

the face of that decision they could not support the order of the Vice-Chancellor.

The LORDS JUSTICES accordingly discharged the order appealed from, and declared the Appellant entitled to the fund in Court. Under the circumstances of the case they ordered the costs of all parties, both of the appeal and of the hearing before the Vice-Chancellor, to be paid out of the fund.

Solicitors : Messrs. *Torr, Janeway, & Co.*; Mr. *Braikenridge*.

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*In re*  
BENNETT'S  
TRUSTS.

# GUNN v. BOLCKOW, VAUGHAN, & CO.

[1875 G. 96.]

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June 26.

Vendor's Lien for Goods—Payment by Acceptances—Wharfinger's Certificate—Document of Title—Custom of Trade—Payment into Court—Keeping Fund in medio.

B. & Co. sold some iron rails to the *A. Company* by a written contract stipulating that payment should be made by buyers' acceptances of sellers' drafts against inspector's certificate of approval and wharfinger's certificate of each 500 tons being stacked ready for shipment. As the wharfinger's certificates were delivered the *A. Company* accepted the drafts of *B. & Co.*, according to the contract, which *B. & Co.* negotiated; but the rails remained in *B. & Co.*'s possession. The Plaintiff advanced money to the *A. Company* on the security of some of the wharfinger's certificates which were handed over to him with a written memorandum. The *A. Company* became insolvent, and their acceptances were consequently not paid. The Plaintiff filed a bill against *B. & Co.* and the receiver of the estate of the *A. Company*, claiming a lien on the rails in the hands of *B. & Co.* in priority to their lien as vendors. The bill alleged that according to the custom of the iron trade, the wharfinger's certificates were in fact "warrants." The Plaintiff having moved for an injunction to restrain *B. & Co.* from parting with the rails, or with the money which they might receive in respect of them, the Vice-Chancellor ordered *B. & Co.* to pay the value of the rails into Court, to be kept *in medio* till the decision of the case:—

Held, first, that the giving of the acceptances in pursuance of the contract was not an absolute payment, but conditional on the acceptances being met; that upon the insolvency of the acceptors the vendors' lien on the goods revived; and that the fact of the vendors having negotiated the bills made no difference.

Secondly, that the wharfinger's certificates were not documents of title, and their delivery passed no right to the goods; and that no custom of trade

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could give them the effect of "warrants" or documents of title as against the vendors.

An order to bring a fund into Court to remain *in medio* ought not to be made upon a mere allegation in the bill that there is a question to be tried at the hearing.

Decision of *Bacon*, V.C., reversed.

THIS was an appeal from an order of Vice-Chancellor *Bacon*.

On the 1st of August, 1874, Messrs. *Richard Fothergill* and *Ernest T. Hankey*, carrying on business at *Aberdare* as the *Aberdare Iron Company*, entered into a contract with Mr. *P. J. Goubonin*, for himself and the *Ural Railway Company* in *Russia*, for the supply of a quantity of iron rails, of which 7000 tons were to be delivered at *Cronstadt* by the end of May, 1875, 7000 tons by the end of June, and 7000 tons by the end of July.

To enable them to carry out this contract the *Aberdare Iron Company*, on the 20th of November, 1874, entered into an agreement with *Bolckow, Vaughan, & Co.*, a limited company at *Middlesborough-on-Tees*, to manufacture for them 2000 tons of rails. The contract contained the following stipulation:—

"The rails to be made in the months of December and January next, and the whole to be shipped at the commencement of the first open water at *Cronstadt*. Fourteen days' notice to be given before commencement of manufacture, in order that the inspector may be present. Payment to be made by buyers' acceptance of sellers' drafts at six months' date against inspector's certificate of approval and wharfinger's certificate of each 500 tons being stacked ready for shipment."

Another contract in similar terms was entered into between the same parties on the 23rd of December, 1874, for a further quantity of 2000 tons of rails in the months of January and February, 1875.

