

BIDDLE v. BIDDLE et al. (No. 9.)

(Supreme Court of Michigan. June 25, 1918.)

1. DAMAGES ⇨81—LIQUIDATED DAMAGES—PENALTIES.

Provision in a contract for sale of land that a payment of \$15,000 should be considered liquidated damages on a breach by the purchaser was properly held to be a penalty, where the property had increased in value from \$1,500 to \$1,750 an acre, and the property had been in possession of the vendor and another contract had been entered into for the sale of the property.

2. VENDOR AND PURCHASER ⇨330—CONTRACT OF SALE—BREACH—DAMAGES.

Where purchaser breached his contract to purchase land, the vendor is entitled to money paid for a survey, abstract, and attorney's fees, but not interest on the purchase price, where the land has greatly increased in value and has been in possession of the vendor.

3. BROKERS ⇨77—COMPENSATION—LIENS.

While an agreement between the purchaser and a vendor that broker's commission should be paid by vendee as part of the purchase price, upon first payment and giving of a mortgage, would not prevent the lien of broker from attaching to the vendee's interest, such lien could not be enforced on breach by vendee before the mortgage was given.

4. CORPORATIONS ⇨566(5) — INSOLVENCY — RIGHT OF STOCKHOLDER—RECOVERY OF ADVANCES.

Where officer of a corporation by fraud obtains money from a large stockholder with which the corporation makes payment on land, but breaches its contract, such stockholder has a prior right to recover such money as against ordinary creditors of the corporation; the corporation having become insolvent.

Appeal from Circuit Court, Wayne County in Chancery; George P. Codd, Judge.

Suit by Louise Biddle against William S. Biddle and others, in which the Detroit Trust Company and others intervened. From an order of the chancellor apportioning certain money in the hands of the trust company, all the parties appeal. Reversed, with directions.

Argued before OSTRANDER, C. J., and BIRD, MOORE, STEERE, BROOKE, FELLOWS, and STONE, JJ.

William H. Wetherbee and Harold H. Emmons, both of Detroit, for appellant Newcomb. Ben C. Hughes, of Detroit, for appellants Hughes and Chevrolet. Frank D. Eaman, of Detroit (Douglas, Eaman & Barbour, of Detroit, of counsel), for appellants Stormfeltz-Lovely Co. and McGinnity. Max H. Finkelston, of Detroit (James O. Murfin, of Detroit, of counsel), for appellant Christie. Henry M. Campbell, of Detroit, for Biddle heirs. Sidney T. Miller, of Detroit (Miller, Smith, Canfield, Paddock & Perry, of Detroit, of counsel), for appellee.

BIRD, J. Primarily this suit was begun in the Wayne circuit court to partition the Biddle estate, but none of the issues of partition are involved in this controversy. The Detroit Trust Company, trustee of the estate