

The question is, whether a reference to the oath, not of the creditor, but of the manager, is competent. In answering this question we must be guided by the precise and peremptory provisions of the statute. It says that reference may be made to the oath of the party, and to no one else. So we cannot sustain the reference in the terms here proposed.

LORD DEAS—I concur that the reference to the oath of the party alone is competent, and that we cannot sustain a reference to the oath of the manager. It does not, however, follow that when the question arises upon the oath in reference, the matter is still confined to the oath of parties. Other evidence may be let in to explain the oath. This judgment only goes to negative the reference.

LORDS ARDMILLAN and MURE concurred.

The pursuers put in a Minute of Reference to the oath of the defenders, excluding the oath of the said John Scott.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the reclaiming-note for the pursuers John A. Bertram & Company against Lord Curriehill's interlocutor, dated 4th December 1874, Recal the said interlocutor; sustain the reference contained in the minute No. 10 of process; find the defenders entitled to expenses since the date of the said interlocutor reclaimed against; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report.”

Counsel for Pursuer—Trayner. Agent—Patrick S. Beveridge, S.S.C.

Counsel for Defenders—Dean of Faculty (Clark) and Rhind. Agents—Ferguson & Junner, W.S.

Thursday, December 17.

SECOND DIVISION.

[Lord Mure, Ordinary.]

PETRIE v. FORSYTH.

Contract—Sale—Offer—Acceptance.

Terms of letters of offer and acceptance held to amount to unconditional sale.

Contract—Sale—Prior Purchaser—Bona fides.

Held that where it was within the knowledge of the second purchaser that prior negotiations had been entered into with a view to a sale, he was bound to make enquiry before concluding his purchase, and that not having done so, he must be deemed to be in *mala fide*.

Observations (*per curiam*) that without defining absolutely what would be requisite to set aside the second sale, there must at all events be adequate knowledge on the part of the second purchaser and failure on his part to put himself into communication with the first purchaser, and generally that his position must be such as to forbid his disregarding rights acquired under the first sale.

The pursuer was the nephew of the defender Euphemia Forsyth. Miss Forsyth was 86 years of

age, and resided till the month of December 1872 in New Elgin, being attended to by the pursuer, his wife, and family.

On 28th August 1872 Miss Forsyth executed in favour of the pursuer a deed of gift in the following terms—“This is to certify that all and whole the property in New Elgin, which I purchased from George Petrie, presently residing there, and now belonging to me, shall at my death belong to William Petrie, my nephew, and son of the said George Petrie; and if I shall sell or dispose of the said property during my lifetime, I shall be liable in payment to the said William Petrie of the sum of eighty pounds sterling (£80), immediately thereafter, as the price payable to him thereof. I grant this in payment of services bestowed upon me by him, his wife, and family; and I also convey to him the part of the house he now occupies free of rent and taxes during my lifetime.”

The pursuer, in the belief that this deed was a good conveyance, or obligation to convey, and occupation of debt, continued in the possession and occupation of that part of the subjects of which he was to enjoy the liferent from the date of the said deed till 4th February 1873, when he received from Mr Robert Young, solicitor, Elgin, Miss Forsyth's law-agent, a letter making inquiry what claim he had to the subjects. To this letter the pursuer made no reply, but he forwarded it along with the deed of gift to the defender Stewart, who had written the above deed of gift, and had subsequently removed to Edinburgh, and who employed Mr David Lister Shand, W.S., Edinburgh, to act in the matter for the pursuer.

Mr Young, shortly after the date of the said letter, advertised the whole of the subjects for sale, whereupon Mr Shand wrote a letter, dated 5th March 1873, informing him of the existence of said deed, and stating the claims the pursuer had to the subjects, and requesting him in selling the property to keep these claims in view; and particularly, to reserve the pursuer's liferent of the portion of the house occupied by him. Some correspondence passed between Mr Shand and Messrs Grigor & Young as to the nature and legal import and effect of the deed of gift; and in order to avoid all disputes, the pursuer proposed that he should purchase the subjects from the defender Miss Forsyth; and certain letters or missives thereafter passed between Mr Shand and Messrs Grigor & Young, whereby the subjects were purchased by the pursuer at the price of £55, payable when the disposition thereof should be delivered to the pursuer, and the term of entry to be Whitsunday 1873.

