

Murray, ap-
pellant,
v.
De Villiers,
respondent.

month, he is entitled to that sum, and such further sum, as shall be a reasonable rent for the cellar, during the rest of the time.

The Court therefore gave judgment, reversing the two sentences appealed against, with costs; and finding the appellant entitled to cellar rent, from the date of the proposal in 1824, for two years at Rds. 50 per month, and for the rest of the period, at such rate, as shall be ascertained by the Master, to be fair and reasonable.

IN RE LOLLY.

COMMISSARIES OF VENDUE *v.* SEQUESTRATOR.

[19th March, 1829.]

Hypothec of Fise. on Estate of Pachter.

Preference of Vendue Commissioner by Instructions of 1793—refused.

In Re Lolly.
Commissaries
of Vendue
v.
Sequestrator.

Lolly was the Government pachter for the retail of wine and spirits. While he held this situation, he purchased certain goods at a vendue sale;—within six months after this purchase, he became insolvent, and his estate was placed under sequestration;—the goods purchased by him as aforesaid, were then in his possession, and were sold by the Sequestrator. When he became insolvent, he was indebted to Government, on account of the pacht payable by him. The then Sequestrator Reitz, ranked the commissioners of vendue, as preferent creditors on the proceeds of the above mentioned goods, before the claim of the Government for the pacht.

The commissioners' claim of preference, was founded not merely, on the unpromulgated vendue regulations, issued by Lord Caledon, (*vide supra* Commissioners of Vendue *v.* Brink, 31st December, 1828, *supra* p. 340,) but on the previously existing instructions and regulations for the vendue master, of 1793, which had been duly promulgated, when they were issued. The Fiscal, by letter to the Sequestrator, admitted on the part of Government, that the commissioners were entitled to this preference.

On the 16th January, 1824, the late Court of Justice, confirmed the Sequestrator's plan of distribution.

Paton and others, sureties for Lolly to Government, for the pacht, appealed against this sentence.

The Government was no party to this appeal.

On the 5th September, 1826, the late Court of Appeal, reversed the sentence of the 16th June, 1824, and decreed:

"the demand of Government, for the pacht money in arrear by Lolly, to have a preferential claim, over that of the Burgher Senate,—the Lawyers,—the Sequestrator,—and the Vendue Masters,—and of J. R. Thomson, as anterior thereto; and doth direct the Sequestrator, to distribute and liquidate the said estate, in the manner now amended," &c.

In Re Lolly.
Commissaries
of Vendue
v.
Sequestrator.

A new plan of distribution, was, in accordance with this sentence, made by the then Sequestrator Kuys, who presented it for confirmation to the Court of Appeals, who refused to receive it;—Kuys then applied to the late Court of Justice, who referred the plan to the Court of Appeals.

After this, nothing was done with respect to it, prior to the 1st January, 1828, when the Supreme Court came, in place of both the late Courts. On the motion of Joubert, for the Commissioners of Vendues, the Court directed the plan of distribution, confirmed by the sentence of the 16th June, 1824, to be submitted to the Master, and to lie open in his office, until the 6th day of next term, for consideration of the creditors, when it would be confirmed, unless cause should be shown to the contrary, reserving to Paton and the other sureties, all such effect in their favor as may arise out of, or belong to the sentence of the Court of Appeals, dated 5th Oct., 1826.

Postea.—The Master having reported, that none of the creditors, had filed any objection thereto, the Court ordered, that the said plan of distribution be formally decreed and confirmed.

8th Septem.,
1829.

DISCOUNT BANK v. HEIRS OF CROUS.

[30th March, 1829.]

Promissory Note,—for accommodation of Endorser,—want of notice to Endorser, of non-payment by Maker, will not discharge Endorser.

This action was brought, to recover from the defendants, the amount of a promissory note, for Rds. 665 5 sk. 2 st., made by Buissinne, in favour of Crous or order, dated 27th February, 1822, payable three months after date, value in account, and indorsed to plaintiffs, by Maasdorp, the authorised agent of Crous.

Discount
Bank
v.
Heirs of
Crous.

Buissinne had become insolvent.

The defendants pleaded, that the claim of the plaintiffs, against Crous the indorser, is barred by their failure, to give Crous notice, of the non-payment of the note by Buissinne, until 1827, and quoted Lybreght, Notaris Ambt. Vert., vol. 2, c. 39, p. 323.

The plaintiffs replied, The note was made by Buissinne,