

1789. July 24. JOHN YOUNG, *Attorney for the Assignees of MESSRS SANDIEMAN and GRAHAM, against DAVID STEWART, Trustee upon the Estate of JAMES STEIN.*

SALE.

Although a Bill of Lading has been transmitted, it was found the goods might be stopped *in transitu*, when the consignee had become bankrupt.

*Faculty Collection, X. 144; Dictionary, 14,218.*

JUSTICE-CLERK. The first thing to be inquired into is the effect of a bill of loading. The shipmaster grants it, and the goods cannot be delivered to any one who is not possessed of it, for no other person can discharge the shipmaster. Sandieman and Graham might have indorsed it away to any one. The civil possession is in Sandieman and Graham; the natural possession is in the shipmaster, not in Stein. Hence the idea of the law is, that the shipmaster holds the subject in trust for the possessor of the bill of loading. Stein might have taken back the goods or disposed of them otherways, upon getting up the bill of loading, but on no other condition. Had Stein demanded back the bill of loading, Sandieman and Graham might have refused it, as being in advance. It is only on the footing of fraud that he could have drawn back the goods. Now there is no fraud here, as Sandieman and Graham were creditors to Stein.

PRESIDENT. Had there been a sale made, and delivery of goods ordered and the bill of loading sent, I should agree with Lord Justice Clerk. An indorsation to a bill of loading gives a *jus ad rem*; and so it was determined in the case of Hastie and Jamieson. But here there is nothing of the nature of a sale; it was merely a transaction with a factor. The property remained with Stein, and he might have countermanded the destination. It is said that Stein was debtor to the factor; that this does not vary the case. Stein was still proprietor; Sandieman and Graham run no risk. The *rei interitus* would have fallen on Stein. *Res perit suo domino*; and the judgment of the King's Bench proceeded on that ground. The right claimed was not of property but of retention.

DREGHORN. Sandieman and Graham were factors: their claim is an account current, and they did not rely on the goods for payment.

On the 24th July 1789, "The Lords sustained the reasons of the reduction brought by David Stewart."

*Act.* A. M'Conochie. *Alt.* A. Rolland.

*Reporter,* Dreghorn.

*Diss.* Justice Clerk, Alva, Rockville.

*Non liquet,* Hailes, who thought that the cause should be delayed until the issue of the other cause in the King's Bench.