*James Greenleaf, Appellant, *v.* Nicholas L. Queen and Eleanor his wife, heirs, and Richard Wallack, administrator, of Washington Boyd, deceased, Appellees.

Assignment in trust for creditors.—Dower.—Decree in chancery.—Parties.

Where, by the terms of a deed, conveying real estate in trust, to be sold for the benefit of the creditors of the grantor, the trustee is directed to sell the property conveyed, by public auction, the trustee is bound to conform to this mode of sale. This is the test of value, which the grantor thought proper to require; and it is not competent to the trustee to establish any other; although, by doing so, he might, in reality, promote the interests of those for whom he acted.[1] p. 145.

Where property conveyed in trust, to be sold at public auction, had been sold by private contract, and the property was afterwards offered for sale, in the manner prescribed by the deed of trust, for the purpose of making a title to the private purchaser; at which time, more was bid for the same, than the amount for which it had been privately contracted to be sold; the purchaser, by private contract, to whom possession was delivered, at the price agreed on, cannot allege that the sale was void; since, whatever may be the liability of the trustee, to those interested in the proceeds of the sale, for the amount offered at the auction; it is not an objection, on the part of the purchaser, to release him from his contract. p. 146.

Where the vendee of real estate had purchased it, subject to the dower of the widow, of which dower he might have been informed, if he had used proper diligence, a court of equity will not interfere, to release the purchaser; but will leave him to such legal remedy as he may be entitled to, in case his title should, at any future time, be disturbed. p. 147.

Where a bill had been filed against a trustee of real estate, and after his death, administration had been granted to A.; who, on the petition of creditors, interested in the trust, was also appointed by the court, the substituted trustee, and the court went on to decree, that A., as trustee, should execute certain conveyances; the decree was held to be invalid; the course of proceeding, being rather to make the decree against A., in the character of administrator, because he claimed, as administrator, under a title derived from the original trustee, and was the person designated by law to represent him; or that a supplemental bill, in the nature of a bill of revivor, should have been filed against the substituted trustee; in which all the proceedings should have been stated, and he required to answer the charges contained in the original and supplemental bill. p. 148.

A decree of a court of chancery is erroneous, which, after ordering certain acts to be done, to enable a party to execute certain duties assigned to him, dismisses the bill; as it puts the cause out of court, and renders the decree ineffectual: and it is no answer to this objection, that it appears by the record in the case, that the acts ordered to be done, have been performed; since the error is in the decree itself, and not in its execution. p. 148.

A bill may be dismissed, where the plaintiff, when called upon to make proper parties, refuses, or is guilty of unreasonable delay, in doing so; but this must be done on demurrer, plea or answer, pointing out the person or persons who, the defendant insists, ought to be made parties. p. 149.

*Where a debtor had conveyed to a trustee, real estate, to be sold for the benefit of creditors, and the trustee dying before the conveyance of the property to a purchaser, another trustee was appointed by the court, upon the application of the creditors, to execute the trust; in a proceeding relative to the execution of the trust, and the conveyance of the estate, it is necessary that the heirs-at-law of the first trustee shall be parties to the same; as the legal title to the estate did not pass to the substituted trustee, by the appointment, but remained in the legal heirs. p. 149. [*139

Appeal from the Circuit Court of the District of Columbia, for the county of Washington; the appellant having been complainant, in a bill in

[1] S. P. Ellet *v.* Paxson, 2 W. & S. 436–7. If a power to sell, contained in a mortgage, be limited to a particular time, and the mortgagee fail to execute it, within such time, it is gone for ever. Lockett *v.* Hill, 1 Woods 552.

equity, filed 31st December 1819, in the court below, against Washington Boyd, trustee of Charles Minifie.

The objects of the bill were to make void a contract made by the appellant, for the purchase of certain lots of ground, in the city of Washington, being the estate held in trust for the creditors of Charles Minifie; that certain collateral securities delivered by the appellant, with his note for $3815, being for the purchase-money of the lots, of the trustee, should be returned; and that the note should be cancelled and surrendered; that a release should be executed, of the judgment at law obtained by the trustee, on the note, and for a perpetual injunction, and general relief, &c.

