesslike manner, with a view to obtain as large a price as may fairly and reasonably, with due diligence and attention, be, under the circumstances, obtainable."

In *Lewin on Trusts*, 11th ed., p. 494, it is stated that "trustees, if they or those who act by their authority fail in reasonable diligence in inviting competition or in the management of the sale, as if they contract under circumstances of haste and improvidence . . . will be personally responsible for the loss to the suffering party; and the Court, however correct the conduct of the purchaser, will refuse at his instance to compel specific performance of the agreement."