

1797.

*dem creditorum*; and gratuitous alienations of this kind, it will not be disputed, may be set aside by creditors whose debts were contracted previous to such alienations, if they have been made with a fraudulent design. The design here was fraudulent, because, when the bankrupt executed this deed, he had no personal funds, and he could not be allowed to lock up his property, and at same time embark in trade, without making the design apparent. Mr. Paterson was trusted by his creditors, on the faith that his estate was still his, and not conveyed away to his children; and, therefore, although the conveyance may not be reducible upon any of the statutes, it is reducible at common law, which upon this point is founded on the most obvious principles of justice. Stair's Decisions, Street and Jackson *v.* Mason, 2d July 1763; Reed *v.* Reed, 4th December 1673.

EDGAR, &c.  
v.  
MILLER, &c.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be affirmed.

For Appellants, *Sir J. Scott, M. Nolan.*

For Respondents, *Wm. Adam, John Clerk.*

[From the Court of Exchequer in Scotland.]

*In Error by Bill of Exceptions.*

JAMES EDGAR, DAVID REID, ROBERT  
HEPBURN, and JOHN HENRY COCH-  
RANE, Commissioners of Customs in } *Plaintiffs in Error;*  
Scotland, . . . . .

DONALD MILLER and BENJAMIN MILLER, *Defendants in Error.*

House of Lords, 9th June 1797.

BRITISH HERRING FISHERY—KING'S BOUNTY—ACT 26 GEO. III. c. 81.—The act of Parliament above quoted confers a bounty of 20s. per ton on all decked vessels, called busses, engaged in the herring fisheries in Scotland. Circumstances in which the mode of fishing practised by the defendants in error, did not entitle them to claim such bounty.

Two modes of prosecuting the herring fishery in Scotland are recognized by acts of Parliament. The one by means of boat, called the boat fishery; the other, by means of larger

1797.  
 \_\_\_\_\_  
 EDGAR, &C.  
 v.  
 MILLER, &C.

vessels, called buss fishery. The former is prosecuted by the fishers on the several fishing stations, when the shoals of herring appear on their coast, and in open boat, the fishers bringing the fish to land, and there salting and curing them in barrels. The buss fishery is that which is followed by means of *decked* vessels, having on board barrels and salt to cure the fish when caught, and a proper equipment of men and provisions for a long voyage of considerable endurance, visiting the remoter fishing grounds, and remaining away for a whole season for that purpose.

For the encouragement of the latter mode of fishing, several acts of Parliament had passed, offering bounties of so much per ton of the vessel's tonnage, for the promotion of the objects thereof, as well as to promote a numerous body of able seamen for the defence of the country.

The act on which the present question arises, the act 26 Geo. III. c. 81, fixes the rate of bounty at 20s. per ton.

In this situation of the law, sometime before 1793, certain fish-curers in the north of Scotland formed a plan of prosecuting the fishery, which, it was alleged, was a mere device formed to obtain the bounties granted to the buss fishery. It appears that these fishers imagined that nothing was wanted to convert their boat fishery into a buss fishery, but the addition of a decked vessel or buss. They accordingly procured a decked vessel. Barrels, salt, nets, and provisions, were put on board. A number of men appeared, calling themselves her crew; and a license from the principal officers of Customs was granted for the vessel to *proceed upon her voyage*. Instead of proceeding on her voyage, however, the barrels, salt, nets, and provisions, were all taken out of the buss, and the men employed themselves in fishing in their open boats. The herrings caught were landed, salted, and packed *on shore*, while the empty buss or decked vessel lay fast at her moorings, without proceeding from the spot.

The defendants in error, merchants in Staxigo, Thurso, were among the number who practised this mode of fishing, and when they applied to the Commissioners of Customs for the government bounty it was refused, whereupon they brought an action upon the case in the Court of Exchequer, for payment of these bounties, proceeding upon the narrative in the declaration, that they had complied with the requisites of the said act, and that their buss or vessel had, between 1st June and 1st October, in the year 1794, cleared

out of the port of Thurso, and proceeded upon the said fishing, and did then begin and continue to fish, and did there catch and take a full cargo of fish, and did return therewith to the port of Thurso, &c.

