

Nonsuit.

Campbell S.-G., G. Williams, and Guytch, for the plaintiff.
Sir J. Scarlett and Channel for the defendant.

Guildhall, Feb 22, 1834

MYNN v. JOLIFFE

(An agent employed to sell an estate has not, as such, authority to receive payment. Communications made to an attorney by his client respecting the sale of estates are privileged. The privilege is not limited to suits existing or expected)
[Applied, *Drakeford v. Percy*, 1866, 7 B & S. 515]

Assumpsit to recover back the deposit paid on a contract for the purchase of an estate. There were special counts for not making a good title, and for other defaults.

[327] To prove the payment of the deposit, the following paper was offered in evidence :—

“Memorandum John Mynn Esq has this day given me his note of hand for £450. being on account of and in part purchase of an estate at Sutton Valance, bought by the said John Mynn of Major Joliffe, at the sum of £3125, upon such other conditions as the said Major Joliffe bought the said estate of Mr. John Watson.

“December 6, 1827.

JOHN CARTER.”

Carter was proved to be the defendant's agent to sell the estate.

It was objected by Sir J. Scarlett for the defendant, that the paper was not evidence, without proving an authority to receive payment. An agent to sell has not authority to receive payment, unless given by the conditions of sale or other means. In general, an auctioneer has by the conditions of sale an authority to receive the deposit only; he has no authority to receive beyond that.

Littledale J. I think that an agent employed to sell has no authority, as such, to receive payment; but I shall not stop the cause the defendant shall have leave to move to enter a nonsuit

The attorney for the defendant, at the time of this transaction, and employed by him as such in the purchase and sale of estates, was called by the plaintiff, and was asked as to a communication made to him by the defendant. He was not the [328] attorney in the cause, and no suit or dispute existed between the parties at the time the communication was made to him

Sir J. Scarlett objected to this evidence. The communication made to the witness was made to him confidentially in his character of solicitor for the defendant. He ought not, therefore, to be called upon to disclose it.

F. Pollock contended that the privilege was limited to communications made relative to suits existing, or in contemplation in consequence of existing disputes; and Lord Tenterden had so ruled (a)

Littledale J. I do not think the privilege is limited to communications made in relation to a suit in existence or expected. I think communications made in relation to the sale and purchase of estates are protected, and the question cannot, therefore, in my opinion, be asked. I so ruled in a case tried at Gloucester, which afterwards came before Lord Tenterden and the rest of the Court. No opinion was given by the Court on this point, but the case went down to trial again before Mr Justice J. Parke, and he ruled in the same way as I had done, and rejected the evidence. I think also it has been so decided recently by the Lord Chancellor (b).

[329] The question was disallowed.

Nonsuit

F. Pollock and Channel for the plaintiff

Sir J. Scarlett and Platt for the defendant.

Guildhall, Feb 28, 1834

LEES AND ANOTHER v SMITH

(A person liable by bond for the costs of the action, may be rendered competent, by

(a) *Williams v. Mundie*, R & M 34, and see *Broad v. Pitt*, M & M 233; *Clark v. Clark*, *supra* 3.

(b) *Greenough v. Gaskell*, Mylne & Keene, 98, *Bolton v. Corporation of Liverpool*, *ib.* 88; see *Bramwell v. Lucas*, 2 B & C 745; *Moore v. Tyrell*, 4 B & Ad. 870.