

including counsel fees to the amount of \$300, and dismissing the bill.]

WM. J. WARD and CHAS. F. MAYER, for Complainant.  
R. W. GILL, for Defendant.

JOSEPH J. SPEED, TRUSTEE,  
vs.  
THOMAS SMITH AND EDWARD BOYLE. } SEPTEMBER TERM, 1851.

[EXCEPTIONS TO TRUSTEE'S SALE.]

THE omission to make a prior incumbrancer a party, though it might possibly be error, for which the decree would be reversed on appeal, will not render the sale void.

A mortgage was executed by an insolvent, and his trustee, nearly twelve years after, petitioned for the benefit of the insolvent laws, upon which a decree for the sale of the mortgaged premises was passed. *HELD—*

That an objection to the sale upon the ground of the incapacity of the mortgagors to execute the mortgage cannot be sustained, the presumption being after such lapse of time and in the absence of proof to the contrary, that no debts due by the insolvent, *at the time* of his application, remain unpaid.

In the absence of any misleading representation by the trustee of the condition and value of the property, an objection by the purchaser that it sold for more than its worth, cannot be sustained, the property having been open to his examination.

If the trustee makes any promise or representation to the bidders, that the estate shall be, or is, clear of all incumbrances, or that the title is better or different from that which would flow from the proceedings, which promise or representation cannot be complied with, or turns out to be erroneous, the sale will be set aside.

The advertisement stated that property sold was subject to a ground rent of "only ten dollars." The exceptant offered in evidence a lease of property of which that sold was a part, executed in 1796, for the yearly ground rent of twenty dollars. Several subsequent conveyances of the property sold were shown and that the ground rent paid upon it had been \$10, and no proof was offered that this particular property had, since the lease, been held liable to the rent of \$20 therein reserved. *HELD—*

That an objection to the sale on this ground could not be sustained, the Chancellor being of opinion, that there had been an apportionment of the original ground rent acquiesced in by those who claim under the original lease.

The trustee stated, at the sale, that there were claims against the property, but that he would retain a sufficient amount of the purchase money to pay them, and that the purchaser would get a good title, which statement the purchaser heard. *HELD—*