To this declaration the plaintiff in error, pleaded the general issue; and the cause coming to be tried, a verdict pursuant to the opinion and direction of the Court was found for the defendants in error for £84. 9s. 3d.

In the course of the cause, a bill of exceptions to the opinion of the Court was tendered.

Judgment having been given for the defendants in error, the plaintiffs brought the present writ of error.

*Pleaded for the Plaintiffs.*—It is incumbent on persons claiming a bounty, to show that they have faithfully, unequivocally, and strictly complied with the conditions upon which the bounty is given. The evidence in this case does not prove a compliance, in point of law, with the conditions prescribed by the act of Parliament, upon which the action is founded, either according to the words or the spirit of that act. First, as to the words of the act, it is declared, that the decked buss or vessel shall *clear out of some port*, and shall *proceed* immediately upon the said fishery, and shall there begin and continue to fish for the space of three months, unless such vessel shall, within that space, *return* into port with a full cargo. By the 3d section of the act, no person shall be entitled to the bounty for any buss or vessel which shall not *proceed* directly upon the said fishery, *from* that part of the United Kingdom to which such buss or vessel shall belong, and the masters and owners shall take out a license to *proceed* on her intended *voyage*. The words also, shall *continue at sea* for three months clear, demonstrate that the bounty was only intended to such vessels as would leave their own ports, and fish in remote coasts or fishing grounds. As to the spirit of the act, it is equally clear, that the object of the act manifestly was to encourage shipping and navigation, and for breeding up a race of hardy seamen; and such object could only be attained by means of these vessels proceeding to sea, not by keeping them moored in port, but by going to sea in vessels, and with a due equipment of able seamen, so as to enable them to make, not only considerable voyages, but also to continue at sea for some time. A mere boat fishery is plainly inadequate to this end; and it is for this reason the buss fishery has had conferred upon it the bounty in question.

1797.

EDGAR, &c.  
v.  
MILLER, &c.

Sect. 2.

1797.

EDGAR, &c.  
v.  
MILLER, &c.

*Pleaded for the Defendants.*—It is admitted by the plaintiffs in error that the defendants' vessel did clear out of the port of Thurso for the said fishery, by taking and receiving from the Custom House the necessary papers for that purpose. It also appears from the evidence in the bill of exceptions, that the said buss or vessel did proceed immediately upon the said fishery, by sending her boats and crew with her nets to fish, which is the invariable mode of fishing for herrings upon all the coasts of Scotland, the busses in the meantime lying in harbours, a-ground or afloat, as circumstances may require or admit; and, on the coast of Caithness, which is extremely dangerous, busses cannot fish in any other way. That this practice was agreeable to the words and spirit of the act, and as such, was repeatedly sanctioned by the plaintiffs in error, and the different officers of customs acting under them. Indeed, on the present occasion, when they took out license as formerly, they had not the most distant hint that they were expected to follow a different mode of fishing from that which had been repeatedly sanctioned by the plaintiffs in error.

After hearing counsel, to argue the errors assigned in this cause, the following question was put to the Judges :

Whether, upon the matter stated in the record, the plaintiff (defendant in error) hath shown that he had a good cause of action, to recover the bounty of 20s. per ton given by the statute made in the 26th year of His Majesty's reign, for the more effectual encouragement of the British fisheries?

Whereupon

THE LORD CHIEF BARON of the Court of Exchequer having conferred with the rest of the Judges present upon the said question, delivered their unanimous opinion in the negative.

It was then

Ordered and adjudged that the judgment given in the Court of Exchequer in Scotland be, and the same is hereby *reversed*.

For Plaintiffs in Error, *Sir J. Scott, R. Dundas, J. Mitford.*

For Defendants in Error, *Wm. Grant, Wm. Adam.*