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Statement of the case.

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the same reasons. Wherever the contamination reaches, it destroys. The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation.\*

The court below erred in refusing to instruct as prayed, and in the instructions given.

The judgment below is REVERSED, and the cause will be remanded to the Circuit Court, with directions to issue a

VENIRE DE NOVO.

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COCKS v. IZARD.

A bill in equity, by the owner of real estate, sold at public judicial sale, will lie against a person who, at such sale, has made untrue representations, which prevent other persons from bidding, and by which he has so, himself, got the property at an undervalue. The original owner is not confined to seeking relief through the summary modes, such as motion to set aside the sale, which it was within the power of the court from which the execution issued, to grant. *Slater v. Maxwell* (6 Wallace, 276), affirmed.

APPEAL from the Circuit Court of Louisiana.

During the late rebellion, one Anderson, by a proceeding in what was known as "the Provisional Court of Louisiana"—a court established by proclamation of the President, in October, 1862, when the insurrection which had prevailed in Louisiana, had temporarily subverted and swept away the judicial authorities of the Union, and which, by the terms of its constitution, was to last only until "the restoration of the civil authority"—brought some sort of suit against one Cocks.

The suit proceeded to execution; and, on execution, the marshal of the said Provisional Court exposed to public sale certain real estate owned by Cocks, in New Orleans, and worth \$15,000. Cocks was a resident of Mississippi,

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\* *Morck v. Abel*, 3 Bosanquet & Puller, 35; *Armstrong v. Toler*, 11 Wheaton, 258; *Collins v. Blantern*, 1 Smith's Leading Cases, 630, and notes.

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Argument against and in support of sale.

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and knew nothing of the suit, execution, or exposure to sale. At the sale, one Izard, his tenant, who was there, made a bid of \$1500, giving out, and letting it be understood, that he was bidding for account of Cocks, and in his interest. Persons, who were at the sale, thus refrained from bidding, from a wish not to compete; and, competition being so prevented, the property was knocked down to Izard at the sum bid by him.

Izard acknowledged these facts soon after the sale, and promised to reconvey on receiving the money which he had advanced. He afterwards refused to do this.

Cocks now filed a bill in the court below, setting forth the above facts, that Izard had received in rents, in two years, \$2500; and praying an account and reconveyance.

Izard demurred, and the court below, sustaining the demurrer, dismissed the bill. Cocks appealed.

*Mr. Conway Robinson, for the appellant*, asked a reversal of the decree on these two principal grounds:

1st. That the court which rendered the judgment against Izard and issued the execution, was not a court competent to exercise judicial power, consistently with the Constitution of the United States.

2d. That conceding that the court had jurisdiction, the proceedings at the sale were, nevertheless, of such a character as to demand the interposition of a court of equity.

*Mr. P. Phillips, contra*, contended that the "Provisional Court," having been established while war was flagrant, and while the place was in military occupation, was founded on necessity, and being to last only while the necessity lasted, had sufficient jurisdiction. That the mere declaration of one person, that he intended to buy for another person, without evidence of any previous agreement to do so, or of any advance of money for that purpose, raised no trust which could be supported in equity.\*

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\* *Lloyd v. Lynch*, 28 Pennsylvania State, 423; *Pattison v. Horn*, 1 Grant, 303.

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Opinion of the court.

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That, independently of this, Cocks ought to have applied to the Provisional Court, to set the sale aside and order a resale.

Mr. Justice DAVIS delivered the opinion of the court.

It was decided by this court, in *Slater v. Maxwell*,\* that where a judicial sale is impeached for fraud, or unfair practices, of officer or purchaser, to the prejudice of the owner, a court of chancery is the proper tribunal to afford relief, and this decision only reaffirmed a well-established doctrine of equity jurisprudence. The present case is within this rule, and the court below manifestly erred in sustaining a demurrer to the bill.

The complainant puts his case for relief on two principal grounds. The necessities of this case do not require us to examine and decide the first point thus raised by him; for the second, if the averments of the bill are true, affords ample ground to give the complainant the desired relief.

