

sum of £175 currency, under the following conditions—"Cash on adjudication—the articles are in charge of the agent of the Trinity House and are sold without any guarantee on the part of the vendors as to quantity or quality; they are sold free of any charge for storage to the 1st May next—after which the purchaser will be subject to a charge."

The Defendant refused to pay according to the conditions; whereupon the Plaintiffs notified him that on the 24th of the same month they would resell the articles at his *folle-enchère*. On that day, the Defendant not having paid, the sale by auction was made, and the goods, wares, and merchandise, adjudged on the 19th November to the Defendant, were sold to F. X. Julien, for £135 currency, on the same conditions that governed the sale of the 19th November.

In February, 1858, the Plaintiffs instituted their action against the Defendant to recover £53 11s., made up as follows, £40 being the difference between £175, price obtained at the first sale, and £135 paid by the purchaser at the second sale—and £13 11s. costs and charges of the second sale.

To this demand the Defendant pleaded, by *Perpétuelle exception préemptoire*, that at the time of the alleged sale to him the Plaintiffs fraudulently represented that the articles sold were in a store at Ellis' Bay, and that they were in charge of the agent of the Trinity House, whilst really they were not at Ellis' Bay or in charge of the said agent; that the Plaintiffs never had any right or title to the articles sold and could not sell them; and that on Defendant's application for a delivery order, the Plaintiffs refused to give him one.—By *Défense au fonds en fait*, that all the allegations of the Plaintiffs' Declarations were unfounded in fact.

On the part of the Plaintiffs the allegations of their Declaration were proved:—no evidence was adduced on the part of the defence.

At the final hearing it was contended by the Defendant that the property in the articles sold passed to the Defendant. The rule of Law was that when the terms of the sale are agreed on and the bargain is struck, and everything the seller has to do with the thing is complete, the contract becomes absolute without actual payment or delivery, and the property and risk incident with goods rest in the buyer. 7 East Rep. 571. 6 B. & C. 360. Poth., Vente, No. 399, 2 Kent, Com. 493. Had the articles perished the loss would have been the Defendant's. The Defendant having once become the proprietor, the Plaintiffs ceased to have any control and could not resell. Their remedy was for the price if they would hold the Defendant to his bargain:—"Le vendeur peut assigner l'acheteur aux fins que faite par l'acheteur d'enlever les marchandises à lui vendues dans un court délai, il sera permis au vendeur de les mettre dehors aux frais de l'acheteur."

Poth. Vente, No. 290. Mais comme le plus souvent on ne peut, sans de grands frais, se faire payer de son débiteur, on a été obligé de se départir* dans les tribunaux de la rigueur de ces principes: et on admet un vendeur à demander la solution du contrat de vente pour cause de défaut de paiement du prix. Poth. Vente, No. 475. Si les coutumes sont muettes et que la convention le soit aussi, le vendeur ne pourra disposer de sa chose sans avoir fait à l'acheteur une sommation judiciaire de venir prendre livraison dans un court délai. Troplong,

* Départir :