

THE LORDS, (27th January 1796), sustained the reasons of reduction, and found the defender liable in repetition of what she had recovered out of her father's estate. No 247.

And upon advising a petition, with answers, they "adhered."

Lord Ordinary, *Monboddie*. Act. D. *Cathcart*. Alt. M. *Ross*. Clerk, *Menzies*.  
D. D. *Fac. Col. No 220. p. 516.*

## DIVISION IX.

### Rights when presumed simulate.

## SECT. I.

### Disposition of moveables *retenta possessione*.

1630. *January 30.* CALDERWOOD *against* PORTEOUS.

No 248.

IN a process upon the passive titles, the defender acknowledged his intromission with the heirship moveables, but that it was in virtue of a disposition from his father. *Objected*, That the disposition was null, *retenta possessione*. The LORDS sustained the answer, that the father and son lived in the same house, and that it must be reputed the son's possession, he being married, and the father old and infirm and a widower.

*Fol. Dic. v. 2. p. 156.*

\*\*\* This case is No 39. p. 9681, *voce* PASSIVE TITLE.

1662. *June* . BOWIS *against* BARCLAY of Johnstoun.

ROBERT BOWIS *alleging*, that John Wood was debtor to him in a certain sum of money, as cautioner for John Strachan of Haugh-head, and having arrested certain goods in the hands of John Barclay of Johnstoun, pursues to make the arrested goods furthcoming. It was *excepted* by the defender, That the goods No 249.

No 249.

pertained to himself, by a disposition from the said John Wood, for a very onerous cause, viz. for farms and duties owing by him to the defender, his master, long before the arrestment. It was *answered*, That the disposition was made *retenta possessione* for the space of divers months; and, before any possession apprehended, Wood was denounced rebel at the pursuer's instance, and consequently the disposition was null *quoad* the pursuer. It was *replied*, That the disposition being made before the disponent was rebel, he might lawfully suffer the disponent (his own tenant) to keep still the goods, as long as he pleased, the rebel's escheat not being gifted and declared; and the act of Parliament doth not annul any disposition before the rebellion, but only such as are made *stante rebellione*.

THE LORDS found the allegiance and reply relevant.

*Fol. Dic. v. 2. p. 156. Gilmour, No 45. p. 33.*

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1666. February 9. Colonel HAITLIE *against* ARTHUR LYLE and Others.

No 250.

THERE is a spuilzie pursued at the instance of Colonel Haitlie, against Arthur Lyle and certain other persons, for spuilzie of a great quantity of yarn belonging to the pursuer, and in his possession. It was *alleged* for the defenders, That the said yarn was lawfully pointed. It was *replied*, Ought to be repelled, unless the defender would allege that the yarn was pointed for a debt due by the pursuer after the said yarn being bought and delivered to him, and the price paid, and he in possession by the space of divers days before the pointing, could never be pointed for any other debt, nor can the pointing liberate. THE LORDS assoilzied the defender from the libel, in respect the yarn pointed was in the common debtor's cellar, and pointed out thereof, and that it was looked after by the common debtor's servants.

*Fol. Dic. v. 2. p. 156. Newbyth, MS. p. 57.*

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1682. January 11. CREDITORS of HAMILTON *against* HAMILTON.

No 251.

IN a reduction at the instance of creditors, of a disposition granted by the common debtor in favours of his sister and brother-in-law, of his house and shop, upon this reason, That the same was simulate, seeing it was made *retenta possessione*, he having continued in the possession for two years, keeping open shop, and continuing his business as formerly; the LORDS, in respect that the sasine upon the tenement was not taken for 18 months after the date of the disposition, and that the common debtor continued to possess, and the same being all the estate he had till he broke, reduced the disposition as simulate, *ad hunc effectum*, to bring in all the creditors *pari passu* according to their diligence. In this case the LORDS refused to reduce upon the act 1621, because