The bill charges that Cocks, a citizen of the State of Mississippi, was the owner of a valuable dwelling-house and lots in the city of New Orleans, occupied by Izard, as his tenant, which were seized on judicial process, and ordered to be sold. It does not appear in what way the court acquired jurisdiction of the case, but, it is fair to presume, it was through a proceeding by attachment, as the complainant avers he was without the State, and did not know of either the judgment, execution, levy, or sale.

In this condition of things, the sale took place, and Izard bought the property for a sum of money hardly equal to its yearly rental value. This he was enabled to accomplish by unfair practices, which operated to prevent persons, who were in attendance at the sale and desirous of purchasing, from bidding.

These practices were of a character well calculated to deceive, for it is easy to see that fair-minded men, knowing the owner of the property to be absent, would be inclined

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\* 6 Wallace, 276.



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Opinion of the court.

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to put faith in the declarations of his tenant, that if he purchased, it was on account of his landlord, whose interests he wished to protect, and would be disinclined to interfere with the arrangement.

Can it, then, be doubted, if these things are true, that the conduct of the defendant deprived the complainant of the advantage which he would have received from a fair sale of his property, at which there would have been competition among persons, both able and willing to buy?

The law will not tolerate any influences likely to prevent competition at a judicial sale, and it accords to every debtor the chance for a fair sale and full price; and if he fails to get these, in consequence of the wrongful interference of another party, who has purchased his property, at a price greatly disproportioned to its value, equity will step in and afford redress, either by setting aside the proceedings under the sale, or by holding the purchaser to account.

The defendant in this case has behaved badly, and cannot be allowed to enjoy the fruits of his unfair dealing. The complainant had a right to expect, after reposing enough confidence in him to rent him a dwelling-house, that he would not, in his absence, turn against him, and use this very relation to his prejudice. It may be that, at the time of his purchase, the defendant intended to carry out his promises, for, after the sale, he admitted his obligation to do so, but his cupidity, in the end, got the better of him, as he now asserts an adverse title in himself.

It is insisted, that the complainant should have availed himself of the summary mode, by petition or motion to the court, to have had the sale set aside, and resale ordered; but this objection cannot prevail. It is needless to inquire whether he could have obtained his object in this way, as by not pursuing it, he did not forfeit his right to sue in equity, and the defendant has surely no right to complain, for he has now ample opportunity to make defence and vindicate his integrity.

The decree of the Circuit Court of the United States for

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the District of Louisiana is REVERSED, and the cause is remanded to that court, with directions to proceed

IN CONFORMITY WITH THIS OPINION.

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THE GRAPESHOT.

1. Proof that papers, not contained in the record, were used in the court below, must be made by affidavit, not by certificate of the clerk.
2. A decree of the Provisional Court of Louisiana, which was established by order of the President, during the rebellion, having been transferred into the Circuit Court, in pursuance of an act of Congress, must be regarded, in respect to appeal, as a decree of the Circuit Court.

UPON two separate motions to dismiss an appeal from the decree of the Circuit Court of the United States for the District of Louisiana; the decree being one transferred there under act of Congress, from the late so-called "Provisional Court" of that State; both motions being made by *Mr. Durant*.

The ground of the first motion was because the transcript was incomplete, "*as appeared by the certificate of the clerk of the lower court, as given in the printed transcript, and because it further appeared by the said certificate, that the missing parts of the record could not be found, so that it was useless to issue a certiorari,*" and on the whole impossible for this court to hear and decide the case.

The ground of the second motion was, that the Circuit Court of the United States in Louisiana had rendered no decree from which an appeal could be taken; so that this court was without jurisdiction.

This Provisional Court of Louisiana, as mentioned in the preceding case, had been established by proclamation of the President, in October, 1862, when the war of the rebellion had subverted and swept away the courts of the Union, and, by the terms of its constitution, was to last no longer than till the civil authority was restored.