

But where, without specially relying on the statute of limitations, a defence was taken against the claim on the 10th of February, 1818, and witnesses were produced and proceedings had; and then on the 10th of December, 1819, a plea of the statute of limitations was filed and relied on. It was held, that the plea was offered too late, and it was accordingly rejected. (*h*)

9th June, 1796.—HANSON, Chancellor.—The Chancellor has considered the petition of Sarah Brookes for setting aside the sale, made by the trustee of the real estate of Benjamin Brookes, and the depositions returned, agreeably to the order for that purpose made, and the arguments of the counsel for General Benjamin Brookes.

He finds nothing reprehensible in the conduct of the purchaser; and nothing which can be deemed fraudulent has been proven; but it is clearly established by the depositions, that the sale was affected by suggestions made at the time of the sale, that thereby a person was prevented from bidding, and the land hath been sold for a considerably less price than otherwise it might have commanded. It hath always been a rule with the Chancellor to impress the public with an idea, that no device or contrivance used at a sale, which requires his ratification, shall be of any avail. It is essential to the administration of justice in this court, that this rule be inviolably observed. Where property appears to have been sold under its value, the slightest circumstance of fraud, combination, or management, ought to be deemed sufficient, on the application of a party interested, to set aside the sale. As those things are of a nature to elude detection, where little is proved, a great deal may fairly be presumed. In the present case, indeed, there does not appear to have been any fraud or combination; but if a sale, under such circumstances, should be ratified, the encouragement which the precedent might afford, would probably operate not only against the interest of the parties concerned in sales, but against substantial justice and the reputation of this tribunal.

It is therefore *Ordered*, that the sale made by William Marbury, trustee of the said real estate of Benjamin Brookes deceased to General Benjamin Brookes, as stated in his report, this day returned, be vacated and set aside; and that the bond or bonds taken by the said trustee, on the said sale, be cancelled or delivered up to the said General Brookes; and that the said trustee proceed to sell again the said property on the terms and in the manner prescribed by the original decree in this cause; and that in every thing, except giving a new bond, before, at, and after the sale, he act as by the said decree prescribed.

On the 30th of July, 1796, a new sale having been made and reported, was afterwards absolutely ratified and confirmed.

The auditor, on the 18th of February, 1803, made a report, in which, among other things, he says that Stephen West's claim, account No. 6, commences early in the year 1756, and is continued as an open account until 1776, in which time, and for ten years afterwards, there does not appear to have been any settlement between the parties; and the affidavit of the executrix of Stephen West appears to be defective; in addition to these objections the solicitor for the executrix of Benjamin Brookes has filed exceptions to this claim herewith returned. That Benjamin Oden's claim, account No. 9, is a judgment against the executrix, which has no proof except the transcript of said judgment.

Sarah Brookes, widow of Benjamin Brookes, in behalf of herself and Robert