Upon filing this bill, an injunction was granted, until further order of the court; and, after various proceedings, the following decree was made:

Greenleaf
v.
Washington Boyd and others. } In Chancery, April Term, 1824.

It is ordered by the court, in this cause, that the trustee appointed by the order of January 21st, 1823, make and execute a good and sufficient deed to James Greenleaf, for the property sold to him, by the former trustee, Washington Boyd, according to the terms of that sale; to be approved by one of the judges of this court, and filed with the clerk, to be delivered to the said Greenleaf, upon the payment of the purchase-money; and that he also obtain and file with the clerk, a sufficient deed of release, from Zachariah Walker, to be approved of by one of the judges of this court, to the said James Greenleaf, releasing all title and claim to any and every part of the lots and property of the said Charles Minifie, sold by Washington Boyd, as trustee, or mentioned in the aforesaid deed of the trustee, Richard Wallack, to James Greenleaf; and that, upon the said deed, and the said deeds of release, being executed, signed, approved and filed as aforesaid, that then the injunction be dissolved, and the trustee authorized to proceed in levying and collecting the amount of the judgment *for the purchase-money, as mentioned in said bill. And the original bill, and bills of revivor, having been set down for hearing, upon the bills, answers and exhibits, and all the proceedings in the cause—it is, by the court, on this 15th of December 1824, decreed and ordered, that the said bill be dismissed, with costs. And it is hereby further ordered and decreed, that, before proceeding in collecting said purchase-money, a good and sufficient bond shall be executed, in the penalty of $500, by any one or more of the creditors, with security, to be approved of by one of the judges of this court, conditioned to indemnify the said Greenleaf, his heirs and assigns, from all claim and demand of Francis Jameson, his heirs and assigns, to any part of the lots or property mentioned in the deed of the said Wallack to said Greenleaf; which may have been purchased by the said Jameson, at the sale of the said Boyd, and filed with the clerk of the said court.

*140]

15th December 1824. By order, William Brent, Clerk.

From this decree, the complainant appealed. The opinion of the court, delivered by Mr. Justice Washington, fully states all the matter of the case.

The case was argued by *Jones*, for the appellant; and by *Key*, for the appellees.

Jones, for the appellant.—1. The title of Charles Minifie was never affected by the sale of Boyd to Mr. Greenleaf. The authority to sell, was a special one, and the terms not having been complied with—as the sale was private, and not public. Minifie, or his heirs, or his creditors, may proceed against the trustee—no time precluding the same. *Daniels* v. *Adams*, Ambl. 495; 1 Bridg. Index 41. A private sale was set aside, although more was obtained by the sale, than by a public sale; it being against the authority of the trustee. The court cannot vary the terms of a trust. 1 Anstr. 80; 4 Bro. C. C. 479.

2. Mr. Greenleaf had no notice of these objections to the title, until a few days before the filing of the bill; and it was then too late for this proceeding. 16 Ves. 272. The title could not be completed, without the consent of Minifie and his wife; and no steps were taken to obtain this; nor were the measures adopted, in reference to the titles acquired by Jameson, Prout and Walker, who purchased some of the lots at the public sale, effective. The purchaser would still be obliged to go into chancery, to complete his title to some of these lots so purchased. Nor has a title been made to him by the heir of Boyd; if Mr. Wallack, the substituted trustee, *could convey her title, it could not be by virtue of the decree stated in the case, as Mr. Greenleaf was not a party to the proceeding. [*141

The court will not permit an executory contract for land, to be carried into specific execution, until the seller can give a complete title. 4 Ves. 97; 2 Ves. jr. 100; 2 Coxe 294; 5 Ves. 147; 16 Ibid. 272. As to taking possession of property, being an acceptance of title: Sugden on Vendors 9.

The sale made to Greenleaf, was a fraud on the public; and no title to the purchase-money could be derived under it. A confirmation of the title held by Mr. Greenleaf, by the legal heir of Boyd, and by the creditors of Minifie, was necessary; and it was not the duty of the purchaser, to seek out the heir. He had called upon Boyd, who had the trust, to do what was proper.

There was no ground to dismiss the bill, for want of proper parties—this should have been pleaded; this is never done, unless in a case where no decree can be made, without affecting those who are not before the court.

