

" possession. If goods are sold upon credit,
 " and nothing is agreed upon as to the time
 " of delivering the goods, the vendee is imme-
 " diately entitled to the possession; and the
 " right of possession and the right of pro-
 " perty vest at once in him. But his right of
 " possession is not absolute; it is liable to be
 " defeated if he becomes insolvent before he
 " obtains possession. Whether default in pay-
 " ment when the credit expires will destroy
 " his right of possession, if he has not before
 " that time obtained actual possession, and put
 " him in the same situation as if there had been
 " no bargain for credit, it is not now necessary
 " to enquire, because this is a case of insolvency,
 " and in cases of insolvency the point seems
 " to be perfectly clear."

It seems, therefore, to be clearly settled, that
 unless actual possession has been delivered to
 the purchaser, the vendor is not deprived of his
 right of lien, as against the assignees of the
 purchaser in the event of his insolvency.

But the question in this case arises from the
 circumstance that the Appellants filled the double
 character of vendors and warehousemen. By the
 delivery order it was stated that rent was to
 commence from January 12th, 1876; and it
 appears that at the time when Webster and
 Co. obtained a transfer of the goods to them-
 selves, their clerk had the rent calculated up to
 the month of July. The question then comes,
 was the arrangement that warehouse rent was to
 be paid equivalent to an actual delivery, so as
 to prevent the vendors from having their right
 of lien. That point seems to have been deter-
 mined in the case of *Miles v. Gorton and others*,
 which has been cited from the 2nd Crompton and
 Meeson's Reports, page 504. The following is
 the marginal note in that case: "goods were sold
 " under an invoice which expressed that they

“ remained at rent. The vendee subsequently
“ accepted a bill drawn by the vendor for the
“ price, which was negotiated by the vendor.
“ Whilst the bill was running, the vendee sold a
“ part, which, by his direction, was delivered by
“ the vendor to the sub-vendee, whom the vendor
“ charged with warehouse rent for the part,
“ which he paid. Subsequently the vendee
“ became bankrupt, and the bill was dishonoured.
“ Held that the assignee of the bankrupt vendee
“ could not without paying the price maintain
“ trover against the vendor for the residue
“ of the goods which had remained in his
“ hands.” In the argument in that case it
was contended that the vendors held in two
capacities,—one as warehousemen and the other
as vendors. Sir William Follett, in arguing
the case, said, “It can surely make no dif-
“ ference whether the receipt of rent, and
“ the other acts showing a delivery, are done
“ by a third person, or whether the vendor
“ unites in himself the character of vendor
“ and warehouseman; the acts done by him
“ as a warehouseman must have the same effect
“ on his rights as vendor as if those acts
“ were done by a third person being a ware-
“ houseman, and not the vendor.” In answer
to that remark Mr. Justice Bayley says, “The
“ goods remained in the possession and control
“ of the vendor. Where the goods are in the
“ hands of a third person, such third person
“ becomes by the delivery order the agent of the
“ vendee, instead of the vendor, and it may
“ then well be said that the warehouse is the
“ warehouse of the vendee, as between him
“ and the vendor. I do not think that the
“ payment of warehouse rent has the effect of
“ a constructive delivery of the whole in a case
“ where the goods remained in the possession
“ of the vendor.”

In this case the goods, whilst in the warehouse, though rent was payable for them, remained in the possession of the Appellants; and their Lordships are of opinion that as the goods remained in the possession of the vendors, and no actual delivery had been made to the purchaser, the vendors' lien revived upon the insolvency of the vendees.

Under these circumstances their Lordships think that the Plaintiffs are not entitled to recover: and they will humbly advise Her Majesty that the judgment of the Supreme Court and the rule absolute be reversed and set aside, and that the rule to set aside the nonsuit and to enter a verdict for the Plaintiffs. Respondents, be discharged with costs. The costs of this Appeal will be paid by the Respondents.

