

R. S. the initial letters of Robert Simpson's name. For a contract of sale is perfected *solo consensu*; and our law allows no hypothec to the seller, for the price of the goods sold.

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THE LORDS found, that a declaration of the Weigh-house clerk of Glasgow, bearing that James Maxwell had weighed over to Robert Simpson's wife ten hogsheads of tobacco, weighing 4500 pounds weight, marked R. S., did transmit the property to Simpson; and that therefore it ought to be made forthcoming to Thomas Main his creditor arrester.

*Fol. Dic. v. 1. p. 592. Forbes, p. 436.*

1714. June 17. WILLIAM CARSE *against* SIR JOHN HALYBURTON.

WILLIAM CARSE being creditor to Sir George Hamilton, causes a messenger offer to poind the plenishing in his debtor's dwelling-house. Sir John Halyburton compares, and produces a disposition to the plenishing and moveables in the house, conform to a particular inventory, expressing the particulars disposed, and the value exceeding the sum due to William Carse, upon which the poinding is stopt.

William Carse arrests in Sir John Halyburton's hand, and libels upon his debt and diligence, and stopping of his poinding by a simulate disposition; and concludes payment either upon his arrestment, or for damage by stopping his diligence.

The defender *alleged* the goods were disposed to him for just and onerous causes, which he instructed by production of bonds or borrowed money, and craved no further interest than the payment of his bonds, as likewise an instrument of possession of the goods.

It was *answered*, The possession was simulate, the disponent having retained the true possession of the goods by the space of three years and a half after the symbolical possession, during which time he transported the goods from one dwelling-house to another, and disposed of some of them at his pleasure, and likewise suffered the pursuer's debtors to continue the same possession for two years and a half since the poinding; so that the disposition is only a colour to cover Sir George, and defraud his creditors.

It was *replied*, There can be no fraud, because there was a just onerous cause instructed, and he might lawfully allow the disponent to continue a precarious possession.

It was *duplicated*; Though the defender be a true creditor, and by the disposition have *jus ad rem*, yet seeing no true possession followed for so long time before the poinding, nor any possession taken by the defender at the time of the poinding nor since, the property was not transmitted to the defender, but did still remain with the disponent; and consequently the pursuer had right to poind the goods belonging to his debtor and in his possession, and the defender

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A disposition by an insolvent person, with an instrument of possession, but *retenta possessione* for several years, found not to transfer the property.

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was liable to make up the pursuer's damage for hindering him to obtain his payment by compleating his diligence.

'THE LORDS found the property was not transmitted to the defender by disposition and instrument of possession, the disponent having continued so long in possession before and since the pointing; and remitted to the ORDINARY to hear the parties, whether the defender should be liable for the pursuer's debt *nomine damni* by stopping his pointing, the value of the goods in the disposition produced at the pointing being more than the debt, or if he should only have access to affect and recover the goods which would have been pointed.'

*Fol. Dic. v. 1. p. 592. Dalrymple, No 106. p. 148.*

\*.\* Forbes reports this case :

WILLIAM CARSE, creditor to Sir George Hamilton of Tulliallan in the sum of L. 1000 Sterling, by his accepted bill, drawn upon him by his Lady, dated 23d June 1708, having, by virtue of letters of horning, containing pointing and arrestment, endeavoured to point Sir George's household plenishing, was interrupted 3d November 1711, by Sir John Halyburton, who pretended right thereto, conform to a disposition dated 9th March 1708, and symbolical possession, conform to an instrument of possession taken a few days thereafter. Mr Carse suspecting collusion in the matter, in regard Sir George had continued several years in the natural possession after the said disposition and instrument, which was a strong presumption that the disposition was simulate, and in trust, or gratuitous, arrested the plenishing in the hands of Sir John Halyburton, and pursued a furthcoming. Sir John for proving the onerous cause of his disposition, produced his grounds of debt, and deponed thereon, that the disposition was nowise in trust, but granted in security of the foresaid debt, which was still resting : whereupon he *alleged*, That the presumption that his disposition was simulate was taken off by his proving the onerous cause.

THE LORDS found the disposition in favour of Sir John Halyburton, with symbolical possession, *retenta possessione naturali* by the disponent for three years and a half before, and two years and a half after the pursuer's offering to point the plenishing disponent, did not convey the real right and property of the goods to the defender.

*Forbes, MS. p. 63.*

In moveables, possession presumes property. See PRESUMPTION.

Sale of moveables. See SALE.

Delivery to a mandatary in the mandatary's own name. See SURROGATUM.

See APPENDIX.