Key, for the appellees.—This is a case, where a purchase was made, when property was high, which has since fallen; and the purchaser, therefore, desires to relieve himself from the bargain. The terms of the trust were complied with, by the trustee; a public sale was made of the property; Greenleaf took possession, knowing all the facts; and not until after judgment came against him for the purchase-money, did he ask for a specific performance, and an injunction. As to notice: 2 Johns. Ch. 197. The purchaser has not done what he ought to have done, to obtain a title. He should have filed his bill against all the persons interested—Minifie and the creditors; but the bill was against Boyd alone; and this authorized the conclusion, that the aid of Boyd only was wanting. The case is one of a *bonâ fide* and regular sale by the trustee; possession taken by the purchaser; execution of his contract, with full knowledge of all the circumstances, by the delivery of his promissory note for the purchase-money;

and afterwards, by proceedings without proper parties, and altogether irregular, an attempt by the purchaser to defeat the claims of the creditors of the *cestui que trust.*

Washington, Justice, delivered the opinion of the court.—This cause comes from the circuit court of the district of Columbia, for the county of Washington. The appellant filed *his bill in that court, against *142] Washington Boyd; setting forth, that on the 19th of March 1817, the said Boyd, as trustee under a deed of Charles Minifie to him, entered into a contract with the plaintiff, for the sale of sundry lots in the city of Washington, at the price of $3500, payable in six, twelve and eighteen months; for which, including the interest, and amounting in the whole to $3815, he then gave his note to Boyd, who acknowledged the receipt thereof, by an instrument under his hand; and thereby agreed, that on the payment of the note, he would convey to the plaintiff, the said lots, which had been previously sold at public auction, two of them to Elliot, as agent for the plaintiff, and the others to Francis Jameson, William Prout and Z. Walker. That, although the title to these lots which had been sold to Jameson, Prout and Walker, had not been released from their claims, the defendant, Boyd, had nevertheless recovered a verdict against the plaintiff for the amount of his note before mentioned, upon which he threatened to sue out an execution. The prayer of this bill was for an injunction, and a conveyance of the lots, with a clear title.

The plaintiff afterwards filed an amended bill, setting forth the original negotiations between the plaintiff and Boyd, in March 1816, for the purchase of the above lots, which resulted in a contract, by which the plaintiff was to be considered as the purchaser of them, at the price of $3500, payable with interest, in six, twelve and eighteen months. That the defendant had nevertheless thought proper to expose the said lots to sale, at public auction, some time in April 1816, and had caused Elliot, the plaintiff's agent, to be set down as the purchaser of two of the lots, at the price of $3500, although neither Elliot nor the plaintiff was present; and that the remaining seven lots were struck off, three of them to Jameson, at $159, one to Prout at $45.15, and the remaining three to Walker, at $264.90, making in the whole, the sum of $4019.05. That matters remained in this situation until the 19th of March 1817, when the written contract mentioned in the original bill was entered into. The bill then sets forth the judgment obtained by Boyd against the plaintiff, upon his note for the purchase-money of the lots, and the deposit by the latter, with the former, of certain securities, as collateral security for the debt, in consideration of a suspension of the execution until some time in December 1819. It further charges, that the plaintiff was ignorant of the title and authority of the defendant to dispose of the above property, until within a few days preceding the filing of this amended bill; when, upon examining the land records of the county, he found the deed of trust from Charles Minifie and one James Ewell and *Z. Farrell, to the said Boyd, conveying the above lots to *143] him, in trust to dispose of the same at public sale, on six, twelve and eighteen months credit, and to apply the proceeds to the payment of the debts of the said Minifie, and to hold what might remain, after such payments, subject to the decree of the circuit court of the said district and

county, in the suit brought by the wife of said Minifie for alimony; and the balance, if any, to be paid over to said Minifie. The bill then concludes, by charging that the contract made by the plaintiff with the defendant, for the purchase of the said lots, is void, because it was made in contravention of an injunction obtained by Mrs. Minifie, and because the purchase, by the plaintiff, was made at private, and not at public sale; that the title is likewise defective, for the same reasons, and because the property is subject to the claim of Mrs. Minifie for alimony and for dower, and is not released from the claims of Prout, Jameson and Walker, to the seven lots sold to them. The prayer of this bill is, that the contract may be declared void; that the judgment upon the plaintiff's note may be perpetually enjoined; and that the pledged securities may be restored to the plaintiff.

