

well founded, that there is in general more real wisdom in adhering to the old practice than in adopting new rules." (l) Here the groundless apprehension of change was exhibited in high relief by the great lawyer. It was in a case indeed, where the appellant was present at the sale, but the observations were general. If it were necessary to make a change he would consult the Master of the rolls and the Vice-Chancellor. Again, in 1822, Lord Eldon said, "During a period of nearly half a century which I have passed in this court, and in which Lord Apsley, Lord Thurlow, the Lords Commissioners, with Lord Loughborough at their head, have presided here, I have heard one and all of them lament, that the practice of opening biddings was ever introduced. I confess that I have great doubt myself upon the subject; but after a practice so long established, is not for me to disturb it." (m) Lord Redesdale likewise observed in his court, "It is a general complaint that estates sold under decrees of the court, go at considerable under-value; the cause of this is the trouble purchasers are put to, in completing their purchases. If greater strictness were preserved in opening the biddings, it would have the effect of producing better sales." (n)

Lord Cranworth also made an ominous remark in *Barlow v. Osborne*, (o) which, had he been quite content with the existing practice, he might have foreborne. "These are all discussions which are proper to be addressed to the Legislature which has the power of altering the law;" (p) and again, "It does seem to me most unreasonable that a vendor should, in cases of this kind, when his property is sold under a decree of the court, be protected at both ends, as it were, both before and after the purchase is made. It seems to me to furnish the strongest grounds for thinking that a general order should be issued by the Court of Chancery for the purpose of altering the present practice." (q) And in 1817, Macdonald, C. B., thus expressed himself; "If one who has given a fair price and is confirmed purchaser before the master, is liable at the distance of several months, and after he has arranged his affairs upon the faith of the purchase, to have it set aside, upon the mere circumstance of another person offering a larger price, it must necessarily affect all sales under the authority of the court, by deterring purchasers from bidding. It is thereupon, the general interest of the suitors to discourage the opening of bidding: unless upon peculiar circumstances in the first sale. As no such circumstances appear in this case, the order cannot be granted." (r)

There is another principle not a little important, when we come to investigate the subject. The court will suffer a third sale, if there be found a candidate equal to the mark, (s) and upon an application by the same person. (t) However, in ordinary cases, the sale will be received. £1,050 were bid, and there was an order to open the biddings upon a deposit of £300. The second sale took place, and £1,338 were bid; but another offer of £160 was made by the same person who had opened the biddings. The Lord Chancellor said he remembered no such application, but as the purchaser did not appear to object, he made the order. (u)

I may just mention as matter of legal history, that when a buyer has taken several lots, and as to one of these, the biddings are opened, it is the rule to give him the option of retiring from the remainder. Macdonald, C. B., thought this a reasonable request; (v) but the Vice-Chancellor (Leach) upon a subsequent occasion made a distinction between lots purchased before the lots which are the subject of the application and those after. He said, "Where a person became the pur-

chaser of a subsequent lot, in consequence of his being declared the best bidder of a prior lot, it was reasonable that he should have the option of retaining or retiring from the subsequent lot. (w) In another case the same Vice-Chancellor required an affidavit from the purchaser "that he had bid for the lot in consequence of having been declared the best bidder for the prior lot." (x)

It is obvious that, from the details and observations which have been submitted to the Society, the object intended in these papers is to prepare the way for an Act of Parliament, or, it may be, a rule of the courts, to assimilate the sales directed by the Court of Chancery with other contracts between buyer and seller. It seems better to return to that ordinary commercial dealing which has so long established good faith and right assurance between man and man. Undoubtedly, the equity judges have endeavoured to preserve, as far as possible, the fair balance between buyers and sellers; but of a practice what can be said commentatory, when the great oracles which have the administration of it are by no means agreed as to the propriety of its continuance? No sooner will the Court of Chancery forbear or be restrained from this method of conducting sales, than the same confidence will arise in the market of that court which obtains in the great market of the world.

## DIVISION COURTS.

### TO CORRESPONDENTS.

All communications on the subject of Division Courts, or having any relation to Division Courts, ~~from~~ future to be addressed to "The Editors of the Law Journal, Barric P. O."

All other communications are as hitherto to be "The Editors of the Law Journal, Toronto."

## THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(Continued from page 112.)

In appointing or altering divisions, "the limits and extent" of every court division must be ascertained and fixed with precision. This may be done by tracing the outer boundary in each case, or by setting out the towns, townships, or detached parts thereof, intended to be within the division; but whatever mode of description be adopted, the established territorial divisions of the country and the authorized subdivision and description should be followed. Thus a division may be composed of so many townships, or of one or more townships, and so many concessions or lots from another township; and that is the usual method taken for fixing "the limits and extent," and the one evidently contemplated by the Legislature; for if we look at the 121st and 122nd sections of the act, we see at once a difficulty in carrying out their provisions unless the established and recognized divisions are adhered to. The jurors are to be taken from the collectors' rolls for the townships and places wholly or partly within the division, and for this purpose "the collector for each place, wholly or partly within any division, shall furnish the clerk" of the court with a

(l) In *Tyndale v. Ware*, Jac. 528.

(m) In *Williams v. Ashborough*, Turn. and Russ. 75.

(n) 1 Sch. & L. 350.

(o) 4 Jur. 367.

(p) Id. 368.

(q) Id. 369.

(r) In *Boyer v. Blackwell*, 3 Austr. 657.

(s) Bro. Ch. Ca. 475, *Soutz v. Noddy*.

(t) 8 Barr. 352, *Walwood v. Walwood*, see the cases of *Orliffy Shores*, 8 Vol. 502, *Wren v. Kirtan*.

(u) 16 Vol. 140, *Freston v. Barker*.

(v) Austr., 684, *Boyer v. Blackwell*.

(w) 1 Sim. v. Sim, 306, *Price v. Price*.

(x) 164 *Fidler v. Fidler* See 4 Masd. 227. *Roggy v. Shelleness*, and note (C) there. As to timber, see 6 Sim. 380. *Bates v. Binner*, 10 per cent. advance; and for other cases, Dart on Vendors, p. 154.