After several letters had passed between the parties, Mr Shand wrote Messrs Grigor & Young, on 6th May 1873, offering to purchase the subjects at the price of £40, and to discharge his claims against Miss Forsyth, she giving a complete title to the subjects and the expense of the disposition, including the stamp duty, and revising fee being borne mutually. To this letter Messrs Grigor & Young replied on 16th May 1873, with copy letter from Miss Forsyth to them, dated 14th May 1873, declining to take £40 for the subjects, and offering to sell for £60, “the expense of the disposition to be borne mutually, and the cash to be paid immediately on the deed being executed.” To this letter Mr Shand, on behalf of the pursuer, replied on 19th May 1873, “The sum which your client asks appears large, but to me: her views my client

will agree to pay £50, which will, I hope, be accepted by her, the price to be paid whenever a disposition can be granted; and Mr Petrie to have entry as at Whitsunday 1873;" to which Messrs Grigor & Young, on 27th of May, answered, annexing copy letter addressed to Mr Robert Young by Miss Forsyth, of said date, in which she stated that she could not accept of the price offered, but that she was willing to divide the difference between the offer and the price asked, and accept of £55 as the purchase price, on the same arrangements as formerly intimated, and requested this to be communicated to Mr Shand as her final determination.

Mr Shand, on behalf of the pursuer, did not at first see his way to close with the defender at £55, but on 28th May wrote Messrs Grigor & Young, offering £52, 10s. That sum the defender declined to accept, as stated in the letter sent by her agents to Mr Shand, dated 29th May, in which they stated that they had communicated his letter to Miss Forsyth, who had replied that she had already stated her lowest terms, and would not make any further abatement. Mr Shand thereupon, on behalf of the pursuer, accepted the said subjects at the price of £55, conform to letter dated 2d June 1873, to Messrs Grigor & Young, in the following terms:—"Dear Sirs—I am to-day in receipt of your favour of 30th ult. It appears to be a pity to break off the whole negotiation for £2, 10s. of a difference between Miss Forsyth and my client, and I am therefore authorised to accept her offer, and to pay £55. Please then send me the title deeds that I may prepare the draft disposition." The purchase being thus effected, Messrs Grigor & Young, by their letter of 3d June, forwarded the titles of the subjects to Mr Shand, who prepared and sent them for revival draft disposition by the said defender Euphemia Forsyth, in favour of the pursuer, and draft discharge of the pursuer's claims against her.

The agents for Miss Forsyth objected to the draft disposition as prepared by Mr Shand, in consequence of the consideration money being therein set forth at £135, £55 of which was the price agreed to be paid, and £80, the sum she, by said deed of gift, agreed to allow the pursuer out of the price; and they insisted that the proper sum was the £55 agreed to be paid, and that the deed should bear to be granted in consideration of that sum as the price. This led to some correspondence; and the defender Stewart, it was alleged "taking advantage of the delay thereby occasioned, and in pursuit of a fraudulent scheme, made overtures to the pursuer to provide him with money to pay the purchase price; and, in pursuance of this scheme, he prepared and sent to his father, who also resides in New Elgin, a disposition, to be signed by the pursuer in his favour, in consideration of a price of £135 or £140, instantly advanced and paid by Stewart to him. Accompanying this deed, and intended also to be signed by the pursuer as acceptor, the defender Stewart sent to his father bills for various amounts making in all the sum inserted in the disposition as the price. He also sent a trust deed in his own favour, to be signed by the pursuer, and pretended to be for the benefit of the pursuer's creditors. The pursuer, who did not understand the complicated mode by which the defender Stewart wished security for his advances, requested information from the said defender's father, and was informed by him that he would receive £15 from his son in