The injunction asked for, was granted, until further order. A petition was filed in the same court, by William Prout and others, creditors of Charles Minifie, setting forth the death of Washington Boyd, leaving Eleanor, the wife of Nicholas L. Queen, his heir-at-law; and praying that another trustee might be appointed to complete the execution of the trusts of the deed from Minifie to Boyd. To this petition, Queen and his wife appeared and filed an answer, admitting the truth of the allegation in the petition, that the said Eleanor is the heir-at-law of Boyd; and submitting to such decree as the court might think proper to make.

That cause being set for hearing on the petition and answer, the court, on the 21st January 1823, made a decree, by which Richard Wallack was appointed trustee in the place of Washington Boyd, deceased, upon his giving bond and security; with authority to complete the trusts left unexecuted by Boyd, according to the provisions of the trust deed, and to recover and collect the purchase-money for such of the trust property as had been sold by Boyd; and upon the payment thereof, to convey said property, by a good and sufficient deed, in fee, to the purchasers thereof, and to bring the said proceeds of sale into the court, to be distributed as the said court might direct, according to the deed of trust. A bond was accordingly executed by Wallack, approved by one of the judges of the court, and filed amongst the proceedings in that cause (a transcript of which proceedings was made an exhibit in this cause); on the same day the above decree was passed, the court decreed, in *this cause, that the plaintiff should, on or before a certain day, proceed in the same, by [*144 making the heirs of Washington Boyd defendants, as also such other persons as might be necessary to enable the court to decree therein; otherwise, that the bill of the plaintiff should be dismissed.

In May 1824, the plaintiff filed a bill of revivor against N. L. Queen and Eleanor his wife, heir-at-law of Washington Boyd, and Richard Wallack, administrator of the said Boyd; to which will Queen and wife appeared, and by consent of parties, the answer filed by them to the petition of Prout and others, was received as an answer to the bill of revivor, and the original suit was agreed to stand revived.

The cause was then set for hearing on the bills, answer and exhibits, and all the proceedings in this cause, and also on the petition of Prout and others before mentioned; whereupon, the court decreed, that Richard Wallack, the trustee appointed by the order of the 21st of January 1823, should execute

a good and sufficient deed to the plaintiff, for the property sold to him by Boyd, the former trustee, according to the terms of that sale, to be approved by one of the judges of the court; to be filed with the clerk; and to be delivered to the plaintiff, upon the payment of the purchase-money; that he should also obtain and file with the clerk, a sufficient deed of release by Zachariah Walker, to be approved as aforesaid, to the plaintiff, releasing all title and claim to any and every part of the property of Charles Minifie, sold by Boyd, as his trustee; and that upon the said deeds being executed, approved and filed as aforesaid, the injunction granted in this cause should be dissolved, and the trustee be authorized to proceed to levy and collect the amount of the judgment for the purchase-money, as mentioned in the bill. The decree then proceeds to dismiss the bill, with costs; and that before proceeding to collect the said purchase-money, a good and sufficient bond should be executed, in the penalty of $500, by any one or more of the creditors, with surety, to be approved by one of the judges of the court, with condition to indemnify the plaintiff, his heirs and assigns, from all claim and demand of Francis Jameson, his heirs and assigns, to any part of the lots or property, mentioned in the deed of the said Wallack to Greenleaf; which might have been purchased by the said Jameson, at the sale of Washington Boyd, and filed with the clerk of the court. From this decree, the plaintiff appealed to this court. A deed by Richard Wallack to James Greenleaf, bearing date the 2d of August 1825, a bond of indemnity executed by Jonathan and William Prout, and a deed of release by Z. Walker, as directed by the aforesaid decree, dated the 3d and 7th of February 1825, were executed, approved and filed by the clerk of the court, in *conformity with
*145] the decree, and form parts of the record brought up by this appeal.