Under these contracts *Bolckow, Vaughan, & Co.* commenced to manufacture iron rails, which, when made, were approved and stacked at the works of *Bolckow, Vaughan, & Co.*, and the wharfinger's certificates, with the certificates of the inspector appointed by the Russian company, attached, of each 500 tons ready for shipment, were given at different dates in December and January, the whole 4000 being ready for shipment by the 26th of

January, 1875. The wharfinger's certificate was in the following form :—

"I hereby certify that there are lying at the works of Messrs. *Bolckow, Vaughan, & Co., Limited*, of *Middlesbrough*, 500 tons of iron rails which are ready for shipment, and which have been rolled under contract dated November 20, 1874, between the said company and the *Aberdare Iron Company*.

"*W. Roe*, Wharfinger."

These wharfinger's certificates, with the inspector's certificates attached, were, as they were signed, delivered to the *Aberdare Company* in exchange for acceptances by the *Aberdare Company* of drafts by *Bolckow, Vaughan, & Co.* at six months' date. These drafts were for sums amounting together to £32,000, and were to fall due at various dates in June, July, and August, 1875. The acceptances were negotiated by *Bolckow, Vaughan, & Co.*, and came into the hands of *bonâ fide* holders.

On the 5th of February, 1875, the *Aberdare Company* entered into an agreement with Mr. *G. B. Toms* that he should advance them £21,000, and signed a memorandum in the following form :—

"It having been arranged to-day that you advance us £21,000 against warrants of about 3000 tons Russian rails which we have to ship during the opening of the navigation this year, by your accepting our drafts with about four months to run, we herewith inclose warrants dated 28th December, 4th and 26th January, with inspector's certificates attached; and our drafts as follow," &c.

With this memorandum the *Aberdare Company* handed to *Toms* three of the wharfinger's certificates for the iron rails which were referred to as "warrants," and *Toms* accepted the drafts accordingly.

The bill contained an allegation that "the warrants referred to in the last-mentioned agreement were in fact three of the wharfinger's certificates hereinbefore referred to; and such certificates, according to the custom of the iron trade in similar cases, are, in fact, warrants."

A similar agreement, with a further deposit of wharfinger's certificates, was made between the same parties on the 3rd of March, 1875, for further acceptances to the amount of £7000.

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On the 15th of March, 1875, *Toms* died, and the Plaintiff in the suit was his administrator.

On the 22nd of May the Plaintiff gave notice to *Bolckow, Vaughan, & Co.* that he claimed a lien on the iron rails, for which he held warrants issued by them. In reply, *Bolckow, Vaughan, & Co.* said that they had issued no warrants for the rails, and that they could not in any way recognise the Plaintiff in the matter.

On the 5th of June, 1875, the *Aberdare Company* filed a liquidation petition, and Mr. *Turquand* was appointed receiver of the property. Two of the bills accepted by them had become due, and had been dishonoured. The others had not yet become due.

The Plaintiff, in his bill, claimed a lien on the iron rails mentioned in the certificates, for the sum of £28,000 advanced by him, and upon all moneys received or to be received by *Bolckow, Vaughan, & Co.*, or by *Turquand*, under the contract with the *Aberdare Company*; and prayed an injunction to restrain *Bolckow, Vaughan, & Co.* from parting with the iron rails without first satisfying his lien.

The bill also alleged that the *Ural Railway Company* had opened a credit with the Russian Bank of Foreign Trade in *Lombard Street* in favour of the *Aberdare Company*, and an injunction was asked to restrain the bank and *Turquand* from paying any moneys received under the contract without first satisfying the Plaintiff's lien.

The Plaintiff moved for an injunction in terms of the prayer. The Vice-Chancellor was of opinion that the Plaintiff was entitled to the injunction, but it was arranged that, subject to the right of appeal, the Russian contract should be carried out, and the money received under it should be paid into the *National Provincial Bank* in the joint names of the receiver and a nominee of *Bolckow, Vaughan, & Co.* (1).

(1) 1875. June 24.

SIR JAMES BACON, V.C.:—

This case is one of very great importance and of some nicety, because it is distinguishable from several of the cases which have been referred to in the course of the argument. The only

thing upon this motion for injunction that I have to consider is how an order can be made which shall protect whatever may be ultimately determined to be the rights of the parties without doing any mischief in the meantime. The Plaintiff relies on these terms in the written contract between *Bolckow,*

From this order *Bolckow, Vaughan, & Co.* appealed.

