

resolutions of the creditors to accept the composition. But it is now conceded by the counsel for the respondents that they are now prepared to admit that the notices were given and received. The proceedings were carried on in the Bankruptcy Court, and they had the effect of discharging the complainer of all debts due at the time they were instituted on payment of the composition.

The charge here under suspension is a charge upon a decree for payment of the whole debt, and the ground of suspension is that the debt is not due, although at the date of the decree of the Sheriff it was due. But that may have been extinguished by payment of a part of the debt, and if a charge is given for the whole debt under the Debts Recovery Act, it surely would not be incompetent to suspend the charge. The composition arrangement is only another mode of discharging the debt upon payment of a restricted amount. Further diligence upon the decree is thereby suspended.

It cannot be too distinctly stated that this is not a review of the interlocutor granting decree. The decree is here assumed to be valid and final. We are now affirming that under the circumstances in which the respondents are placed they are not entitled to enforce their decree in the face of the composition contract which has been carried through.

On these grounds, I think the Lord Ordinary's interlocutor must be recalled, and the case must be remitted to the Lord Ordinary to pass the note.

LORD DEAS concurred.

LORD MURE—Now that the matter has been fully explained, I have come to the same conclusion, because the ground of suspension amounts substantially to this, that the debt has been paid since the date of the decree charged on by the composition offered and accepted in the English bankruptcy proceedings. This would, I think, have been a good ground of suspension of a charge following upon a decree, by whatever Court that decree might have been pronounced. If, therefore, the decree had been given in the Small Debt Court, and the debt had been paid after decree, the clause in the Small Debt Act founded on by the charger would, as your Lordship has pointed out, have had no application, as it points at the cause being reconsidered on its merits. But that is not what is wanted, and the remedy in such a case would, as here, have been suspension of the charge illegally brought to enforce the decree for a debt no longer due.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the reclaiming note for the complainer against Lord Curriehill's interlocutor, dated 7th September 1876, Recall the said interlocutor, and remit to the Lord Ordinary in the Bill Chamber to pass the note, and grant interim interdict as craved.”

Counsel for Complainer—Millie. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondents—J. C. Lorimer. Agents—Davidson & Syme, W.S.

Thursday, November 30.

FIRST DIVISION.

[Lord Curriehill, Ordinary.]

MILLER v. MILLER AND TUTORS.

Entail—Stat. 5 Geo. IV. cap. 87, § 10—Process.

The Act 5 Geo. IV. c. 87 (Lord Aberdeen's Act), provides that in case of an heir of entail in possession being sued for payment of provisions granted under the Act to the children of a former heir, he shall be discharged from such suit upon conveying to a trustee, “to be named by the Court of Session,” one-third part of the rents of the estate. In such an action the Court (on a report by the Lord Ordinary), and following the precedent of the case of *Maxwells v. Maxwell*, June 26 1840, 2 D. 1225, instructed his Lordship to appoint a trustee.

Counsel for Pursuer—George Watson. Agent—H. R. Macrae, W.S.

Counsel for Defender—Pearson. Agents—Mackenzie, Innes, & Logan, W.S.

Thursday, November 30.

FIRST DIVISION.

[Lord Craighill, Ordinary.]

WARIN & CRAVEN v. FORRESTER.

Sale—Sale-Note—Free on Board.

A sale-note stipulated that sugar sold was to be “free on board,” and further, “to be delivered at the port of shipment in about equal quantities per month.” There was also this clause—“the sellers will use every endeavour to engage freight-room and expedite shipments, but are not liable for delay caused by want of tonnage.”—Held that the obligation upon the sellers was not to have the goods shipped, but to have them ready for shipment at the time specified, and to use all reasonable efforts to have them despatched without delay.

Date—Rescission of Contract—Remedy.

Where a buyer rejects goods, and distinctly intimates a repudiation of the contract, the seller must re-sell immediately to entitle him to claim against the buyer the difference between the contract price and the price obtained for the goods when re-sold.

This was an action of damages for breach of contract, at the instance of Warin & Craven, sugar merchants, London, against David Forrester, sugar merchant, Glasgow. The contract of sale-note was dated 17th September 1874; the subject sold was “about 2000 bags French or Belgian beetroot sugar, of the crop 1874/75, at 24s. 6d. per cwt., free on board at Dunkirk or Antwerp. The sugar to be taken at the official customs shipping weights, less usual tares, and to be delivered at the port of shipment in about equal quantities per month during October, November, December 1874, and January 1875. The sellers