cash, and the purchase money; and all accounts in connection with the sale, and due to the pursuer's creditors, would be cleared by the defender Stewart. The pursuer had no creditors, and at once saw that Stewart had conceived the intention to obtain possession of the property, and he refused to sign the said disposition, bills and trust-disposition, or to have anything more to do with Stewart, who had till that time pretended to act as his friend in the negotiations for a purchase. Mr Shand, who had acted for the pursuer under instructions conveyed to him by the defender Stewart, and who was prejudiced against the pursuer by Stewart, on being informed of the dispute between the parties, declined to act for the pursuer, and he was thereupon left without an agent. The drafts of the deeds of disposition and of discharge, which had been sent by Mr Shand, agent for the pursuer, to Messrs Grigor & Young, agents for Miss Forsyth, were, on the request of Mr Shand, returned to him. The pursuer, who was left without an agent, could make no arrangements for a short time to obtain a conveyance to the subjects. On 10th September 1873 he caused his agent to write Mr Shand for the letters embodying the terms of sale, and it was only after considerable correspondence passed between them, and delay, that Mr Shand could be prevailed upon to hand them over to him. But before these letters could be obtained the defender Stewart had, without any communication with the pursuer, and in the knowledge that the subjects had been sold to him, obtained from the defender Forsyth the disposition to the subjects narrated in next article. After the dispute between the pursuer and the defender Stewart, the latter visited Elgin, and at once put himself into communication with Miss Forsyth, and represented to her that he was a friend of the pursuer's, but that he had refused to take his advice to complete the purchase of her subjects, and informed her that he (Stewart) had paid an account of £20 incurred by the pursuer to Mr Shand, which the pursuer declined to pay; that he had also certain other claims against the pursuer; and that it was not the pursuer's intention to go on with the purchase. The whole of these statements were false, and the defender Stewart knew them to be false; but the defender Miss Forsyth, who is infirm and facile, was imposed upon by Stewart, and consented to execute a disposition in his favour in consideration of a price of £149, 10s. This deed is dated 6th, and is, with a warrant of registration on behalf of the defender Stewart, recorded in the division of the General Register of Sasines applicable to the county of Elgin, 8th, both days of August 1873. The defender Stewart had not funds to pay the purchase money, and the sum inserted in the disposition was so inserted with the view to make it appear an onerous *bona fide* deed, and to defeat the pursuer's right to insist on a disposition being granted by Miss Forsyth in his favour. In point of fact, the deed is a gratuitous deed, and the subjects were conveyed to Stewart on fraudulent representations, and in satisfaction of certain claims which he falsely represented to the defender Forsyth he had against the pursuer, and without any just or adequate consideration having been paid therefor. The pursuer has repeatedly called upon the defender Stewart to denude himself of the subjects by reconveying them to the defender Forsyth, and on her to implement her part of the contract of sale before narrated, and to

execute and deliver a conveyance to him, on payment of the said sum of £55, the purchase price, but they refuse, at least delay, so to do; and hence the present action has become necessary."

"Miss Forsyth purchased the property about fourteen years ago from the pursuer's father for £112, and immediately afterwards laid out a considerable sum in repairs and improvements. Miss Forsyth has repeatedly advanced to the pursuer sums of money, and has signed bills for him, which she has had to meet to the extent of several hundreds of pounds, and any services which may have been rendered to her by the pursuer and his wife have been already amply repaid. Some years ago the defender Miss Forsyth made a *mortis causa* settlement, by which she intended to leave the property in New Elgin equally between the pursuer and his brother, subject to their mother's life-rent; but having had so much to pay for the former, she subsequently made an alteration on it. The pursuer having become aware of this, about two years ago abstracted the settlement and the titles of the property from the box in which Miss Forsyth kept them, and when inquiry was made, denied at first that he had done so, and then admitted it, but stated that he had put them back. This was afterwards found not to have been the case, and the matter was put into the hands of the Procurator-Fiscal; but owing to the pursuer's relationship, Miss Forsyth did not press the proceedings. The pursuer eventually agreed to return the papers to Miss Forsyth, but only on the condition that she should sign a document which he read over to her at the time. The document read over to her by the pursuer was not a deed of gift, as alleged in the condescendence. In any view, the document which was signed by Miss Forsyth was impetrated from her by the pursuer; was only granted in consequence of undue influence and compulsion on his part, and without any consideration; and was looked upon by her as a revocable deed. In the beginning of the year 1873, Miss Forsyth was informed that the pursuer was putting forward a claim against her, and instructed her agent, Mr Robert Young, solicitor, Elgin, to ascertain the nature of it. Mr Young accordingly wrote to the pursuer, on 4th February 1873, but got no answer to his letter. This letter, with the deed of gift, was sent by the pursuer to the defender Mr Stewart, with a request that he would get some Edinburgh agent to take up the matter, and he accordingly handed the papers to Mr David Lister Shand, W.S., who put himself in direct communication with the pursuer. The said defender had thereafter no communication with the pursuer. Miss Forsyth finding that she was getting into reduced circumstances, shortly afterwards instructed Mr Young to advertise the property for sale, and the necessary advertisements were inserted in the newspapers. This brought about the correspondence betwixt Messrs Grigor & Young and Mr Shand, narrated in the summons, which resulted in the alleged missives of sale. It must be explained, however, that in answer to Mr Shand's letter of 6th June 1873, sending the draft disposition for revival, Messrs Grigor & Young wrote as follows:—'*Elgin 10th June 1873.*—We have received your favour of the 6th current, with the three titles of the New Elgin property, and drafts disposition and discharge referred to in your letter, but have since been completely occupied. Miss Forsyth will not agree to the deeds proposed by you, and it is needless to say more