Mr. Jackson, Q.C., Mr. Millar, and Mr. Maclaren, for the Appellants :—

The effect of the Vice-Chancellor's order is to lock up £32,000 of our money for an indefinite time, which may produce irrepa-

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*Vaughan, & Co.* and the *Aberdare Company*, "Payment to be made by buyers' acceptance of sellers' drafts at six months' date against inspector's certificate of approval and wharfinger's certificate of each 500 tons being stacked ready for shipment." It is not disputed that acceptances were given, the dates of which are stated in the bill.

Now for the moment to lay aside authorities, what can be the meaning of these dealers in iron who enter into this written contract? The *Aberdare Company* had a contract with the Russian Government, under which the company were bound to supply the Russian Government with certain rails. They buy those rails of *Bolckow, Vaughan, & Co.* by the contract, one of the clauses of which I have read. The shipment is to be made at the commencement of the first open water at *Cronstadt*. The first of the bills that was given in payment would not become due until the 21st of this month of June. What can be the meaning of these words, "payment to be made by buyers' acceptance?" When the *Aberdare Company* delivered their goods in *Russia* they were to receive the money, but they were not to pay any part of it until the month of June arrived.

Mr. Kay has argued upon another part of the case that the documents in their nature were transferable, and capable of creating a right against the Plaintiff's interest. But the real transaction between the parties is that

*Bolckow, Vaughan, & Co.* say, "You are to give us the acceptances against the two certificates, one by an inspector of the Russian Government that the iron has been rolled and that it is of proper weight, and the other the wharfinger's certificate that those things which were so rolled to the approbation of the inspector are lying on our premises ready for shipment." If the contract had been carried on without interruption, probably all the rails would have been delivered long before the first of the bills of exchange became due. The Plaintiff asserts that such documents as were passed to him by way of equitable charge are, according to the custom of the trade, negotiable instruments, at least to this extent, that they are capable of transferring to the person who receives them and advances his money, or comes under obligations in respect of them, that interest which the memorandum itself purports to convey.

I can see nothing unreasonable in the nature of the contract. It is not necessary to dispute on this occasion whether *Bolckow, Vaughan, & Co.*'s lien as unpaid vendors remains or not, for the injunction does not seek to obstruct that lien in any degree. There may be left out of consideration all the doctrine about stoppage *in transitu*, with all the doubts that beset it. Except in the passage which Mr. Jackson read to me from the decision in *Wentworth v. Outhwaite* (10 M. & W. 436), it has never been raised as a question whether the lien remains, or

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nable injury to us in our business: and this, too, on allegations of a special custom of trade which are entirely unsupported by evidence. The wharfinger's certificate is not a document of title,

whether the non-payment of the price has the effect of rescinding the contract. The question is of the greatest importance at all times, and in this case of bankruptcy it is of the most vital importance; for the contract with the Russian Government may have been so advantageous to the estate which is in liquidation that the trustee or receiver, or anybody else interested, would readily produce money sufficient to pay *Bolckow, Vaughan, & Co.*, in order that they might get the benefit of this contract with the Russian Government. These are questions between the Russian Government and the Plaintiff, and have to be determined in this cause. What means have I of determining them now? It is impossible by any decision I could pronounce on this question of injunction that I could decide anything without anticipating that which can only be properly determined when the cause is brought to a hearing, when the proper evidence has been given on the subject of that custom, a very important matter, upon which the parties are at issue. I find that the stipulations of the agreement are admitted to have been fully performed up to the extent of having the inspector's certificate and the wharfinger's certificate; and although this can be merely guessed at, I find that upon the inspector's certificate is a signature under it, which I take to be that of *Bolckow, Vaughan, & Co.*'s resident manager. If so, they were parties to this certificate of the inspector. The wharfinger's certificate has been read several times in the course of the discussion, but the effect of it only is that the materials there mentioned, which

have been rolled under the contract between *Bolckow, Vaughan, & Co.* and the *Aberdare Iron Company*, are ready for shipment. I have no means of deciding the main and most important question. I have no intention of interfering with the lien of the unpaid vendor, because I cannot do that. I have still less inclination to say that the contract has been rescinded, because the passage to which I have before referred shews that the law in some degree is unsettled upon that subject. I cannot say I think that was the intention of Mr. Baron *Parke*, for I find him saying also that the recent authorities and the inclination of his own opinion was that the contract was not rescinded, and all the justice and all the good sense, as far as I can perceive at this moment, are in favour of that proposition.

