

1715. February 15.

JOHN WARRANDER and ROBERT STIRLING *against* JOHN ALEXANDER and  
ADAM THOMSON.

DUNCAN LUTTIT skipper in Prestonpans, by his bill of loading, 8th January 1712, obliges himself to deliver to Robert Stirling merchant in Rotterdam, or order, 20 bags of goods; and on the 20th of January thereafter delivers the goods to Richard Sheriff in Prestonpans, and takes his receipt of the particulars, viz. Muslins, pepper, calicoes, &c. for which Sheriff obliges him to hold count so soon as Luttit returned to Rotterdam, which was in May thereafter; he indorses Sheriff's receipt to Stirling, and he to Warrander his correspondent here. John Alexander and Thomson his cedent coming to know that there had been some goods lodged in Sheriff's hand by Luttit, arrest the same upon a dependence; and thereafter the cause being advocated from the inferior Judge, the question came to turn upon this, Whether the goods were presumed to belong to Luttit, (and in consequence to the arrester) or to Stirling? And,

It was *alleged* for the arrester, *imo*, That he was founded in the general rule of law, that possession presumes property; and therefore since the goods were lodged in Sheriff's hands by Luttit, they were presumed to belong to him. And *2do*, The receipt being taken in his own name, and Sheriff bound to be accountable to him, the presumption was in favours of the arrester, that they were Luttit's, unless the contrary were clearly instructed.

*Answered* for Stirling and Warrander, That though the rule takes place in moveables in general, yet not in this case; for a skipper's possession by goods being on board of him, presumes not property, but that the goods belong to the merchant, and the skipper hath only naked custody and retention, like a common carrier. *2do*, To what purpose should the indorsation of Sheriff's receipt have mentioned that the goods were Stirling's, seeing all that was designed by it, was a warrant to Sheriff to deliver them; so that the only design seems to have been that Luttit should satisfy his trust, and Stirling have his own goods, and therefore the order was conceived in plain and general terms.

"THE LORDS found, that since Luttit by his bill of loading, dated the 8th of January 1712, was obliged to deliver to Stirling, or order, 20 bags of goods; and having on the 20th of the said month delivered Sheriff five pieces of calicoe, six pieces of muslin, and 14 bundles of pepper, for which he took Sheriff's receipt in his own name, and obligation to hold count to him for them; and since Luttit in May thereafter, did order Sheriff to deliver the saids goods or prices to Stirling or order, and took no discharge of the bill of loading from Stirling, that these circumstances were sufficient to infer a presumption, that these goods in Sheriff's receipt were a part of the goods contained in the bill of loading to Stirling; and to elide the presumption of Luttit's property thereof by his possession, or his taking a receipt from Sheriff in his own name.

Act. Ro. Dundas et Jo. Falconer.

Alt. Ja. Ferguson.

Clerk, Robertson.

Bruce, vol. 1. No 76. p. 92.

No 25.

The presumption that possession presumes property, found done away by other presumptions.