

1786. August 2. WILLIAM SIMPSON *against* The CREDITORS of DUNCANSON.

No 39.  
What delivery  
requisite to  
transfer the  
property?

WILLIAM SIMPSON employed Duncanson to build a ship for him.

The materials composing the hull were to be provided by the builder; but the employer was to furnish the masts and other articles necessary for completing the vessel, and the price was to be paid in three different portions; one at laying the keel; another, when the vessel was built up and planked to the top of the gunwall; and the remaining sums when the ship was launched.

After receiving payment of the first portion, Duncanson, the shipbuilder, became insolvent. The factor on his sequestrated estate insisted, that the ship, in its then imperfect state, was to be viewed as still the property of the bankrupt, the proceeds of which were to be divided among his creditors in general. Mr Simpson, on the other hand, *contended*, That by the construction of the vessel in terms of the contract, it became his, *specificatione*; the builder being to be considered merely as a mandatary, who acquired, not to himself, but to his constituent.

The determination of the case was thought by the Judges to depend, not so much on general principles of law, as on the special terms of the agreement. By these the employer was to pay the price in different portions. Before payment, however, he had a right to see the work so far properly performed: Thus, as the builder proceeded, such an appropriation took place, as prevented his creditors from attaching the ship without refunding the sums advanced.

THE LORDS found the claim of Mr Simpson to be preferable to that of the creditors of the bankrupt.

Lord Reporter, *Morbodo*. Act. Mat. Ross, Tait. Alt. Wight, Rolland.  
C. Fol. Dic. v. 4. p. 251. Fac. Col. No 290. p. 446.

1803. November 24. ARNOTS *against* BOYTER.

No 40.  
A foreign  
merchant  
from whom  
goods are  
commissioned,  
is entitled  
to send the  
bill of lading  
to his own  
agent, and to  
demand security  
from the  
purchaser  
that the price  
will be paid  
when due.  
On failing  
to grant such

MOENS and SON of Rotterdam, having shipped goods to the amount of £225:8:3, which had been commissioned (26th November 1802) by Stewart Boyter, merchant in Dundee, the invoice was sent to him; but they sent the bill of lading to Peter and George Arnots, their own agents in this country. Four months credit was to be allowed.

When the goods arrived, (14th December), Boyter had become embarrassed in his circumstances, although there was no insolvency. Accordingly, Messrs Arnot took a protest against him; and declined delivering the said goods, unless Mr Boyter would give sufficient security for paying the value thereof, at the expiry of the credit specified in the invoice, otherwise that he should be liable for any deficiency of price upon a sale of the goods. Upon the idea that he was not obliged by his bargain, and that it was not consistent with