Having, then, as I have said, no intention to prejudice that question about the vendor's lien, which the vendor has a right to have decided in this Court, and which I am bound to leave undecided and unaffected by anything that I do, it remains only to be considered whether anything else can and ought to be done. Now that something ought to be done seems to me to be inevitable. It would be unreasonable that the receiver in the liquidation should be able to receive from the government of *Russia* that sum of money which can only be paid to him as representing the estate, and if he does justly represent the estate that ousts the Plaintiff's claim altogether. The Plaintiff would only be a creditor of the estate. I cannot do that. But if the parties like for themselves to

and no custom of trade, even if such a custom were proved, can make it so. It is nothing more than a certificate from our own servant that the goods have been manufactured and are ready for delivery. It does not purport to be an order for delivery. We claim the ordinary vendor's lien on the goods, which lien we have never lost. It is true that we took the acceptances of the purchasers in payment for the goods, but when the bills were dishonoured our lien as vendors revived: *Ex parte Chalmers* (1); *Griffiths v. Perry* (2); *Wentworth v. Outhwaite* (3); *M'Ewan v. Smith* (4); *Schotsmans v. Lancashire and Yorkshire Railway Company* (5); *Townley v. Crump* (6).

SIR W. M. JAMES, L.J., referred to *Pooley v. Budd* (7).

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come to an arrangement, I can facilitate that, and will by all the means in my power do so; and although it may be inconvenient to Messrs. *Bolckow, Vaughan, & Co.* to have the price tied up until the question can be decided, that is a matter they must consider for themselves. I do not feel that I have any power to deal with the money or with the proceeds of the contract, or to interfere with the views which the parties may take of their rights under those contracts.

The bill states, I think quite fairly and reasonably, that *Goubonin* and the *Ural Railway Company*, who represent the Russian Government, have opened a credit with the *Aberdare Iron Company*, and that *Turquand* intends to pay the moneys which will be payable under the contract to the Defendants *Bolckow, Vaughan, & Co.*, without first satisfying the Plaintiff's charge, in which case he will sustain a great injury. It alleges that the rails remain in the possession and control of *Bolckow, Vaughan, & Co.*, and that they intend, with the privity and assent of *Turquand*, to ship the same to *Russia*. That is not the vendor's lien—that is

rescinding the contract of *Bolckow, Vaughan, & Co.* with the *Aberdare Company*. Whether the Plaintiff has that lien which he insists upon is a question to be decided at the hearing, and a question of very considerable difficulty in my mind. The doctrine of stoppage *in transitu* has nothing in the world to do with this case, as Lord *Campbell* said in *M'Ewan v. Smith* (2 H. L. C. 309, 328). Although I think that the doctrine of the law of stoppage *in transitu* is well established, and if there had been in this case, as there is not, and as there was not in *M'Ewan v. Smith*, any *transitus* commenced, there might be questions arising out of that. But there is no such thing. With the strongest desire that nothing now done should prejudice the rights of any party, and that the matter should remain for future decision, I must grant the injunction.

(1) Law Rep. 8 Ch. 289.

(2) 1 E. & E. 680.

(3) 10 M. & W. 436.

(4) 2 H. L. C. 309.

(5) Law Rep. 2 Ch. 332.

(6) 4 A. & E. 58.

(7) 14 Beav. 34.

