forward and pulled the door to with considerable force, and not knowing that the door would run on until brought up by the handle, one of the fingers of his left hand, with which he held the handle, was jammed between the handle and the side of the doorway, and severely crushed.

After the accident the defenders put up pieces of angle iron, which were sufficient to prevent such an occurrence in future.

The Sheriff-Substitute (ERSKINE MURRAY) gave decree for £30.

The defenders appealed, and argued that the defender was in fault, as the evidence showed that the door was quite safe if carefully handled.

At advising—

LORD PRESIDENT—One satisfactory feature of this case—and it is the only satisfactory feature—is that there is no dispute about the facts. We know exactly what happened, and the question is whether the facts are sufficient to impose liability on the defenders—that is to say, whether the defenders used reasonable caution in providing safe machinery and plant in their works.

The door in question was of a construction particularly suited to prevent fire communicating from one room to another, and the occasion on which the door was intended to be used—that of fire breaking out—was a serious one, for if the fire communicated with the room where the matches were stored the consequences would have been alarming. Now, this door, if shut quietly and deliberately, could hurt no one, and if the man had looked to see how the door shut there would have been no chance of danger. But then the door was intended to be used on the occasion of a sudden fire, and on such occasions people act very hurriedly in order to prevent the evil. Therefore the defenders were bound to see and believe that the door could be safely shut in a great hurry without looking to see what the consequences of shutting would be.

There is this further fact, that a very slight alteration would have made the door secure, and therefore I am compelled to the conclusion that the defenders did not use all reasonable precautions for making the door safe, looking to the circumstances that people would require to shut this door in a state of hurry and alarm. I am, therefore, for affirming the judgment of the Sheriff-Substitute.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

The Court affirmed the interlocutor appealed against.

Counsel for Pursuer (Respondent)—Rhind—Watt. Agent—Andrew Urquhart, S.S.C.

Counsel for Defenders (Appellants)—J. P. B. Robertson—Ure. Agent—Lindsay Mackersy, W.S.

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*Friday, June 5.*

## SECOND DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.

## FORBES *v.* CAMPBELL.

*Sale—Contract Silent as to Time of Payment—Ship—Reasonable Delay in Giving Bill of Sale.*

A person who had agreed to buy and had taken delivery of a vessel from the owner, repudiated the bargain on being told by the latter that the bill of sale could not be given till he had made up his title as executor to his deceased father, who was the last registered owner. The bill of sale was tendered within a month. The Court (*dub.* Lord Justice-Clerk) *awarded* damages for the breach of agreement, on the ground that the owner had acted honestly and with no reasonable delay.

Donald Forbes, master-mariner, Stornoway, brought this action against John Campbell, shipmaster, Inverness, for £60 as damages sustained through the defender's alleged failure to implement an agreement to buy from him a schooner called the "Conquest," and which was made under the following circumstances. The pursuer's father Donald Forbes died on 29th December 1878, and was at the time of his death the registered owner of the schooner. The pursuer continued to sail the vessel in the coasting trade for behoof of himself, his mother Mrs A. M. Forbes, and the rest of the family, the name of his father still standing in the register. On 8th June 1883 he agreed to sell the vessel to John Campbell, conform to the following letter of agreement:— "*Stornoway, June 8th*, 1883.

"Dear Sir,—We hereby offer you the schr. 'Conquest,' of Stornoway, as she now lies at the quay of Stornoway, for the sum of £375 sterling, less five pounds discount. The said sum to be paid us for and in exchange of bill of sale.—We are, yours truly, DONALD FORBES, A. M. FORBES" [the widow].

Campbell accepted the offer the same day. Before the offer and acceptance was written out Campbell was made aware that the ship still was registered in the name of the pursuer's father; and the pursuer averred "(Cond. 6) . . . . The defender was made aware of the state of the title to the 'Conquest,' and he, defender, was distinctly informed that a bill of sale could not be granted until confirmation should be obtained, but that he could obtain immediate delivery of the ship on consigning the purchase price in bank either in name of a third party or in the joint names of pursuer and defender, to await completion of pursuer's title and delivery of bill of sale." "(Cond. 7) It was thereafter arranged that the defender should proceed to Inverness and return to Stornoway during the following week for the purpose of paying the said purchase price and taking possession of the schooner. The pursuer therefore discharged the crew and abandoned the contemplated voyage to Larne, and instructed an agent to apply for and procure him confirmed as executor-dative to his deceased father, with the view of granting a bill of sale of the vessel to the defender." "(Cond. 8) On or about 11th June 1883 the defender

returned to Stornoway, and received from the pursuer the keys of the cabin and other parts of the said schooner, and he slept in the cabin that night." "(Cond. 9) Next day (12th June) the defender called upon the pursuer, and intimated verbally to him that it was his intention to resile from his agreement to purchase the said schooner, and he has hitherto refused or delayed to implement the same." . . .