about it. She adheres to the previous mode of arrangement. We cannot see any difficulty about the Stamp Act. Surely a person can sell at any price they like. At all events we cannot overcome the repugnance she has to receiving any discharge from Mr Petrie.—We are, &c. (Signed) GRIGOR & YOUNG.' Not having received any answer to this letter, Messrs Grigor & Young again wrote to Mr Shand in the following terms:—'*Elgin, 24th June 1873.*—We wrote you on the 10th inst., to which we have had no reply. Unless we have a reply in eight days, we shall presume the whole matter is at an end.—Yours truly, (Signed) GRIGOR & YOUNG.' No answer was received to this letter, and accordingly Miss Forsyth considered that the negotiation was at an end. In the beginning of August 1873, the defender Mr Stewart went to Elgin to see his father, who resides there, and during his stay called on Miss Forsyth, who was an old acquaintance. In the course of conversation she alluded to the property, and asked Mr Stewart if he could find a purchaser, and finally asked him if he would purchase it himself. This he at first declined to do, but ultimately agreed to buy at a price of £149, 10s., which, with the exception of £40, was paid to Miss Forsyth on delivery of the disposition in his favour, of which the summons calls for reduction. Payments to account of this balance have since been made, and there is now only a sum of £19 due, which is being gradually cleared off under an arrangement betwixt the defenders."

The pursuer pleaded—" (1) The pursuer having purchased the said subjects at the price of £55 from the defender Euphemia Forsyth, with entry at Whitsunday 1873, she is bound to execute and deliver to him a disposition containing all usual clauses, on payment of said price. (2) The disposition to said subjects granted by the defender Forsyth in favour of the defender Stewart having been obtained by false and fraudulent representations on the part of Stewart, and without any price having been paid, ought to be reduced. (3) The said disposition in favour of Stewart having been fraudulently obtained by the latter from the defender Forsyth after a sale by her to the pursuer, which was known to Stewart, ought to be reduced and set aside. (4) The pursuer is, in the circumstances libelled, entitled to decree in terms of the conclusion of the summons, with expenses."

The defenders pleaded—" (1) The pursuer not being the author, or in right of the author, of the deed sought to be reduced, has no title to sue. (2) The defender Miss Forsyth having, at the time of selling the subjects and granting the disposition sought to be reduced, full power to do so, the title of the defender Mr Stewart is valid and unchallengeable. The pursuer's statements being unfounded and untenable, the defenders are entitled to absolvitor, with expenses."

The Lord Ordinary (MURE) pronounced the following interlocutor:—

"*23d July 1874.*—The Lord Ordinary having heard parties' procurators, and considered the closed record, proof adduced, and whole process, Finds, 1st, That when the property in question was purchased by the defender Stewart, in August 1873, the transaction for the proposed purchase of that property, which had been carried on between the pursuer and the defender Miss Forsyth, was at an end, and was known to the defender Stewart to be so; and 2d, That the pursuer has failed to prove that the disposition granted by Miss Forsyth

in favour of the other defender was obtained by false and fraudulent representations on the part of the said defender, and without any just or adequate consideration having been paid for the same: Therefore assoiliizes the defenders from the conclusions of the action, and decerns, &c.

"*Note.*—A great deal of the evidence in this case relates to differences between the pursuer and Miss Forsyth, and to other matters, which appear to the Lord Ordinary to have no very direct bearing on the main question here at issue, viz., whether, at the date of the sale of the property to the defender Stewart, there was any subsisting transaction for the purchase of that property between the pursuer and Miss Forsyth, and some of which, as disclosed in evidence, are certainly not very creditable to the pursuer. And there is also a good deal of evidence of a contradictory and almost irreconcilable description, as to certain communications which are said to have passed between the parties, relative to some alleged wish on the part of the father of the defender Stewart to acquire that property from Miss Forsyth through the pursuer; and which also, in the opinion of the Lord Ordinary, has no very material bearing on the main questions at issue, except as affecting the credibility of the parties more immediately concerned, who gave a very strange and conflicting account of the matter.

