

**Case No. 854.** BANK OF ALEXANDRIA V. TAYLOR ET AL.  
[5 Cranch, C. C. 314.]<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1837.

JUDICIAL SALE—MOTION TO SET ASIDE—SALE NOT FAIRLY MADE.

The court will set aside a sale made under its decree, if not fairly made.

Upon the return of the report of a sale made under a decree of this court, in this cause.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

Mr. Semmes, for the Misses Herbert, heirs at law of the late Thomas Herbert, deceased, moved to set aside the sale of a house and lot at the corner of Cameron and Fairfax streets in Alexandria, on the ground of a misapprehension at the sale by which persons at the sale were induced not to bid for the property; and offered to sustain the motion by parol viva voce evidence.

Mr. Neale, for Mr. Corse, the purchaser, objected; that it was a novel motion in this country; and that according to the English practice, the whole purchase money must be brought in and deposited before the biddings can be opened.

Mr. Semmes, contra, cited *Tait v. Lord Northwick*, 5 Ves. 655; *Anon.*, Id. 148; *Chetham v. Gurgeon*, Id. 86; *Upton v. Lord Ferrers*, 4 Ves. 700; *Rigby v. McNamara*, 6 Ves. 117; *West v. Vincent*, 12 Ves. 6; *Fergus v. Gore*, 1 Schoales & L. 350; *Wood v. Hudson*, 5 Mun. 423; *Quarles v. Lacy*, 4 Mun. 251.

The evidence was, by consent, given viva voce, and reduced to writing; and showed that the bid of \$1,510 made by Mr. John Corse was in his hearing declared to be for the benefit of the Misses Herbert, the heirs at law of the mortgagor, the late Thomas Herbert, deceased; which declaration was not denied by Mr. Corse, whereby the by-standers were induced not to bid against him; and that the property at the time was worth \$2,000.

THE COURT (THRUSTON, Circuit Judge, absent) upon this evidence refused to confirm the sale, and ordered It to be set aside.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]