the act of 1805, and the additional premium in that case was imposed upon a re-valuation, without relation to a change in the rates of premium, but resulting from the increased valuation. In this case, the sum demanded arises from the changes made in the rates of premium, arising from a *399] *variation of risk ; to equalize which the 8th article of the present rules of the society requires an additional per-centage to be paid by the present members of the company, in conformity to what is to be imposed upon subsequent applicants for insurance. And it is contended, that the contract being complete between the parties, the insurers cannot add to the consideration to be paid for insurance.

In general, this doctrine is unquestionably correct, but peculiar circumstances except this from ordinary cases. This subject was considered in the quoted case decided between these same parties in February 1810. It is there laid down, and on reflection we are confirmed in the opinion, that in the capacity of an individual of the body corporate, the defendants are bound by the by-laws of the society, so far as is consistent with the nature of its institution. This case is within the 4th section of the 8th article of those by-laws, and therefore, the judgment below ought to have been for the plaintiffs.

Judgment reversed.

Webster and Ford *v.* Hoban. (*a*)

Auction.—Defaulting purchaser.

Upon a sale of land at auction, if the terms be, that the purchaser shall, within thirty days, give his notes, with two good indorsers, and if he shall fail to comply, within the thirty days, then the land to be resold on account of the first purchaser, the vendor cannot maintain an action against the vendee, for a breach of the contract, until a re-sale shall have ascertained the deficit, although the vendee should instruct an attorney to draw a deed, and insert his name as purchaser.

Error to the Circuit Court for the district of Columbia, in a special action on the case, by the plaintiffs in error, against the defendant in error, for not paying the purchase-money for a house sold by the plaintiffs to the defendant, at public auction.

The premises were publicly advertised, and set up at auction, by a licensed auctioneer. On the day of sale, certain written articles, purporting to exhibit the terms, were read aloud by the auctioneer, in the presence and hearing of the defendant and others assembled upon that occasion, and the paper was also handed round and read by those present. Of those articles, three only require notice.

*400] *Art. 1st declares that the highest bidder shall be the purchaser. Art. 3d requires that the purchaser should secure the purchase-money, with interest included, by his promissory notes, with two approved indorsers, payable in six and twelve months. Art. 5th declares that the purchaser shall be allowed "thirty days to comply with the 3d article, at which time (in case of compliance) he shall receive a good and complete title to the property. On failing to comply, within the thirty days, the property then to be resold on account of the first purchaser."

(*a*) February 24th, 1813. Present, all the judges, except Todd, Justice.

Webster v. Doban.

The premises were struck off to the defendant, as the highest bidder, at the price of $4000 ; whereupon, the auctioneer, in the presence of the defendant, signed a certificate, at the foot of the articles of sale, declaring him to be the purchaser at that price.

An attorney was employed to draw a deed of bargain and sale, and received instructions for that purpose, both from the plaintiffs and defendant ; the draft of the deed, with blanks for the date and the name of the grantee, was presented to the defendant, and left with him for inspection ; after examining it, he returned it to the attorney, requesting him to insert his, the defendant's, name in the proper blanks, which he accordingly did. This draft of the deed recited the title of the plaintiffs, and that the defendant, being the highest bidder, had purchased the premises at the sum of $4000, which he had secured to be paid to the plaintiffs, according to the terms of sale.

The breach of the agreement alleged in the declaration, was, that the defendant had failed to give his promissory notes, within the thirty days, or at any time afterwards. The court below decided, that the plaintiffs could maintain no action upon the contract, without first resorting to a resale, and ascertaining the *deficit.*

Jones, for the plaintiffs in error, contended, 1. That the remedy by a resale, was cumulative, *and did not take away the right of action [*401] for a breach of the original contract. 2. That the draft of the deed (as to its collateral effect, as written evidence of the agreement) having been authenticated by an act equivalent to signing, imported a substantive and positive agreement to go on with the contract, and to complete the purchase, and was not subject to be explained or controlled by the original terms.

