

SALE OF VESSEL IN FOREIGN PORT—*Continued.*

agents with the concurrence of defendant, offered the vessel at public auction upon her arrival in San Francisco, and the defendant became the purchaser. **HELD—**

That under all the circumstances of the case the relation in which the parties stood at the time of the sale, did not preclude the defendant from becoming the purchaser of the vessel, the relation of trust and confidence between them having been destroyed by the complainant himself, by confiding the power to dispose of his interest in her to other parties. *Peters vs. Speights*, 375.

2. The purchase of a ship in a foreign port by the master is generally to be considered as made for the benefit of the owners if they elect so to regard it; the incapacity of the master to purchase in such cases, arises from the relation of trust and confidence which exists between him and the owners. *Ib.*

SALES BY TRUSTEES.

1. Mere inadequacy of price in a chancery sale, unless so gross and inordinate as to furnish, *per se*, evidence of fraud or misconduct on the part of the trustee, is not sufficient cause for setting the sale aside or refusing its ratification. *House vs. Walker et al*, 62.
2. 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. *Speed vs. Smith*, 299.
3. A mortgage was executed by an insolvent, and his trustee, nearly twelve years after the former, 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. *Ib.*

4. 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. *Ib.*
5. 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. *Ib.*
6. 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 particu-