the Court presuming a writing where one is required.

McMichael, Q.C., for plaintiff.
Bethune, Q.C., for defendant.

CHANCERY.

Heron v. Moffatt.

(April 3, 1876.)

Trustee and cestui que trust—*Purchase by trustee.*

After the judgment, as reported in 22 Gr. 370, where the facts sufficiently appear, the plaintiffs proceeded to a hearing at the last examination term in Toronto, before the Chancellor, and there gave evidence that Moffatt had, at the auction sale there spoken of, offered some property of his own for sale by auction, and had the same person (Barclay) employed as his agent to bid for that lot as well as for the property held in trust; and that Barclay did accordingly bid, and the property was knocked down to him; when the auctioneer called upon him to sign the sale-book, and he (Barclay) then explained that his bidding was as Moffatt's agent only, and therefore the auctioneer did not press Barclay to sign, considering, as he stated, both properties bought in. It was contended for the plaintiffs that the case now was distinguishable from that presented on the motion for injunction, and that Moffatt was bound to complete the contract, which was valid by reason of Barclay's name being entered in the book as agent for Moffatt.

Spragge, C., said that no doubt he would be bound if he bid with the intention of becoming a purchaser, but it is quite clear that he had no intention of becoming a purchaser; and if he had not, the bidding was in order only to get a good price. It may have been irregular or even improper, but Barclay's agency, taking it to be ever so strongly established, cannot be more binding upon him than if he had bid himself. The judgment already delivered is clear upon these points: "The cases establish that if a trustee for sale buy in the property, intending to become the purchaser, the *cestui que trust* has the option of holding him to his bargain: *Campbell* v. *Walker*, 16 Gr. 526.

And it seems also that assignees in bankruptcy cannot buy in the property for the benefit of the estate, unless having authority from the creditors,—and if they do so, they may be held to their purchases. "In the class of cases, however, represented by *Campbell* v. *Walker*, the trustee bid with the intention of purchasing for himself. In the bankruptcy cases it has to be noticed that the assignee had no discretion, no authority to interfere with the sale; his duty was to carry out the instructions of the creditors. In this case, however, the trustee was authorised, *in his sole and independent discretion*, to sell either at public auction or private contract for cash or on credit at fair reasonable prices, and to re-sell. So that Moffatt was the person who was to exercise the discretion that in bankruptcy is vested in the creditors. It is the duty of a trustee for sale to take reasonable precaution to protect the property, to prevent its being disposed of at an undervalue."

Upon the question of Moffatt being disallowed the moneys expended by him for insuring the buildings, the subject of the trust, his Lordship remarked that he entirely agreed with V.C. Proudfoot, that "the question depends on whether Moffatt was a trustee or only a mortgagee; and considering the duties imposed on him by the agreement, I have no difficulty in determining him to be a trustee. And a trustee is entitled to insure, and charge the premium against the estate." The plaintiffs, however, are entitled to an account.

The usual reference reserving further directions and subsequent costs was made.

J. A. Boyd for plaintiffs.
Crooks, Q.C., and *Boulton* for defendants.

The Grand Junction Railway Company v. Bickford.

(March 24, 1876.)

Railway Company—Delivery of railway iron.

This was a suit to restrain the defendants, Bickford & Cameron, and the Bank of Montreal, from removing a quantity of railroad iron, alleged to have been delivered by Bickford & Cameron to the defendant Brooks, who had entered into a contract with the plaintiffs for the construction of their road, under a contract to do so made with Brooks. It appeared that under an agreement executed in June, 1874, between Brooks and Bickford & Cameron, the latter had agreed to furnish Brooks with 4,000 tons of rails at $47 a ton, on a credit of six months from the several deliveries of the iron, the periods for which were set forth in the agreement, Brooks, amongst other securities, agreeing to execute an irrevocable power of attorney in favour of the Bank of Montreal, to receive the Government and certain municipal bonuses mentioned in the bill—"the vendors to hold their lien and ownership on the iron till laid down on the track, when the several grants and bonuses are payable"—and agreeing also to procure from the plaintiffs a mortgage for a sufficient sum,