

AUCTIONEER — IMPLIED AUTHORITY OF AUCTIONEER TO SELL WITHOUT RESERVE—LIMITATION OF AUTHORITY OF AUCTIONEER UNKNOWN TO BUYER —NOTE IN WRITING—AUCTION — LIABILITY OF PRINCIPAL — STATUTE OF FRAUDS.

In *Rainbow v. Howkins* (1904) 2 K.B. 322, the plaintiff had attended a sale by auction of a pony. The defendant was the auctioneer, and disclosed the name of the vendor, and inadvertently stated that the sale was without reserve, whereas in fact his instructions were to sell subject to a reserve price of £25. The plaintiff bid £15 15s., and the pony was knocked down to him. The defendant immediately after discovered his mistake, and put the pony up for sale again, and bought it in for the vendor. No note in writing was made of the sale to the plaintiff. The plaintiff claimed delivery of the pony or damages for its detention, or alternatively damages for breach of warranty by the defendant of authority to sell the pony. The County Court Judge dismissed the action, holding that the absence of a note in writing was a good defence to the first head of claim, and, as to the second ground, that, the principal having been disclosed, the defendant was not personally liable. The Divisional Court (Lord Alverstone, C.J., and Wills, and Kennedy, JJ.) affirmed the decision, but not altogether on the same grounds. They agreed with the County Court Judge that the absence of a note in writing was a good defence to the plaintiff's claim as purchaser. On the second ground of claim, however, they considered that the fact that the principal had been disclosed was not necessarily a bar to an action against the auctioneer, but they held that there is an implied authority to an auctioneer to sell without reserve, and that the principal cannot repudiate a sale without reserve, on the ground that the auctioneer has exceeded his private instructions which were not communicated to the buyer; therefore they held that (but for the want of a note of writing) the contract of sale to the plaintiff would have been binding on the vendor, consequently there was no breach of warranty of the defendant's authority to sell.