The first objection made by the appellant's counsel to the decree of the court below, is, that the contract between the appellant and Washington Boyd, for the sale of the lots mentioned in the bill, was void, for want of authority in the latter, to dispose of the property in any other mode, than at public auction. Such, it must be acknowledged, is the mode prescribed by the deed of trust; nor can it be questioned, but that the trustee was bound to conform to this, as well as to the other requisitions of the deed, under which he professed to act. This was the test of value, which the grantor thought proper to require; and it was not competent to the trustee to establish any other, although by doing so, he might, in reality, promote the interest of those for whom he acted.

But what are the facts in the present case? The nine lots, which formed the subject of the correspondence between the appellant and the trustee, in March 1816, and of the written contract, on the 19th of March 1817, were actually advertised, as directed by the deed of trust; were set up for sale, as the amended bill alleges, at public auction, in April 1816, and were sold for the sum of $4019.05. Two of them were set down to S. Elliot, the agent of the appellant, at the price of $3500; and the other seven were struck off to Jameson, Prout and Walker, for the remaining sum of $519.05. It is not even charged in the bill, much less is there any proof in the cause, to warrant a suspicion that the sale was not fairly conducted; or that any person bid for the two lots set down to Elliot, more than the sum at which they were charged to him. In making the sale in that mode, no deception was practised upon the appellant; since he was informed, by Elliot's letter to

him, of the 16th of March 1816, that Mr. Boyd had further postponed the sale of Minifie's property, and would consider him, Greenleaf, as the purchaser for $3500. The writer adds, "I have stipulated, that the whole property shall be included; it is necessary to go through the forms prescribed by the decree;" meaning, no doubt, if the letter be truly transcribed into the record, the trust deed. But, on the 19th of March 1817, when the contract was finally reduced to writing, the appellant was distinctly apprised, that the whole of the lots had been sold at public sale, at six, twelve and eighteen months; and he was then satisfied to give his note for the stipulated sum agreed to be paid for the nine lots, upon the engagement of Boyd, to make a deed for the same to Samuel Elliot. Upon what plausible ground, then, can the appellant *now insist, that the lots were not sold at public auction, and on that ground, seek to be relieved against the [*146 payment of his note, given for the purchase-money, thus agreed to be paid for the property? The argument urged by his counsel, that the contract is void, because the lots were sold to the appellant for a less sum than that at which they were struck off to the purchasers at the public sale, cannot, for a moment, be maintained; since, whatever might be the liability of the trustee to the *cestuis que trust*, to pay the difference between those sums, it is surely not an objection, in the mouth of the appellant, sufficient to release him from his contract.

But were it to be admitted, that Boyd acted in derogation of his trust, in selling the property to the appellant for a less sum than he actually sold it for at public auction, and that on that account, the title of the appellant might be impeached; may not the objection be removed, by the agreement of the parties beneficially interested in the property under the deed of trust, to confirm the sale; or, by their acts, tending to produce the same result? Of this, we apprehend, there cannot exist a doubt. Now, who are the parties for whose benefit this trust was created? They are the creditors of Charles Minifie, in the first instance; and after they are satisfied, Mrs. Minifie, to the extent of the sum which might be decreed to her for alimony; and then Charles Minifie, as to any balance which might remain. But it appears from the exhibits filed in the cause, that the amount of the debt due by Minifie, and for which judgments were obtained against him, exceeded considerably the sum at which these lots sold at public auction, independent of the interest due upon those debts, and the costs of the different suits in which the judgments were entered. The only persons, then, who are beneficially interested in the property conveyed by the deed of trust, are the creditors of Charles Minifie, who have united in a suit against the heir-at-law of Boyd, for the purpose of having a new trustee appointed to carry into execution the sale made of the property, by the former trustee, under the deed of trust; and they are, as the bill charges, the active parties in enforcing the payment of the purchase-money; after these solemn acts, done in affirmance of the sale made to the plaintiff, the creditors would never be permitted, by a court of equity, to impeach it; nor can the alleged breach of trust be urged by the appellant, as a reason for annulling the contract, or excusing him from the payment of the purchase-money.