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Mr. *Kay*, Q.C., and Mr. *Locock Webb*, Q.C., for the Plaintiffs:—

All that the Vice-Chancellor has done is to order the value of the rails to be placed *in medio* until the questions raised in the suit have been determined. We say it is a question which fairly arises on the fact whether the transaction did not amount to a contract by *Bolckow, Vaughan, & Co.* that they would take acceptances of the *Aberdare Company* in satisfaction of payment, and that on such acceptances being given their lien as vendors should be at an end. The question whether an absolute or conditional payment was intended when acceptances are taken, is a question for a jury: *Goldshede v. Cottrell* (1); and if an absolute payment is intended, the vendor's lien will not revive on the bill being dishonoured: *Benjamin on Sales* (2). In this case, by the negotiation of the bills *Bolckow, Vaughan, & Co.* were estopped from saying that the payment was conditional: *Horncastle v. Farran* (3); *Bunney v. Poyntz* (4). With respect to the wharfinger's certificates, we contend that they were equivalent to warrants, and we are entitled to prove that they are so by giving evidence of the custom of the trade. If such certificates had been given to a factor, he would have had power to pledge the goods: *Farina v. Home* (5).

Mr. *De Gex*, Q.C., and Mr. *Robinson*, Q.C., for the receiver of the estate of the *Aberdare Company*.

Mr. *T. L. Wilkinson*, for the Russian company.

Mr. *Jackson*, in reply:—

In *Bunney v. Poyntz* the conditional payment had been converted into an absolute payment.

SIR W. M. JAMES, L.J.:—

In this case I am of opinion that the order of the Vice-Chancellor cannot be sustained.

With reference to the point which was pressed very much upon us both by Mr. *Kay* and by Mr. *Locock Webb*, that the effect of

(1) 2 M. & W. 20.

(3) 3 B. & A. 497.

(2) 2nd Ed. pp. 598, 684.

(4) 4 B. & Ad. 568.

(5) 16 M. & W. 119.



the order is only to keep things *in medio* until the right is determined, the keeping of £32,000 *in medio* may be absolute ruin to a mercantile firm. *Bolckow, Vaughan, & Co.* may be, and no doubt are, persons to whom the keeping of £32,000 *in medio* may be very little more than keeping a few shillings *in medio* to some other persons; but supposing the same order had been made against the *Aberdare Iron Company*, it might very possibly have been the very cause of that failure which we know to have ensued. Stopping £32,000 to a manufacturer may really be of the most serious consequence, and therefore an injunction is not to be granted on the ground that it is merely keeping things *in medio* for a certain time, and only on the allegation by the Plaintiff that there is a question to be tried. The Court must see, under those circumstances, whether there is really anything to be tried.

First of all, it is supposed that the right of a vendor in an ordinary case of stoppage *in transitu* or vendor's lien is interfered with by the allegation of the custom of the trade. The whole equity of this bill, the whole thing which is supposed to make this case differ from what would be the ordinary case between vendors and purchasers who have paid for their goods in bills of exchange, is this—that it is said that such certificates, according to the custom of the iron trade in similar cases, are in fact warrants. To say that is in truth to say a thing which cannot be. No custom of the trade can make a certificate a bill of exchange or a warrant. What is evidently meant by that allegation, giving the most liberal interpretation to it in favour of the pleader, is that people deposit the certificates as if they were warrants. That is really what it comes to. Everybody knows that warrants are things warranting a wharfinger, or warranting somebody else who has possession of the goods, to deliver them. The owner of the goods gives an authority to the person who is the bailee of the goods to deliver them. That is what is meant by a warrant. Such warrants are constantly dealt with, and if they are negotiable they are properly and validly dealt with as a security. And what is meant by saying that such certificates, according to the custom of the iron trade in similar cases, are in fact warrants, can only be this, that persons lend money upon certificates in the same way as they would lend money upon warrants. They may lend money as

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much as they like, but that cannot alter the nature of the documents. No practice of the persons who have got those certificates, and money lenders as between them, would in any way affect the manufacturer, unless you can shew the manufacturer has in some way authorized something to be done. What he has agreed to do is to be found in his contract, and the only question is what the legal rights are under this contract, and whether anything has occurred as far as the manufacturers are concerned, whether they have put their names to or done anything, which has in any way interfered with their legal right. It appears to me that this is to be tried exactly as it would be tried in an action of trover at law, in case the purchaser, or the purchaser's assignee, had brought such an action. Of course the Plaintiff *Gunn*, being only an equitable mortgagee, only a mortgagee by deposit, could not have brought it in his own name, but he could have brought it in the name of the *Aberdare Company*. It appears, therefore, to me to be a mere question depending on the legal right to these goods, upon which the Lord Justice will express his opinion.

