

none can seek recovery of such, unless he condescend *quo modo desiiit possedere*; else all commerce would be destroyed; and whoever could prove that once any thing was his, might recover it *per mille manus*, unless they instruct their title to it. *2do*, Though it should be condescended that they were lent, yet it must be proved only *scrito vel juramento*, being a matter above an hundred pounds. The pursuer *answered*, That in liquid sums or promises, witnesses are not receivable above that sum; but, *in corporibus* or facts, as in bargains of victual, made and delivered, witnesses are sufficient, though for greater value.

No 287.

THE LORDS found, The pursuer behoved to condescend upon the way the books were delivered; and found it probable by witnesses.

*Fol. Dic. v. 2. p. 161. Stair, v. 1. p. 258.*

\* \* \* Newbyth reports this case :

1665. *January 28.*—WALTER SCOT having right by assignation from his father, Sir John Scot of Scotstarvet, to six volumes of Atlas Major, which the said Sir John caused reprint, and made some voyages to Holland for that effect; after the date of which assignation, the said Sir John did lend to Sir John Fletcher, at his earnest desire, the said six volumes; and now pursues him for redelivery thereof; the time of calling of which action, the question was touching what was necessary to be proved in the said summons; for it was *alleged* by Walter Scot the pursuer, That it was sufficient for him to say and prove, that the books were his, and that they were in Sir John Fletcher's possession; or else, *quod dolo desiiit possidere*, and *rei vindicatione* to pursue for restitution of his own goods, without any necessity for him to prove that they were lent to Sir John Fletcher, any other way than by his own declaration: To which it was *answered*, That where the party that delivers the goods is pursuing for redelivery, in that case, it is not sufficient for him to say, that the goods are in the defender's possession, and that he had once a right to them; but he must prove the delivery, and *ex qua causa* they were delivered; which can only be probable *scripto vel juramento*. THE LORDS repelled the defence, and found the summons probable *pro ut de jure*, in regard the subject of controversy was books *et sic inter mobilia*.

*Newbyth, MS. p. 22.*

1665. *December 12.*

RAMSAY against WILSON.

No 288.

POSSESSION presumes property in moveables, but yields to stronger contrary presumptions.

*Fol. Dic. v. 2. p. 161. Stair.*

\* \* \* This case is No 5. p. 9114, *voce* MOVEABLES.