The pursuer pleaded—"(1) The pursuer having offered to sell the said schooner on the terms specified in the said written offer, and the defender having accepted thereof, the same constitutes a legal agreement between the parties. (2) The defender having wilfully, and without reasonable cause, failed to implement his part of said agreement, he is liable in damages to the pursuer therefor.

The defender pleaded—"(1) The pursuer not not having had any right or title to sell the ship, the alleged sale was ineffectual. (2) The pursuer having no right or title to transfer the ship, and having failed to transfer the ship at the time agreed on for delivery and payment of the price, the pursuer and not the defender broke the contract, and the claim of damages lies at the defender's instance and not against him, and the defender ought to be assoilzied, with expenses."

In the proof which was led the pursuer's averments were substantially proved, and it further appeared that the defender was informed by a person who was acting as agent for the pursuer that on his depositing the purchase price of the vessel in the hands of a neutral party he might take the vessel without payment to the pursuer.

The pursuer was decerned executor-dative on 3d July, and confirmed on 10th July, and on 13th July was registered as owner of the vessel. It was on 13th June preceding that the defender had first intimated his objection to go on with the sale, because owing to the state of the title the pursuer could not deliver a bill of sale.

The Sheriff-Substitute (Blair) pronounced this interlocutor:—"Finds, in point of fact, 1st, that the pursuer on the 8th June 1883 agreed by missive letter to sell the vessel in question, and the defender agreed to purchase the same at the price of £375, less £5 discount, the price to be paid on delivery of the bill of sale of the said vessel; 2nd, that the said vessel was then registered in name of Donald Forbes, the pursuer's father, who died on 29th December 1878; 3rd, that the pursuer was, on the 3rd July 1883, decerned executor-dative *qua* one of next-of-kin of the said deceased Donald Forbes, and was on the 13th of the same month registered as owner of the said vessel; 4th, that on the 13th June 1883 the defender tendered the price, less £15, the sum agreed to be allowed for certain defects which were discovered in the vessel, and required delivery of the bill of sale; but the pursuer failed to deliver the same, whereupon the defender intimated his intention to withdraw from the bargain. . . .

"*Note.*—On the 8th June 1883 a contract for the sale of the schooner 'Conquest' of Stornoway was made between the parties as she then lay at the quay at Stornoway—the price to be £375, less £5 discount, and payable on delivery of bill of sale. The missive letter is silent as to the time of delivery or payment. The defender came to Inverness soon after for the purpose of getting money, and returned to Stornoway on the 12th. . . . . Next day the parties met, when the defender tendered the price; but the pursuer, though willing to give possession of the vessel to the defender, stated that he could not give a bill of sale, because the vessel was registered in name of his deceased father, and that he would require to make up a title to his father's moveable effects before he could give a bill of sale of the vessel. The defender then told pursuer that as a bill of sale was essential he would not pay the price. No bill of sale was offered by the pursuer to the defender, nor could the pursuer give a bill of sale to the defender until the 13th July thereafter—the date of his registration as owner of the vessel in question. The contract of sale here is a simple one, and, as already mentioned, is silent as to the time of payment or delivery. It implies that the terms are cash on delivery of the bill of sale, and under it the defender was entitled to delivery on showing his readiness to pay the price. This delivery must be held to be immediately on the defender performing his part of the contract. In the circumstances above mentioned, can it be said that the pursuer was ready to complete the transaction? I think not. The pursuer, to whom the right to the vessel was transmitted on the death of his father, was not then in a position to grant a bill of sale until he had been entered as registered owner, because the registration of his acquired title was a condition precedent to his disposing power. The pursuer, when he made the unconditional offer of sale on the 8th June knew, or ought to have known, that he could not give a valid bill of sale until he had obtained a title to administer his father's moveable estate; and if a reasonable time was required for this purpose, and was a matter within the view of the parties when the contract of sale was constituted, he should have made it an essential condition of his bargain. In the absence, then, of any such condition the defender was entitled to demand delivery on tendering the price, and on the pursuer's failure to deliver the bill of sale in terms of the contract, the defender was entitled either to annul the bargain or to insist for performance with damages. It was a clear breach of the bargain for the pursuer to refuse to deliver the bill of sale, and therefore justified the defender in withdrawing from the bargain. The defender was entitled to rely on getting a valid bill of sale, because apart from its effect under the statute (17 and 18 Vict. c. 104) as a conveyance, it is for the registrar the legal evidence that ascertains the property and proves the transfer of the vessel. It is the instrument when duly executed and delivered, and followed by possession, which would entitle the defender to enforce his rights to the vessel against the registered owner or mortgagee, just as he might enforce a right in respect of any other personal property, and until this instrument is executed and delivered the statute recognises an absolute disposing power as being still in the transferror.