SIR G. MELLISH, L.J.:—

There are, as I understand, two questions to be tried, according to the argument of the Respondents, and they say that the fund ought to be placed *in medio* until those questions are tried.

Mr. *Kay* contends that it will be a question of fact to be tried at the hearing, whether those acceptances were taken by the vendors, *Bolckow, Vaughan, & Co.*, in absolute satisfaction of the debt due from the purchasers for the iron, so that the vendor's lien would not revive upon the purchasers becoming insolvent, and giving public notice that they were insolvent; and, secondly, it is contended that the wharfinger's certificate is a document of title representing the goods, so that when that document of title is pledged by the person to whom it is given with a mortgagee, it will, either at law or in equity—he could hardly contend seriously that it would do so at law—but either at law or in equity it will give a charge upon the goods which will be superior to the vendor's lien.

Now, in my opinion, as to the first question, it depends entirely upon the construction of the contract, and there is no question of

fact to be tried at the hearing respecting it. The contract is as follows :—[His Lordship read the contract of the 20th November, 1874, set out above, and continued :—]

Now, it is said that it is a question of fact to be tried, whether that acceptance was taken in satisfaction. It is one of the most ordinary terms of a mercantile bargain for “payment to be made by buyers’ acceptance of sellers’ drafts at six months’ date, against inspector’s certificate of approval and wharfinger’s certificate of each 500 tons being stacked ready for shipment.” It states that those certificates are to be given, no doubt as a condition, before the vendor is entitled to require the buyer’s acceptance. Whoever heard of such a thing in a mercantile contract, when it is said that payment is to be made by buyer’s acceptance of seller’s drafts, that if the acceptance was dishonoured, the right to sue under the original contract did not revive? No one ever heard that if the purchaser became insolvent before the goods were actually delivered, the vendor’s right to refuse delivery to an insolvent purchaser did not revive. Or even if he had actually started the goods, and delivered them to a carrier to be carried to the purchaser, it is perfectly well known that at law upon the buyer’s insolvency there would be a right of stoppage *in transitu* which would revert the vendor’s lien. It would make no difference that a bill had been given which had not yet become due, or that credit had been given. No doubt, if the buyer does not become insolvent, that is to say, if he does not openly proclaim his insolvency, then credit is given by taking the bill, and during the time that the bill is current there is no vendor’s lien, and the vendor is bound to deliver. But if the bill is dishonoured before delivery has been made, then the vendor’s lien revives ; or if the purchaser becomes openly insolvent before the delivery actually takes place, then the law does not compel the vendor to deliver to an insolvent purchaser.

Then the next point is as to the wharfinger’s certificate. It is perfectly plain upon the contract, and on reading the certificate, what the certificate is. It is to be a “wharfinger’s certificate of each 500 tons being stacked ready for shipment.” The certificate itself is in exact conformity with what one would expect: “I hereby certify that there are lying at the works of *Bolckow,*

