

case are so fully before him as to warrant his present judgment. But after consideration of the terms of the Bankruptcy (Scotland) Act, 19 and 20 Vict., c. 79; and more particularly of the 71st and 75th sections of that Statute, as illustrated by the judgment of the Lord Ordinary, and of the Court in the case of *Buchan and Others v. Bowes*, June 13, 1863, the Lord Ordinary has come to the conclusion that, dealing with the statements on the record as they stand, the pursuer cannot succeed in the present action.

"If this conclusion be well founded in relation to the statutory provisions, there is no apparent hardship in giving effect to it here, as no specific allegation is made on the part of the pursuer of actual loss or injury suffered, or anticipated by him in respect of the proceedings, which, at the risk of probable hardship to others, he seeks to set aside."

The pursuer reclaimed, and pleaded, with reference to the alleged finality of the Sheriff's judgment, that under the statute the Sheriff had no power to intertain objections to the validity of the minute of meeting, but could only deal with objections which were disclosed in that minute and related to such matters as the votes of particular creditors or personal objections to the trustee.

FRASER and SCOTT for pursuer.

CLARK and SHAND in answer.

The Court adhered to the interlocutor of the Lord Ordinary, and adopted both his Lordship's grounds of judgment. With reference to the Sheriff's power to deal with objections like the present, Lord Neaves held that such power did not require to be expressly given. Whether it was expressly given or not, it was fairly within the contemplation of the statute. It would be a different matter if a creditor could allege that an irregular meeting had been held behind his back and fictitious minutes concocted, and the Sheriff's confirmation obtained, all before he had been aware of the proceedings. On such a case no opinion need be expressed. A reduction-improbation of the minute might in that case possibly be competent, but there was no suggestion of such a case here; and the pursuer was, in the circumstances of this case, fairly foreclosed by his failure to state his objections before the Sheriff.

Agent for Pursuer—Thomas Wallace, S.S.C.

Agent for Defender—William Spink, S.S.C.

Wednesday, March 3.

## FIRST DIVISION.

### BATE v. CORSTORPHINE.

*Sale—Heritage—Missives—Concluded Contract—Condition.* A, proprietor of land, wrote, "I agree to accept an offer of £12,600 from B, provided he couples his offer with" a certain condition. B wrote accepting the offer, subject to the condition. *Held* that there was a concluded contract of sale between the parties, and that, on fulfilment of the condition, B was entitled to a disposition.

Bate wished to purchase the lands of Broad-chapel, belonging to the defender, and offered £11,000, which offer was declined. Farther correspondence about the purchase took place between Waugh, a friend of the pursuer, and the defender, and then the defender wrote and delivered to Waugh the

following letter:—"Kingsbarns, 26th July 1868,—Dear Sir,—As I now understand that an offer for Broadchapel is to be made by another party, and as I have not had an opportunity of ascertaining the amount of it, I agree to accept an offer of £12,600 from Mr John Bate, provided he couples his offer with the condition that, in the event of a better offer than his being made before he has gone to any expense in improving the property, he will divide equally with me the sum offered or accepted in excess of £12,600.—Yours truly, Alexr. Corstorphine. Mr John Waugh, Castlehill."

The pursuer sent this answer,—"*Broadchapel, Lochmaben, Dumfriesshire, July 29, 1868.*—Captain Corstorphine,—Dear Sir,—I agree to accept of your offer of the property of Broadchapel for the sum of £12,600, subject to the condition named in your letter of the 26th instant to Mr John Waugh.—Very sincerely yours,—JOHN BATE."

These writings were holograph of the parties.

The pursuer contended that by these letters a sale of the land was validly constituted, and alleged his willingness to pay the price, and perform all the obligations incumbent on him under the letters.

The defender alleged that, at his interview with Waugh, he "stated that he expected Mr Jardine, a neighbouring proprietor, to offer; but if the pursuer would offer £12,600, and so ensure that price to the defender, he (the defender), in the event of his selling the estate to Mr Jardine at a higher price, would give a-half of the excess over £12,600 to be got from Mr Jardine to the pursuer, as a douceur for the loss of the property. Mr Waugh thought this proposal quite reasonable, and the letter quoted in this article was accordingly written by the defender as the first step of the above arrangement. It was quite understood between the parties that defender was to be entitled to accept a higher offer from Mr Jardine. The expression in the said letter, 'he will divide equally with me' is a Fifeshire provincialism, and means, 'he will receive an equal share with me.' On 30th July 1868, Mr Jardine made an offer of £13,050 for the lands of Broadchapel, which was, of same date, accepted by the defender. The defender is willing to pay to the pursuer one-half of the difference between £13,050 and £12,600."

The Lord-Ordinary (JERVISWOODE) found "that the terms of the letter of 26th July 1868, addressed by the defender to Mr Waugh, import a present consent to sell to Mr John Bate the property of Broadchapel therein mentioned, for the sum of £12,600, subject only to a condition subsequent, to the effect that, in the event of a better offer being made for the property before Mr Bate had gone to any expense in improvements, he, Mr Bate, should divide equally with the seller, Mr Corstorphine, the amount of the sum offered, so far as in excess of the £12,600, whether he, Mr Bate, should accept or should decline to accept such offer; and finds that the acceptance of the said offer by the pursuer, in terms of the letter of the 29th July 1868, as set forth in the 7th head of the condescendence, was unconditional; and, with reference to the foregoing findings, finds, as matter of law, that a binding contract of sale was completed between the parties: Therefore sustains the first plea in law for the pursuer, and appoints the cause to be enrolled with a view to further procedure."

