

No 3. disponent becomes insolvent, process lies for stopping his infestment, and drawing back the disposition; December 1721, Selkrig *contra* Selkrig, No 28. p. 9167.

*Answered*; Where the sale remains *in nudis finibus contractus*, there is no more than a personal obligation; and neither party can demand implement, unless he be ready and able to give it. But here the transaction did not remain upon the footing of a minute of sale. The lands were delivered on the one hand, and the price secured on the other: And this is equivalent to payment; "si is qui vendidit fidem emptoris sequutus fuerit, dicendum est, statim rem emptoris fieri," § 41. Inst. De R. D. Indeed, the *pactum legis commissoriae* was introduced for the very purpose of preventing the immediate transference of property upon delivery; and, since no paction intervened in the present case, the seller must be understood to have betaken himself to the personal security of the purchaser.

Excambion stands upon different principles from sale. Each party is *debitor speciei*, and the contract is not completed without an effectual transference upon both sides, which cannot take place, if one of the parties was not the real proprietor of the species which he took upon him to convey. But, in sales, the seller only is *debitor speciei*, and the purchaser is *debitor nominis*; there is no *ipsum corpus* to be delivered by him; and, therefore, his obligation may be satisfied by equivalents, by giving security, as well as by actual payment.

"THE LORDS repelled the reasons of reduction, and assolizied."

G. F. Act. Macqueen. Alk. Grosbie.  
Fol. Dic. v. 4. p. 248. Fac. Col. No 55. p. 290.

No 4. 1778. January 17. Earl of SELKIRK *against* NASMITH.

A REFERENCE of the price in a contract of sale to arbiters was found to be binding on the heirs of the referee, and to be sufficient evidence of the bargain.

Fac. Col.

\*\* This case is No 11. p. 627. *voce* ARBITRATION.