"The defender, convinced that the pursuer could not give him this instrument, and thus complete the transaction in terms of the contract, at once intimated his desire to withdraw from the bargain, and on this intimation he has continued to take his stand. Looking, then, to the whole circumstances, I am of opinion that

the failure on the part of the pursuer to deliver a bill of sale to the defender when the defender tendered the price, was such as to entitle the defender to annul the bargain, and that therefore the defender should be assoilzied from the conclusions of the action.

"Pursuer's authorities—Abbot, 26. Defender's authorities—Bell's Prin., 7th ed., sec. 101, note c, and authorities there cited."

The pursuer appealed to the Court of Session, and argued—He had proved the bargain. His delay in granting the bill of sale was unavoidable, and had not been unreasonable; indeed there was no averment that it was unreasonable. The defender had therefore no right to resile, and was liable in the amount of damages which pursuer had proved.

The defender replied—The bargain which he accepted was one for immediate delivery, there being nothing on the face of the agreement as to delay. He delivered the price and performed his part of the bargain, and was entitled on the pursuer's failure to implement his part to resile.

At advising—

Lord Young—The facts of this case are not complicated. The contract between the parties, for alleged breach of which the action is brought, is in writing. It is contained in an offer and acceptance, both dated 8th June 1883. The offer is in these terms—"We hereby offer you the schooner 'Conquest' of Stornoway, as she now lies at the quay of Stornoway, for the sum of £375 sterling, less five pounds discount. The said sum to be paid as for and in exchange of bill of sale. We are, yours truly, Donald Forbes, A. M. Forbes." And the acceptance is quite simple—"I accept the above offer — John Campbell." The parties who signed the offer are the son and widow of the last registered owner, who died some years before, and since whose death they had been in possession of the schooner, which they had been sailing for the benefit of the family. When the sale was made it was explained to the purchaser that the last registered owner was dead, and that a title had to be made up to his estate before the bill of sale could be prepared. At first the purchaser, according to the evidence before us, seemed willing to assent to this, and we have it stated in the condescendence that he received from the pursuer the keys of the cabin, and slept there that night. On the following day, the 12th (I take it from the condescendence), he called on the purchaser and intimated verbally to him that he intended to resile from his agreement to purchase the schooner, and the averment goes on to say that "he has hitherto refused or delayed to implement the same." The question, then, for our consideration is, whether a bargain in terms which I have read having been made on 8th June, and the schooner delivered on the 11th, the defender was justified on the 12th in cancelling the sale on the ground that it would take some time to complete the executors' title to the schooner? I am of opinion that he was not. I think the sellers behaved quite honestly, and in the matter of completing title were guilty of no delay which could entitle the purchaser to repudiate the sale. I should therefore be prepared to affirm in point of fact that the contract had been made and had been broken by the defender, the buyer, refusing to go on with it, and to find him in consequence liable in such damages as the pursuer, the seller, could establish as having resulted from the breach. We have heard nothing on the question of damages. The pursuer estimates his loss at £60, and unless we hear something to the contrary now, I am prepared to fix it at that sum.

Lord Craighill—I concur. On the face of the sale-note there is no stipulation as to any particular time for the price to be paid and the bill of sale to be delivered, and therefore it is a reasonable inference that the meaning of the contract was that the money should be paid and the bill of sale delivered within a reasonable time. And I am satisfied of this from the conduct of both parties. Immediately after the sale-note was signed, the defender was told that the bill of sale could not be immediately given because the title had to be made up to the late registered owner, and no objection was made by the defender to this proposal. On the contrary, it is plain the defender was not ready with the money, and even when the defender came to Stornoway he was not then ready, and said he would be back in a fortnight. If he was going to take a fortnight, and no unreasonable time beyond that was taken by the pursuer to make up the title, there was nothing to entitle him to tie the seller down. I therefore concur with your Lordship.

Lord Rutherfurd Clark—I concur.

Lord Justice-Clerk—I wish I could say I have so clear an opinion in this case as Lord Young has. I have found great difficulty, because this bargain is a ready-money one for the sale of a vessel, and was one for delivery of a bill of sale against payment of price. Nothing was said before the sale as to the title of the seller. All that was said was said after the bargain was completed. It turned out it could not be completed within about a month. The question then arises —Was the purchaser bound to wait that time? I think that is a very difficult question. It would serve no good end if I were to give the grounds of hesitation, because I think this litigation has already gone far enough, and ought to take end.

We shall sustain the appeal, recal the judgment, and find £60 of damages.

The Court sustained the appeal, recalled the judgment, and found £60 of damages due to the pursuer.

Counsel for Pursuer (Appellant)—Dickson—Orr. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defender (Respondent)—Guthrie. Agents—John Clerk Brodie & Son, W.S.