

Eng. Rep.]

BASKCOMB v. BECKWITH.

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the assenting and non-assenting creditors, even under the English Act, and authorities cited. It may be true that the non-executing creditors could not sue on the covenant to deliver the notes; but the covenant has been fulfilled; money and indorsed notes for the composition, payable to all the creditors assenting and non-assenting, have been placed in the hands of the assignee, and with the exception of Winks & Co., all have received the money and composition notes to which they were entitled, and Messrs. Winks & Co., are entitled at any time to prove their claim and receive the money and notes held by the assignee for them. The insolvents have done all in their power to carry out the arrangement made with their creditors; the arrangement itself is fair and equal, and if there is any slight inequality between the assenting and non-assenting creditors, which I think there is not, it is only incidental to the position of a non-assenting creditor. In *Blumberg v. Rose*, Pollock, C. B., says in his judgment—"It is impossible where there are two sets of creditors, assenting and non-assenting, but that there should be some degree of practical inequality. But to a deed equal in principle, inequality in effect is no objection."

The memorandum attached hereto shows that the insolvents have obtained the execution of the deed of composition and discharge by a majority in number representing three-fourths in value of the creditors whose claims are above \$100, and as the deed is fair, and the insolvents have complied with all the requirements of the act, I think they are entitled to the confirmation of their discharge.

Memorandum attached to the judgment.

Total number of creditors	52
Secured creditors who have accepted securities with consent of assignee	2
Creditors under \$100.....	6 8
No. of creditors over \$100 who have executed deed 35	
Total liabilities of insolvents	\$54,531 65
Less secured claims as above	\$4,570 00
And claims under \$100.....	313 49
	4,883 47
	\$50,233 42
Proportion of creditors required	\$37,675 07
Amount of unsecured claims over \$100 of those who have executed the deed	\$40,034 58
Proportion in value who have signed, deducting the claims of John Macdonald & Co., Sutherland & Co., and Hoskins & Co	\$38,419 71

ENGLISH REPORTS.

CHANCERY.

BASKCOMB v. BECKWITH.

Vendor and purchaser—Specific performance—Suppression of facts—Plan of estate produced at sale.

Where specific execution of a contract is sought, there must have been perfect truth and the fullest disclosures by the vendor in order to entitle him to relief. The Court will otherwise, even where there has been no intentional suppression of fact, relieve the purchaser who has been thereby deceived, provided he has acted throughout reasonably and fairly.

A building estate was offered for sale by auction, in plots, under conditions of sale which stipulated that no public house should be erected thereon. The defendant bought one of the plots and accepted the title, but refused to complete on discovering that the whole of the vendor's

estate, as had been the defendant's impression, was not included in the sale, but that a plot had been reserved, within one hundred yards of the defendant's purchase, to which the vendor contended the above stipulation did not extend. This impression was produced by the conditions of sale being framed as if including the whole estate without any reservation, and also by the reserve plot not being coloured or marked with the vendor's name. The defendant thereupon refused to complete, unless with covenants on the part of the vendor including the reserved plot; and in a suit for specific performance instituted by the vendor,

Held, that he could not compel the defendant to execute the contract if he, the plaintiff, insisted on retaining the plot free from any restrictive covenant; but that the plaintiff was entitled, at his option, either to a decree for specific performance with a covenant including the reserved plot, or to have his bill dismissed, and must in either case pay the costs of the suit.

[M. R., 17 W. R. 812.]

The plaintiff, George Henry Baskcomb, who was the owner of the Manor House estate at Chislehurst, comprising thirty-five acres, on the 7th of May, 1867, put the greater part of the same up for sale by auction, divided into seventy-four lots. Lot 1 was the Manor House and grounds, of which the defendant became the purchaser.

The 11th condition of sale was to this effect:—"Each of the respective purchasers of building land at this sale shall in the deeds of conveyance to them respectively enter into covenants with the vendor not to build thereon otherwise than in conformity with the plan annexed to the particulars, and for the observance and performance of such conditions relative to the erection of fences modes of building on and using such lots as are mentioned in the general stipulations as to building land annexed to the particulars."

So far as is material, the general stipulations as to building were as follows:—"No purchaser to erect more than one single house, or two semi-detached, on his or their lot, or at a less value than £800 for the one, and £1,200 for the two. No house shall be used as a public-house or place of business or trade, and no trade or manufacture shall be carried on upon the property."

In August, 1868, the defendant discovered that a small adjoining piece of land at the junction of the Bromley and Greenwich roads belonged to the plaintiff, and was not included in the sale. This plot of land lay within one hundred yards of the Manor House gate.

The defendant accepted the vendor's title, but refused to carry into execution his contract unless the plaintiff would in the conveyance enter into covenants to observe the building stipulations not only with respect to the property comprised in the said particulars of sale, and in the plan of the property annexed to such particulars, but also with respect to the adjoining piece of land retained by the plaintiff and never offered for sale by him as building land.

The present suit was accordingly instituted by the vendor and his mortgagees. The plaintiffs charged that all the defendant was entitled to require was that the plaintiffs should enter into covenants with him to require every purchaser from them of the building land mentioned in the particulars of sale to enter into qualified covenants restricting the same to such building land only.

The defendant submitted by his answer that when land is sold in lots subject to building stipulations the vendor is, as between himself and