

the arrestment; unless he had refused to allow the arrester at his desire the like liberty 11 March 1636 Diak contra Spence and Thomson. All the moveables in ones possession may be pained or distrained for his personal debt: because the right of moveables is presumed from possession, so as neither his assertion nor his oath, that they belong not to him will stop the paining. Stat. lib. 4 fol. 47 § 26. Independent Spence wood (small) Comprising silus that a ship the be made the cannot be pained, but must be appraised. If persons appear to make faith, before a paining is complete that such goods belong to them the execution cannot proceed. If the messenger or other officer as Judge in the execution is allowed to take the oath of such persons. He is not bound to acquiesce in their Deposition in general, that the goods belong to them; and not to the painer's debtors: but may put any pertinent Interrogatories to the Deponent, for lifting out the true right, as how and for what Cause they became his who claims them? whether by natural or simulate possession? If his right to them was in trust only for the behoof of the painer's debtors? If he bought them and paid the price? If he refused to possess them? and the answers to these questions ought to be set down in the Execution of paining. If here the pretender to the goods, refuses to be thus particular in his oath, the Executor of the paining may without respect there to proceed to paine. The reason of this is, that the Legal Diligence of Creditors may not be obstructed by the Dispositions given by Debtors to their Confidants: in that if the Disposition be granted in security of some debt the ways are equal to the Subject Disposer, the Creditor for any may pay the same, and go on with his Diligence. Stat. lib. 4 fol. 30 § 6 fol. 47 § 26 fol. 49 § 7. An oath to stop paining may be given not only by the owner of the goods but, in case of his absence without suspicion or collusion by his wife, or Child, or Domestick servant, or one having Commission from him to give it: partly, for that the owner could not know the time of the paining; partly, for that he may by way of action recover the goods the pained for another man's debt, which would be more in convenience to the painer. But the the pretender to the goods should depone to the messenger's satisfaction. Such an oath in his own favour, is but like an oath of

of Credulity or Calumny, which in possessio vincit only paining in the Interim not withstanding the presumption of property from possession, and doth not determine the point of right: For the person at whose Instance the paining was to be executed, may thereafter the argue that oath in proof of Declarator by swearing, that such goods were truly by Declarator in order to paine them. Stat. lib. 1 fol. 9 § 22 lib. 4 fol. 30 § 6 fol. 47 § 26. A pretender may likewise to paine his Debtors goods by one pretending right thereto by virtue of a Disposition with a simulative possession granted to him, but he shall be fore for an onerous fault, during which time he shall retain the natural possession; and the receiver of the Disposition having deposed him to continue in possession, shall answer after appearing to paining upon account the Disposition being found not to convey the right to the painer, for that it appeared to have been granted only in security of the Debtors debts from the Debtor, and that Declarator's Disposition of the paining by virtue of that Disposition was found liable to make the goods still remain to the Debtor whose Diligence was hindered, in the state they were in at the time of the stop, or pay the cost due to him in way of Damages, the debt being within the value of the goods, and found in the Disposition produced on stopping the paining 1714. Case contra Hays v. Hays. The paining was not after the paining of some iron was complete, while the iron was being, and not yet delivered to the painer, and offering to make faith that the goods were not his persons, for whose debt they were pained, but his own; the messenger was not obliged to take such an oath, or to restore the goods, and mainly to pay: without prejudice to him to insist for his Iron via relictas as accorded 9 July 1675 Gotts Contra Hays v. Hays.

When no person pretends right to the goods about to be pained, they are appraised upon the ground by the sworn appraisers in the place, or failing these by appraisers chosen by the messenger or other officer pro re Nata against whom the Debtor can Insturial no Just exception Stat. lib. 4 fol. 47 § 31. to the value of the Debt, and the Sheriff's fee, that is, the twenty penny more, or so far as they will extend if of less value than the Debt.