"Upon the main questions raised, there appears to the Lord Ordinary to be a total failure of evidence to instruct that there was any fraudulent representations made by the defender Stewart to induce the other defender to sell him the property. It is, on the contrary, distinctly proved, both by Miss Forsyth and others who were cognisant of her wishes and intentions, that she herself proposed to the defender to purchase the property, which he at first declined, but ultimately agreed to do; and that the purchase, as between them, was an onerous and *bona fide* transaction, made in the belief that the arrangements between the pursuer and Miss Forsyth were completely at an end. So that, in this view, the main question seems reduced to whether there were any sufficient grounds for this belief. The Lord Ordinary thinks that there were. Because, even assuming that, by the correspondence which took place between the parties up to the beginning of June 1873, there was a missive offer to sell for £55 and an acceptance, that proposal was substantially departed from on the part of the pursuer when he stipulated that the terms of the disposition should bear a different consideration from that contained in the offer. This was at once objected to by the defender Miss Forsyth, and on the proposal as so qualified being renewed, it was distinctly rejected on the 10th of June; and no farther communication having been received from the pursuer, the letter of the 24th of June was despatched, informing the pursuer's agent that, unless an answer was received within eight days, the agent for the latter would consider 'the whole matter at an end.' Now, no answer was received to this letter; and Mr Young, the then agent for Miss Forsyth, stated in evidence that, having received no answer, he considered the transaction to be at an end; and it is pretty plain that he must have informed Miss Forsyth that it was so, because, when she offered the property for sale to the defender Stewart, she told him that she had done with the pursuer, as no answer had been received to the letter. In these circumstances, the

defender Stewart was, it is thought, fully entitled to believe that the other defender was free to sell, as he had been made aware of the terms of the letter of the 24th of June, and that no answer had been sent to it; and the omission on the part of the pursuer's agent to communicate that letter directly to the pursuer cannot, it is thought, be held to prejudice Miss Forsyth in her right to dispose of her property.

"This case was fully heard before Lord Mure, and the prefixed interlocutor and note were prepared by his Lordship; but his removal into the Inner House prevented them from being issued. In order to avoid the expense and delay of additional discussion, both parties have agreed that I should issue the interlocutor and note without a new hearing, and on that footing I have accordingly signed them."

Against this interlocutor William Petrie reclaimed.

Authorities—*Marshall v. Hind*, 18 Jan. 1828, 6 S. 384; *Lang*, 29 June 1813, F.C.; *Morison v. Sommerville*, 23 D. 232; and the cases in M., 16,089 to 16,096.

At advising—

LORD JUSTICE-CLERK—(*After narrating the facts of the case*)—The first question here is, Did these two letters of the 30th May and 2d June constitute a completed contract of sale? I think they did constitute an unconditional offer to sell at a fixed price and an unconditional acceptance. It was only when the contract was completed that the question as to the form of the conveyance could arise.

The second and only other question is, Did Stewart buy in good faith? I am clearly of opinion that the term good faith cannot be applied to him. In such a question bad faith means that the state of knowledge in the party will not be sufficient legally to sustain the transaction. The question comes to be, Was Stewart, in his position, and with his knowledge, legally entitled to make the second bargain? There is no doubt a conflict of evidence, but I see no reason to doubt Mr Shand, whose evidence is corroborated by the real evidence in the cause, and it is clear that Stewart substantially knew all that happened until Mr Shand retired.

It is impossible to hold that there was *bona fides* here, if under such a term is to be included ignorance of the existence of a prior right. Less than is proved here would have been sufficient for the case. A party in such a position is bound to make enquiry. As to the authorities quoted on the matter of *bona fides* I think it is a question of circumstances, but if a party purchases in the knowledge of a prior right existing it is sufficient to exclude the idea of his action being that of a person in *bona fide*.

LORD NEAVES—I concur. The question is, when a contract of sale has been concluded and the party selling has made away with the subject to a second party, how far can this second transaction be set aside. It is not necessary there should be fraud if it is done erroneously and contrary to the legal rights of parties. Miss Forsyth would have had no good plea against a declarator for implement of the sale to Petrie. Looking to Stewart's position and his knowledge of all the circumstances, I cannot hold he acted in *bona fide* in the matter.

LORD ORMDALE—I concur. The first question is

Was there a concluded and binding sale to the pursuer?

The second is, If there was a binding sale, was it subsisting when Stewart entered into the transaction with Miss Forsyth and obtained a purchase of the same subject?

The third question is, Whether the second purchase, made in the knowledge of a previous sale still subsisting, should be allowed to stand?

I am clear that there was such a contract of sale, and that it is impossible to hold that Miss Forsyth's agents could put an end to it by such a letter as the one which they wrote. I am also clear that Stewart was in *pessima fide*, and ought to have made inquiry after the warning he received from Mr Shand, and with the knowledge he possessed.

