BRITISH COLUMBIA ADMIRALTY DISTRICT.

HACKETT AND OTHERS .....PLAINTIFFS; 1903 Jan. 29.

AGAINST

THE SHIP *BLAKELEY.*

In re JONES.

Sale of ship by marshal—Purchaser refusing to complete sale—Re-sale—Judicial sales—Statute of frauds.

A ship was sold at auction by the marshal under an order of court in an action for seamen's wages. The ship was knocked down to J. for $2000. J. refusing to complete the purchase, the ship was re-sold by the marshal for $1900. Upon an application for an order to make J. pay the difference in price and the costs occasioned by his default,

Held, that J. was liable therefor.

2. Judicial sales are not within the *Statute of Frauds*, and therefore no memorandum in writing of the sale to J. was necessary. *Attorney-General* v. *Day* (1 Ves. Sr. 218) referred to.

3. For the purpose of establishing J's liability in this matter, it was not necessary that the marshal should have obtained an order for the re-sale.

MOTION to make a defaulting purchaser of a ship sold under an order of court pay the damages and costs arising out of his default.

The plaintiffs in this action recovered judgment against the ship for wages due and obtained an order for the sale of the ship. The ship was put up for sale by the marshal, and knocked down to one H. H Jones for $2000, but he refused to complete the purchase. The ship was subsequently re-sold by the marshal for $1900, and the plaintiffs then applied to make Jones responsible for the difference in price, and for the costs occasioned by his default.

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The motion came on for hearing before the local judge of the British Columbia Admiralty District on 22nd December, 1902.

L. Bond for plaintiffs;

F. Higgins for Jones.

MARTIN, L.J. now (January 29th, 1903,) delivered judgment.

On the evidence there is no difficulty in arriving at the conclusion that the ship was purchased at the marshal's sale on the 17th of October, 1902, by Henry Humphrey Jones for $2000, and that he subsequently, in writing, on October 28th, absolutely refused to complete his purchase, and repudiated all responsibility in regard thereto. Under such circumstances the marshal re-sold the ship, without obtaining an order for such re-sale, for the sum of $1900. The present application is by the plaintiffs to compel the defaulting purchaser to make good the difference in price, and pay the costs and expenses occasioned by and incidental to such default.

The application is resisted, first, on the ground that there was no memorandum in writing of the sale to satisfy the Statute of Frauds. Even if such were the case, the answer is that judicial sales are not within that statute (1).

In the second place it is contended that before the defaulting purchaser can be held liable there must be an order for a re-sale.

The analogous practice in chancery on this point is to be found in the cases of *Hodder* v. *Ruffin* (2); *Gray* v. *Gray* (3); *Harding* v. *Harding* (4); *Crooks* v. *Crooks* (5); and *Re Heeley* (6); and it is the fact that in those

(1) *Attorney-General* v. *Day*, 1 Ves. Sr. 218.
(2) 1 V. & B. 544.
(3) 1 Beav. 199.
(4) 4 Myl. & Cr. 514.
(5) 4 Gr. 376.
(6) 1 Chy. Cha. 54.

cases an order for re-sale was made, but it is apparent to me, at least, that the reason for adopting that practice was to fix a limited time within which the purchaser might still have an opportunity to complete, and failing that, he should be, as it were, formally adjudged a defaulter and held liable as such. The object, in short, was to give him a certain time within which to make up his mind; and the clear distinction between those cases and this is that in none of them had the purchaser definitely repudiated his purchase, but had either taken steps in the direction of completion, or had simply done nothing towards carrying it out, while in this case he has under his own hand declared himself to be a defaulter. It would, under such circumstances, be going through an idle and expensive formality for the court to declare a purchaser to be a defaulter when he has himself already deliberately notified the marshal to that effect. It is only the possibility that the purchaser may be trying to complete that renders the application for the order necessary.

If the re-sale is otherwise regular, it is, as a matter of practice, just as convenient that the order directing a defaulting purchaser to be held liable should be made after the sale as before. Indeed, in such a case as the present wherein it is not necessary to ascertain by an order whether the purchaser may still at the eleventh hour wish to complete or not, it would appear to be the better practice to wait till after the result of the re-sale before applying for such order, because it might very well happen that on the re-sale a greatly increased price would be obtained.

There would in any event be a further reason why an application for an order for re-sale might be necessary in chancery without that being the case in this court, which is that sales in chancery are subject to

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the approval of the court, while such is not the practice in this court, sales of ships being conducted pursuant to an open and general commission of sale to the marshal. If one sale prove abortive there is no good reason why the marshal should not hold another sale at the earliest convenient date without further order.

The defaulting purchaser herein has caused a loss to the plaintiffs, and as the Lord Chancellor said in *Harding* v. *Harding* (1), "I do not know why a person purchasing under a decree of the court should not be held to his contract as much as a person purchasing in the ordinary way." There has been an attempt to play fast and loose with the court in this matter, and under the circumstances it would not be seemly that to obtain redress the plaintiffs should be sent to another tribunal when this court possesses ample power to speedily, and at less expense than elsewhere, afford relief

There will be an order, therefore, directing the said Jones to pay into court the deficiency in price, $100, and all costs, charges and incidental expenses attending the last sale, and incidental thereto, and occasioned by the default, which amount to $270, and also to pay to the plaintiffs or their solicitor the costs of the present motion.

Judgment accordingly.

Solicitors for plaintiffs: *Dumbleton & Bond.*

Solicitors for H. H. Jones: *Higgins & Elliott.*

(1) 4 Myl. & Cr. 514.