The pursuer reclaimed.

ASHER for reclaimer.

GIFFORD and BURNET for respondent.

At advising—

LORD DEAS—I have no doubt that the Lord Ordinary is right. These two missives are holograph of the respective parties. The one missive is addressed to a third party, said to be the agent of Bate, but that makes no difference. They are both holograph documents, as probative as if they had been regularly tested. The whole question is whether, on the face of them, there is a concluded bargain? Now a bargain may be final and concluded, although on a condition,—and I cannot doubt that there was here a concluded bargain on the condition in the letter, whatever that may be. It is not unusual either for the purchaser or seller to make the first offer, and it is no difference which makes it. Here it is the proprietor, who says—“I agree to accept an offer of £12,600 from Mr John Bate.” If you stop there, is that not an offer to accept £12,600 as the price of the property? That was subject, no doubt, to a condition, where the writer goes on to say that in “the event of a better offer than his being made before he has gone to any expense in improving the property, he will divide equally with me the sum offered or accepted in excess of £12,600.” That contemplates that, before it shall be determined whether there is a surplus sum to either, Bate shall be in possession, and making improvements. Can that be anything but under the missives of sale? It is he alone who was spoken to. He is supposed to be in possession as the purchaser, no matter to whom the offer was made. If there was a *bona fide* offer within a certain time, the meaning was that the advantage was to be divided between them. The holograph letter of Bate could not be better expressed if his object was to tie down Corstorphine to this as a final purchase. In place of explaining the condition, Bate took the far safer plan of saying, “I accept your offer of the property, subject to the condition named in your letter.” There is no doubt that that is the legal construction, and I am glad that it is not inequitable. I think we should adhere, but that we should also go farther, by deciding that the pursuer gets the property on condition of paying the £225.

LORD ARDMILLAN—I am of the same opinion. It cannot be denied that there may be a good sale, with a condition inherent in the contract. The true question here is, what is the condition within this contract? Now, I don't think a second sale was necessary,—an offer without a sale was contemplated. It was enough that there was an offer, and if there was a *bona fide* higher offer, then Bate was bound to pay half of the difference between that offer and the price he gave.

LORD KINLOCH—I think there is no serious difficulty in this case. It appears just to stand here. Corstorphine had a property which he wanted to sell, and which Bate wanted to buy. Corstorphine thought that Bate was willing to give £12,600, but surmised that he might get a better offer, but, as he says, he had no opportunity of ascertaining the amount. So he writes a letter which, I think, is simply an offer of the property to Bate at £12,600, coupling his offer with the condition already stated. The meaning of this transaction is to me perfectly clear. Directly, and in the first instance, it contemplates Bate coming into possession of the property as proprietor, and stipulates that if Bate gets a better offer for it than the price he had himself paid, he shall give one-half of the surplus to the original seller. The words “offered or accepted” are used in the

letter, because it was not on acceptance of any higher offer, but simply on such being made, that Bate was to pay half of the difference. But whilst this was the case directly in view, the principle of the transaction applies equally where a higher offer was made to Corstorphine before Bate had finally concluded his arrangement. Such an offer was in fact made. Bate is quite willing to pay one-half of the surplus to Corstorphine, so as to give him £225 more than he expected to get. I think that this is all which at the utmost was implied in the condition. And, as Bate accepted the condition, and is willing to fulfil it, I think the sale must stand and be enforced.

The LORD PRESIDENT was absent.

This interlocutor was pronounced,—“Adhere to the interlocutor in so far as it finds that there was a concluded contract of sale between the parties; *Quoad ultra* recal that interlocutor: Find that both parties admit at the bar that if, as has now been decided, there was such a concluded contract, the price to be paid by the pursuer is £12,600 with the addition of £225 in respect of the offer subsequently made by Mr Jardine: and Find that, upon payment of these sums with interest from and after Martinmas 1868, the defender will be bound, *simul et semel* to grant a disposition *habili modo* in favour of the pursuer; and to this extent and effect decern in terms of the conclusions of the summons: Find the pursuer entitled to expenses, and remit the account thereof when lodged to the auditor to tax the same and to report.”

Agent for Pursuer—W. S. Stuart, S.S.C.

Agents for Defender—Adamson & Gulland, W. S.

Wednesday, March 3.

M'ISAAC v. MACKENZIE.

Assessment—Poor-rates—Militia Act, 17 and 18 Vict. c. 106. Held (Lord Kinloch dis.) that, under the 36th section of the Militia Act, premises rented and used by the Commissioners of Supply for Militia purposes are exempt from poor-rates as regards the proprietor of the premises as well as in respect to the Commissioners.

Certain premises in Campbeltown, belonging to a trust estate on which the defender is judicial factor, are let to the Commissioners of Supply for Argyleshire, as a place for the keeping of the arms, accoutrements, clothing and other stores, belonging to the Argyle and Bute Militia Regiment, and as buildings or premises appurtenant thereto, part being occupied as quarters for the permanent staff of militia, part as a hospital for the militia regiment when it is called out for training and exercise, and thereafter by the permanent staff, and the remainder of said premises consists of a yard or place wherein the men are mustered for the issue and return of their arms, accoutrements, clothing, and other stores, and of a building in which these are kept. The gross rent of the premises is £163.

The pursuer, inspector of poor for the parish of Campbeltown, levied an assessment for poor's rates on these premises on account of the rents paid or payable to the defender, but the defender refused to pay them, on the ground that the same are not liable to be valued and assessed for poor's rates, or county, or burgh or local rates, in respect of the terms of the 36th section of the 17th and