The next objection made by the appellant's counsel to the decree of the court below, is, that the title of the property, which it directs to be conveyed to the appellant, is defective; being incumbered with the claim of

Francis Jameson to three *of the lots, and with the right of dower of Mrs. Minifie in the whole of the property. It is very manifest, that the title of Jameson, if any he has, is merely nominal. The sale to him was made in 1816, upon six, twelve and eighteen months credit; and by the terms of the sale, he was required to give his note for the purchase-money, with an approved indorser, negotiable at one of the banks in this district. The bill does not charge, nor is it even alleged at the bar, that a note was given by Jameson for the purchase-money bid for these lots; not one cent of it had been paid by him, nor even demanded; or that, from the year 1816, when the sale was made, to the present moment, a claim to the property has been asserted or intimated, by this person. But it does appear, by the testimony of a witness examined in the cause, that the plaintiff, Greenleaf, has been in possession of the whole of the property, from the time that he purchased it; and that Jameson had, upon the application of Boyd to relinquish his claim to the property, consented to do so. Upon this state of facts, this court can feel no hesitation in saying, that Jameson had not such an equitable title to the lots purchased by him, as a court of equity would enforce against the trustee of Minifie, or against the plaintiff. Whether that court would require a title like this to be released, in a case where a trustee was a party plaintiff, asking for a specific execution of the contract, need not be decided in this case. But we are clearly of opinion, that the want of such a release cannot be urged by the vendee, as a cause for rescinding the contract.

The objection founded on the right of dower of Mrs. Minifie, is quite as untenable as the one that has just been disposed of. The plaintiff, when he made the purchase of this property, was apprised that he was dealing with a trustee; and knew, or might have known, from the land-records of the county in which the property was situated, whether Mrs. Minifie was a party to the deed of trust; and had, or had not, relinquished her right of dower. He required of the trustee no stipulation in relation to this right; and it may, therefore, be fairly presumed, that the value of it was taken into consideration, in fixing the amount of the purchase-money to be paid for the property. In such a case, as well as in that which we have just disposed of, a court of equity will not interpose to relieve the vendee, but will leave him to such legal remedy as he may be entitled to, in case his title should, at any future time, be disturbed by these claims.

The court is, upon the whole, of opinion, that the objections to the decree, which have been noticed, are insufficient to warrant a reversal of it.

*148] It is, however, exposed to other *objections, which must produce this result, and which now remain to be examined. The first is, that Richard Wallack, the substituted trustee, who is required by the decree to perform a number of acts, in order to entitle him to levy and to collect the amount of the judgments for the purchase-money, and upon the performance of which, the injunction is dissolved, was no party to the controversy in the court below. The suit, it is true, was revived against him, in his character of administrator of Washington Boyd, and also against the heir-at-law of Boyd; to which mode of proceeding, no objection could be taken, if the decree had been against him in his character of administrator, because, in that character, he claimed under a title derived from the party, by whose death the abatement of the suit was caused; and was the person designated

by law to represent him, in relation to his personal estates. But this was not the case in respect to Richard Wallack, as the substituted trustee and successor of Boyd. The power with which the latter was clothed, became vested in Wallack, not by operation of law, but by the appointment of the court, subsequent to the institution of the suit. The original suit, which abated by the death of Boyd, became also defective, by the termination of his powers, and the appointment of a new trustee, and could only be prosecuted against him, by way of a supplemental bill, in nature of a bill of revivor; in which it would be necessary to state, not only the original bill and the proceedings thereon, and the death of the former trustee, but the appointment of Wallack as his successor, and his acceptance of the trust; and to require him to appear and and answer the charges contained in the supplemental and original bills. For anything appearing upon the face of this record, Wallack is an entire stranger to the trust with which the decree connects him, and without any power whatever to make a valid conveyance. For there being no supplemental bill, nor allegation in any bill that Wallack had been appointed to complete the trust which Boyd had left unexecuted, and to collect the purchase-money for the property which that trustee had sold, and that he had accepted such appointment; these facts cannot be considered as having been established by the proceedings and decree in the suit of the creditors of Minifie, against the heir-at-law of Boyd. See Mitf. 33, 63, 70.

The next objection to the decree is, that after decreeing Wallack to perform a number of acts to entitle him to levy and collect the amount of the judgment against the appellant, as before mentioned, it proceeds to dismiss the bill, with costs; thereby putting the cause out of court, and rendering the other parts of the decree ineffectual. Should Wallack, for *example, refuse to execute a conveyance of the property to the plaintiff in the court below, pursuant to the decree, the non-existence [*149 of the suit on which that decree was made, would prevent any process of contempt from issuing against him, for the purpose of compelling him to execute the decree. It is no answer to this objection, that it appears by the record in this case, that Wallack has, in fact, executed the decree on his part; since the error complained of is in the decree itself, and not in its execution.