The authority to contract, he said, might be by parol, although the contract must be in writing. Roberts on Frauds 112 ; Sugden on Vendors 56. Hoban gave the attorney verbal authority to draw the deed, which amounts to an agreement in writing signed.

There was no argument for the defendant in error.

March 3d, 1813. Livingston, J., delivered the opinion of the court, as follows :—If there ever existed a valid agreement between these parties, in relation to the house in question, on which the court gives no opinion, the terms of it must be sought for in the articles exhibited by the auctioneer, at the time of sale. Of these, two only bear on this case. These were, "that the purchaser should secure the purchase-money, with interest, by his promissory notes, with two approved indorsers, payable in six and twelve months :" —and "that the purchaser should be allowed thirty days to comply with these terms, at which time, in case of compliance, he was to receive a good and complete title to the property, and on failure to comply, within the thirty days, the property was then to be resold on account of the first purchaser.

The plaintiffs offered no evidence of any resale, or of any deficiency arising thereon, but contended, that the remedy by a resale was merely cumulative, and did not take away the right of action against the defendant, for his violation of the contract. Such is not the opinion of this court.

The vendee, by the terms of sale, had an option of taking the estate, after it was bid off to him, and in case of refusal, of having it sold again *402] *on his account. It might have produced more than on the first sale, in which case, the surplus would have belonged to him ; or the same price might have been obtained, and then he would have lost nothing ; or it might have sold for less, and then, by paying the difference which would have formed his whole loss, he would not have been exposed, as he must be, if this action proceeds, to have damages assessed against him, by some uncertain and arbitrary or unsatisfactory rule, which might be adopted by a jury. Of these advantages, which were reserved to him by the terms of the auction, the plaintiff had no right to deprive him. The court is further of opinion, that nothing which was done after the sale, at all varied the right of the parties. The judgment below is affirmed, with costs.

Judgment affirmed.

Maryland Insurance Company *v.* Wood. (*a*)

Blockade.

The letter of Mr. Merry to the secretary of state, of the 12th of April 1804, extended to the island of Curaçoa, the order of the lords commissioners of the admiralty, of the 5th of January 1804, respecting the blockade of Martinique and Guadaloupe.

March 3d, 1813. Error to the Circuit Court for the district of Maryland, in an action of covenant on a policy upon the schooner William and Mary, " at and from Baltimore to Laguira, with liberty of one other neighboring port, and at and from them, or either of them, back to Baltimore :" "warranted by the assured to be an American bottom, proof of which to be required in the United States only."

The former judgment of the circuit court, in this case, having been reversed (6 Cr. 29), and the cause remanded for a new trial, the verdict and judgment were again in favor of the original plaintiff.

The defendants took only one bill of exceptions, which stated the execution of the policy, the sailing of the vessel, with proper documents as an American bottom, from Baltimore, on the 8th of March 1805, upon the voyage insured ; her arrival off Laguayra on the 24th of the same month, where she remained three days, laying off and on, vainly endeavoring to obtain permission to enter the port, and on the 31st, sailed towards *403] the port of *Amsterdam, in the Island of Curaçoa, by the direct and accustomed route, with a view and intention of ascertaining, by inquiry of British ships of war, or other vessels, whether the port of Amsterdam was then in a state of blockade, and to enter it, if it should not be blockaded, but if it should be blockaded, not to attempt to enter it, but to proceed to St. Thomas or Porto Rico. That Amsterdam was a neighboring port to Laguayra, being distant about 147 miles. That when she approached Amsterdam, being distant about 30 miles, the master discovered a British vessel, at the distance of 21 miles, whereupon, he altered the course of the schooner, and stood directly towards the British vessel, for the purpose of inquiring whether Amsterdam was still in a state of blockade ; that while so standing for the British vessel, which was a frigate then actually supporting the blockade of the port of Amsterdam, the schooner was captured by the