[HIGH COURT OF AUSTRALIA.]

TRACEY . . . . . APPELLANT
DEFENDANT,

AND

MADDEN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1908.

SYDNEY, *August* 31.

Griffith C.J., Barton, O'Connor and Isaacs JJ.

Sale of goods—Receipt for purchase money—Question to be left to jury—Assurance of personal chattels—Registration—Bills of Sale Act 1898 (*N.S.W.*) (*No.* 10 *of* 1898), *sec.* 3.

At the trial of an interpleader issue involving the question of the ownership of certain horses the plaintiff gave evidence of having bought the horses from the execution debtor, and put in evidence a document purporting to be a receipt for the purchase money. The Judge nonsuited the plaintiff on the ground that the document was an assurance of personal chattels requiring to be registered under sec. 3 of the *Bills of Sale Act* 1898, and not being registered, was void as against the sheriff.

The Supreme Court having set aside the nonsuit on the ground that the document was in form a receipt for the purchase money, and that as there was evidence of a sale completed independently of it, it should have been left to the jury to say whether such an independent transaction had in fact taken place or not; the High Court refused to grant special leave to appeal from that decision on the ground that it was plainly right.

Special leave to appeal from the decision of the Supreme Court (*Madden* v. *Tracey*, (1908) 8 S.R. (N.S.W.), 304) refused.

MOTION for special leave to appeal from a decision of the Supreme Court of New South Wales setting aside a nonsuit in an interpleader action.

H. C. OF A. 1908.

TRACEY v. MADDEN.

The applicant in execution of a judgment seized certain horses in the possession of the judgment debtor. The horses were claimed by Catherine Madden, and an interpleader issue was directed.

At the hearing the plaintiff gave evidence that she had bought and paid for the horses, giving the judgment debtor £90 for them. A considerable amount of evidence was given as to the negotiations and completion of the sale, and a document purporting to be a receipt for the purchase money, signed by the vendor, was put in evidence. It was in these words:—'This is to certify that I have this 14th day of January 1908 sold to Catherine Madden three head of draught horses for the sum of £90, value received. —James Smith." The presiding Judge held that this was an assurance of personal chattels within sec. 3 of the *Bills of Sale Act* 1898 and required registration; and, not having been registered, was void as against the sheriff. He therefore nonsuited the plaintiff, who then appealed to the Full Court. That Court held that there was evidence of a binding contract apart from the document, and that it should have been left to the jury to say whether there was such a contract or not. They therefore set aside the nonsuit and ordered a new trial: *Madden* v. *Tracey* (1).

From that decision the defendant now applied for special leave to appeal.

Windeyer, for the applicant. The evidence showed that the parties contracted by means of the document. It was therefore the real medium of transfer and a document of title. In fact it was the only evidence of the claimant's title. It was not a mere receipt for the purchase money. There was no evidence of any contract of sale independently of the document. Even in the case of a bill of sale, there is always some arrangement apart from the document, but that does not prevent the document from being a document of title. The parties here plainly intended that the document should be the contract.

[GRIFFITH C.J. referred to *Newlove* v. *Shrewsbury* (2).]

There there was clearly an agreement independent of the document. The question is whether the parties finally intended that

(1) (1908) 8 S.R. (N.S.W.), 304. (2) 21 Q.B.D., 41.

the contract should be the document, and the prior arrangements mere negotiation. The document may be both a receipt and an assurance.

[GRIFFITH C.J.—Your contention comes to this that giving a receipt in a form that has been used in such transactions as this for years makes the whole transaction void unless the document is registered.

BARTON J. referred to *Ex parte Cooper*; *In re Baum* (1), cited in *Woodgate* v. *Godfrey* (2).

ISAACS J. referred to *Marsden* v. *Meadows* (3).]

If it is such a document that in equity a party could rest upon it as an assignment or as a ground for insisting upon an assignment it comes within the section. [He referred to *In re Hood*; *Ex parte Blandford*; *In re Hood*; *Ex parte Burgess* (4); *In re Roberts*; *Evans* v. *Roberts* (5).]

GRIFFITH C.J. The Supreme Court thought there was a question of fact to be left to the jury. We think it quite clear that there was such a question. Giving the fullest weight to the argument of Mr. *Windeyer*, still we think there was a question of fact to be left to the jury, and, therefore, that special leave should be refused.

Special leave refused.

Solicitor, for the applicant; *L. L. Hogan*, by *Collins & Mulholland.*

C. A. W.

(1) 10 Ch. D., 313.
(2) 5 Ex. D., 24.
(3) 7 Q.B.D., 80.
(4) 10 Mor., 231.
(5) 36 Ch. D., 196.