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*Vaughan, & Co.* 500 tons of iron rails, which are ready for shipment, and which have been rolled under contract." It professes simply to be what it is, a certificate that those tons are ready for shipment. It is merely a security to the buyer that such things are actually there. It is not the same thing as the inspector's certificate. The inspector examines the rails while they are being manufactured at the manufactory, and certifies that they are properly made. The wharfinger certifies that those rails have been actually brought down, and are actually ready for shipment. It is utterly impossible, in my opinion, to make that out to be a document of title. A document of title is something which represents the goods, and from which, either immediately or at some future time, the possession of the goods may be obtained. In this way a bill of lading represents the goods while they are at sea, and by which, when the goods arrive at the port of destination, the possession of the goods may be obtained. So also a delivery order is an order for the delivery of the goods either immediately or at some future time; generally immediately on the presentation of the delivery order the party is entitled to the goods. Therefore it represents the goods. It is perfectly plain that the certificate was never intended to represent the goods, and the goods could never have been obtained by it, because by the contract and by the certificate itself the goods were to be shipped for *Cronstadt* and were to be delivered at *Cronstadt*; and I should like to know whether, when the goods were shipped for *Cronstadt*, and a bill of lading was given for the goods, which would represent the goods certified, and supposing the certificate is mortgaged to *A.* and the bill of lading is mortgaged to *B.*, when they arrive at *Cronstadt*, the man who holds the certificate or the man who holds the bill of lading would be entitled to the goods? There can be no doubt the man who would hold the bill of lading would be entitled to the goods, because that is a real document of title which represents them. Then it is said that there is a custom of the trade to treat these certificates as warrants. Now, in the first place, there is no evidence of such a custom. That these certificates are often pledged, and that as between the party who pledges them and the party who advances money they would be evidence of an equitable charge, is, I think, very probable. The

iron trade, we know, is a very speculative trade. I daresay those who are engaged in it raise money in that way. But if the custom were proved, I cannot understand how any practice of raising money in that way can affect the vendor's rights. The vendor, having agreed by his contract that he would give the wharfinger's certificate in order that the purchaser may have evidence that the goods have been actually made, and now are actually ready to be shipped, cannot help giving the certificate; and how the fact of his giving that certificate, which does not profess to be negotiable, and does not profess to require the delivery of the goods to order or to bearer, or anything of the kind, can affect his lien as vendor, merely because the purchaser chooses to borrow money on the faith of it, I am at a loss to conceive.

Therefore it appears to me that neither of those two grounds is made out at all. The case is the simple ordinary case of a vendor who has sold goods upon credit, and before the time has arrived for the delivery of them the purchaser has become insolvent, and has given notice to all the world and to his creditors that he is insolvent. The vendor cannot rescind the contract, according to the late decisions, but he is entitled to say, I will not deliver the goods until I get actual payment.

The only other question that was raised was this: Mr. *Kay* said that *Bolckow, Vaughan, & Co.* had negotiated the bills. I do not think myself that that would make any difference, because they have no security on those bills; there is no third person or party to the bills; they are simply bills drawn by *Bolckow, Vaughan, & Co.* on the *Aberdare Iron Company*, and they have no security for the payment of the bills except the *Aberdare Iron Company*. *Bolckow, Vaughan, & Co.* may have to take up those bills. Two of them have become due, and although we have no evidence one way or the other as to their being indorsed, or what has happened, we may suppose that as *Bolckow, Vaughan, & Co.* are in good credit, that they have taken up the two bills which are due. Even if the law was that a lien could not be enforced during the time the bills were outstanding, yet all the other bills, looking at the dates, will become due, and will have to be taken up before the goods can be sent to *Cronstadt*. There is therefore no reason that I can see for interfering with the carrying out of the

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contract. If the purchaser or the mortgagees think it is a beneficial contract, and are willing to pay the full price for the goods, of course when the goods arrive at *Cronstadt*, and the full amount of the bills is paid, *Bolckow, Vaughan, & Co.* will be bound to deliver the goods; but in my opinion, they are not bound to deliver the goods otherwise. I quite agree that, under all the circumstances, the Court ought not to grant an injunction so as to interfere with their rights. It seems to me that it would be a very serious thing indeed to do so. Here is a large sum, upwards of £32,000, which, according to the ordinary course of business, and the bargain they have made, they will receive between the 21st of June and the 27th of August, and which they will have to pay to the holders of these bills; and to deprive them of the right of realizing that sum out of this iron until the whole of this case has been decided seems to me to be taking away from a mercantile firm a very large sum of money indeed, which would be of very great consequence to them. I think it ought not to be done unless a clear *prima facie* case is made out, and the Court can see clearly that there is some question of difficulty to be tried at the hearing. In my opinion this case only turns upon matters of law, on which I do not entertain myself any serious doubt. I think the application to the Vice-Chancellor ought to have been refused with costs.

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