

2/1923

CROZIER v. MANSSELL.

JUDGMENT

KNOX C.J.
GAVAN DUFFY J.
ALCH J.

This is an appeal from an order made by Crisp J.
In this case the parties signed the following document:

OPTION FOR PURCHASE "MT. VERNON"

to L.J. Crozier or his nominee till 31st. May 1921.

I agree to sell Mt. Vernon complete in all comprising approximately 4800 acres more or less. £25,000.

Mt. Vernon house including approximately 250 acres Upper Race-course White Banks. Front of house to Ficton estimated at 100 acres I agree to rent from the purchasers for £400 per annum from 1st. March for two years say until 1st. December 1922. Outbuildings to be apportioned mutually between us taking into account each person's requirements.

Purchasers give and have free access to all property.

Possession forthwith say 1st. March 1921.

Live stock to be taken at valuation on option to be mutually agreed.

Terms of purchase are as shown on attached slip.

This comprises the slip referred to on Page 1.

Mansell accepts as follows as purchase price.

3,000 shares in W.H. Paxton & Co. Ltd. of Larkay Old. Merchants.

Share valuations to be assets value approved by Auditors of Company of Paxton & Co. Ltd. Troup Harwood & Co. Ltd. Davey Street property (known as Fitzgeralds) £3500 :-:-

substantiated by land valuation by competent land valuer.

Cash within 12 months £3500, balance to be in War Loans 6% at face value, or scrip and the like such as land.

The mortgage of £10,000 at present current with Perpetual Trustee Coy. to be taken over by the purchasers.

I hereby agree to approve or otherwise of Davey St. property by Monday 28 February 1921.

To complete the above option the seller agrees and hereby accepts the sum of £1 which forms the basis of the option money

Dated at Melton Mowbray this 26th. February 1921.

(sgd) Andrew E. Mansell
" Leslie J. Crozier

In pursuance of ^{the} ~~this~~ understanding the respondent conveyed the properties mentioned in this document to a nominee of the appellant.

Some delay occurred in respect of the transfer and registration of the shares in J.H. Paxton & Co. Ltd. and the respondent ultimately took out a summons under section 9 of the Vendor & Purchaser Act 1875 claiming that as default had been made in the punctual production of a transfer and valuation of these shares he was entitled to be paid the sum of £8250 in cash instead of such shares.

The learned Judge thought that the respondent was entitled to have this sum and ordered its payment by the appellant and directed that on such payment the shares which had in the meantime been transferred to and registered in the name of the respondent should be retransferred to the appellant.

From that order this appeal is made.

The question arose whether the case came within section 35 of the Judiciary Act but it is unnecessary further to discuss that matter as the appellant asked for special leave to appeal which we propose to give him the respondent consenting to that course being taken, In our opinion the respondent was not entitled to this payment even if the default by the appellant which he alleges in fact occurred. He is entitled to no more than he has bargained for viz. the shares which have been certified as of the full value of £8250. If he has suffered any damage by delay or other breach of contract he is entitled to be compensated for that damage in an action brought for that purpose against the party responsible but he has not asked for nor could he obtain such compensation in these proceedings.

In the present proceeding the appellant was assumed in the Court below to be the party liable to the respondent for any default on payment of the stipulated price, In view of the opinion we have expressed it is unnecessary for us to say whether he or his nominee is the party liable

*Order. appeal allowed. Summons dismissed.
Respondents to pay the costs both in
this Court & the Supreme Court.*