

REEVES -VS- CAPPER [1838]

Court of Common Pleas

Substance of a pledge -- *Chronometer*

Tindal C.J.

The question which has arisen upon the motion for setting aside the verdict in this case appears to us to turn entirely upon the legal effect of the contract under which the chronometer was delivered by Wilson, the then owner, to Messrs. Cappers on the 23rd of December 1836. And it appears to us, upon the evidence, that Messrs. Cappers by the delivery of the chronometer to their clerk on that day, upon the terms of the special contract entered into between Wilson and them, acquired the legal property in the chronometer, to be held by them as a security for the repayment of £50; and that Wilson had nothing left in him but the reversionary property in the chronometer, to come into possession after such repayment had been made.

The chronometer was delivered to Messrs. Capper, and it was delivered for a valuable consideration, and this distinguishes the present case from those, in which it has been held, that a verbal gift of chattels, unaccompanied with delivery of possession, passes no property to the donee; *Reed v. Blades* (5 Taunt. 212), *Irons v. Smallpiece* (2 B. & Ald. 551). Further, the chronometer was delivered under a written agreement; and although such agreement not being under seal, that circumstance becomes immaterial as to the question of property, yet being a written agreement, it proves with precision and accuracy the object of the delivery, and the nature of the interest intended to be passed.

"In consideration of your advancing £100. instead of £50, I hereby make over to you, as your property, until that sum be repaid, my chronometer, &c. you allowing me the use for this voyage."

At the moment, therefore, of the delivery to Messrs. Capper's clerk, the property vested in Messrs. Capper for the purpose and upon the condition mentioned in the written agreement, which condition has never been performed by repayment of the money.

Then arises the point upon which the Plaintiff rests his claim to the chronometer under the subsequent pledge to him, for a valuable consideration; namely, that the possession of the chronometer having been afterwards parted with by Messrs. Capper, and restored, as it is contended, to Captain Wilson, the property of Messrs. Capper in it was entirely lost, either on the principle, that the agreement with Messrs. Capper must be held fraudulent and void, as possession did not accompany it; or upon the ground, that where the party to whom a personal chattel is pledged, parts with the possession of it, he loses all right to his pledge.

As to the first objection to the title of the Defendants, the want of possession, under the agreement, can at the utmost amount to no more than a ground of fraud to be submitted to the jury; and no such question was made at the trial; and indeed the answer to the objection is sufficiently obvious, that the parting with the possession followed, and was consistent with the very terms and provisions of the agreement itself.

And as to the second point, we agree entirely with the doctrine laid down in *Byall v. Rolle* (1 Atk. 165), that in the case of a simple pawn of a personal chattel, if the creditor parts with the possession he loses his property in the pledge: but we think the delivery of the chronometer to Wilson under the terms of the agreement itself was not a parting with the possession, but that the possession of Captain Wilson was still the possession of Messrs. Capper. The terms of the agreement were, that:

"they would allow him the use of it for the voyage:"

words that gave him no interest in the chronometer, but only a licence or permission to use it, for a limited time, whilst he continued as their servant, and employed it for the purpose of navigating their ship. During the continuance of the voyage, and when the voyage terminated, the possession of Captain Wilson was the possession of Messrs. Capper; just as the possession of plate by a butler is the possession of the master; and the delivery over to the Plaintiff was, as

between Captain Wilson and the Defendants a wrongful act, just as the delivery over of the plate by the butler to a stranger would have been; and could give no more right to the bailee than Captain Wilson had himself.

We therefore think the property belonged to the Defendants, and that the rule must be made absolute for entering the verdict for the Defendants.

Rule absolute.