It was insisted by the counsel for the appellees, in anticipation of the above objection, that the court below would have been warranted in dismissing the bill absolutely, without requiring anything to be performed by the new trustee, in consequence of the omission of the plaintiff in that suit to make proper parties. That a bill may be dismissed, where the plaintiff, when called upon to make proper parties, refuses, or is guilty of unreasonable delay in doing so, need not be questioned; but to do so, without a demurrer, plea or answer, pointing out the person or persons who the defendants insist ought to be made parties, is unprecedented, and would, most unquestionably, be erroneous, although the decree should assign this as the ground of dismissal; which is not done in the present case.

The last objection to the decree, which it is thought necessary to notice, is, that the heir-at-law of Washington Boyd, deceased, is not required to release her title to the property in controversy to the appellant; a majority of this court being of opinion, that the legal estate in that property did not

pass to Richard Wallack, under the decree of the 21st of January 1823, before referred to, but is yet outstanding in the heir-at-law of Boyd.

The decree of the court below must, for these errors, be reversed, and the cause is to be remanded to that court for further proceedings to be had therein, in conformity with the principles before stated.

DECREE.—This cause came on, &c.: On consideration whereof, it is the opinion of this court, that there is error in the said decree, in requiring any act to be performed by Richard Wallack, before he was made a party to the said suit, by regular proceedings against him, according to the course and practice of a court of chancery, and had either answered the bill making him such a party, or the same had been taken for confessed against him; and that the said decree is also erroneous, in dismissing the bill of the plaintiff in the court below; and also, in not decreeing the said Nicholas L. Queen and Eleanor Queen his wife, the defendants in the said suit, to
*150] release to the *appellant, James Greenleaf, all their right and title to the property directed by the said decree to be conveyed to him by the said Richard Wallack; for which errors, it is now by this court decreed and ordered, that the said decree be reversed and annulled, and that the cause be remanded to the court below, to be there proceeded in according to law, and in conformity with the principles stated in this decree.

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*151] *BENJAMIN BUCK and THOMAS HEDRICH *v.* CHESAPEAKE INSURANCE COMPANY.

Marine insurance.—Policy.—Interest.

To affirm, that "in policies for whom it may concern," there can be no undue concealment as to the parties interested in the property to be insured, is obviously going much too far; since the underwriter has an unquestionable right to be informed, if he makes the inquiry. The assured may be silent, it is true, if he will; and let the premium be charged accordingly; but if the inquiry, when made, should be responded to by information, contrary to the verity of the case, this obviously gives a conventional signification to the terms of the policy, which may differ from the known and received signification in ordinary cases. p. 159.

A policy "for whom it may concern," will, in ordinary cases, cover belligerent property.[1] p. 160.

A knowledge of the state of the world, of the allegiance of particular countries, of the risks and embarassments affecting their commerce, of the the course and incidents of the trade on which they insure, and of the established import of the terms used in their contracts, must necessarily be imputed to underwriters.[2] p. 160.

The term *interest*, as used in an application for insurance, does not necessarily imply *property* in the subject of insurance.[3] p. 163.

The master of a vessel to whom property shipped on board the vessel under his command is to be consigned, in the absence of proof, that the owner of the property had not given authority to order insurance, has an insurable interest in the property on board his vessel; and this interest is sufficient to authorize the recovery of a loss, on the policy. p. 163.

As to the effect of certain instructions in a letter relative to insurance, and circumstances connected with the same, constituting a representation, to vitiate a policy, made under the authority and directions of the letter. p. 163.

This case came before the court, upon a division of opinion of the

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[1] Hodgson *v.* Marine Ins. Co., 5 Cranch 100; Straas *v.* Marine Ins. Co., 1 Cr. C. C. 343.

[2] Hazard *v.* New England Marine Ins. Co., 8 Pet. 557. And see Clarke *v.* Manufacturers' Ins. Co., 8 How. 249.

[3] See Hooper *v.* Robinson, 98 U. S. 538.