With regard to the authorities cited, the case of *Lang*, in 1813, was peculiar in regard to the manner of the second purchaser's knowledge of the first sale. There he actually saw that the subject had been established as part of the public quay.

The case of *Marshall*, in 1828, is conclusive against the defender. There the transaction related to the sale of wood, and it was held that the second purchaser was aware of the first sale and should have made inquiries.

The case of *Morrison v. Somerville* was very complicated and the transaction doubtful, and I do not think it has much bearing in the present case.

LORD GIFFORD—I concur, although I have felt some difficulty. I think there was here a completed bargain binding and enforceable by either party. It has been contended that there was another matter which required to be settled *unico contextu* with the sale. I do not think so. I think there was no condition annexed to the acceptance of the offer. The second question is, did the bargain ever come to an end? I do not think it ever was departed from. The main point is whether Stewart is entitled to insist on his second purchase. Now, in this class of questions I think that *mala fides* comes to be a question of circumstances. It must amount to a personal bar against a party making a second bargain. It is not easy to define by a general proposition what will set aside a second sale; but there must be full and adequate knowledge of the first sale—the second purchaser must have failed to put himself in communication with the first purchaser, and he must occupy such a position as not to entitle him to disregard the rights acquired under the first purchase. All these elements tell against Stewart here; and I do not think he is entitled to be regarded as a *bona fide* second purchaser.

The Court pronounced the following interlocutor—

“Alter the interlocutor of the Lord Ordinary complained of; find by the missive letters, Nos. 19 and 51 of process, that the defender Miss Forsyth agreed to sell the property in question, and the pursuers agreed to purchase the same, at the price of £55, with entry at the term of Whitsunday 1873, the price to be paid on delivery of the disposition, and that the defender Miss Forsyth is still bound to convey the said subjects to the pursuer in terms of the said concluded agreement; further, find that the defender Stewart having been cognisant of the said agreement between

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the defender Miss Forsyth and the pursuer and in respect of his knowledge thereof, was not entitled to conclude with the defender Miss Forsyth a contract for the purchase of the said subject on his own account, and that the conveyance in his favour libelled in the summons cannot affect the right of the pursuer to obtain a disposition thereof from the defender Miss Forsyth, and to that effect and extent, reduce, decern, and declare in terms of the reductive conclusions of the summons, reserving all questions of repetition or otherwise between the defenders; and further, decern the defender Miss Forsyth to implement her part of the contract of sale of the said subjects, entered into between the pursuer and her in terms of the other conclusions of the summons: Find the pursuer entitled to expenses, and remit to the Auditor to tax the same and to report.”

Counsel for Pursuer (Reclaimer)—Solicitor General (WATSON) and Mackintosh. Agent—Alexander Gordon, S.S.C.

Counsel for Defenders (Respondents)—Asher and Paul. Agents—J. J. & A. Forman, W. S.
I., Clerk.

Thursday, December 17.

FIRST DIVISION.

[Sheriff of Dumbarton.

JOHN M'INNES v. JAMES PHILLIPS.

Master and Servant—Truck Act, 1 and 2 Will. IV. c. 37.

Held that a person employed at a yearly salary as foreman, but with the stipulation that he should assist the men in manual labour, was not an artificer in the sense of the Truck Act.

The pursuer of this action in the Sheriff Court was Phillips, slate quarrier and merchant at Luss, who sought to recover from M'Innes, his foreman, the price of certain goods supplied, and the rent of a house. It was not denied that the goods had been furnished or that the rent was unpaid, but the defender pleaded, as regarded the first, that the claim was barred by the provisions of the Truck Act; and as regarded the second, that there was an agreement that the house should form part of his wages. The Sheriff-Substitute pronounced the following interlocutor:—

“Dumbarton, 31st July 1874.—The Sheriff-Substitute having heard parties' procurators on the concluded proof, and having resumed consideration of the process, Finds that the pursuer in this action concludes against the defender for payment of four separate accounts annexed to the summons, for goods furnished, and also for house rent, and amounting altogether to £113, 18s. 10½d. Finds that the pursuer deducts from this sum £90, 16s. 6d., being balance of defender's salary and amount of certain payments made by him to account, leaving £23, 2s. 4½d. as the sum concluded for in the summons: Finds that from this sum the pursuer further deducts £5 paid by the defender to account of rent since the present action was brought into Court,—thus reducing the sum now claimed to

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