

P E R I C U L U M.

S E C T. I.

Periculum Rei Venditæ.

1667. December 13.

HUNTER against WILSONS.

HUNTER having charged Wilsons for payment of 500 merks contained in their bond, they suspended on this reason, the bonds bears expressly, that the same should not be paid till the suspender be put in possession of a tenement of land in Glasgow, for a part of the price whereof the bond was granted; *ita est*, they neither were nor can be put in possession, because the house was burnt in the conflagration in Glasgow. It was *answered*, *Non relevat*, because after perfecting the vendition *periculum est emptoris*, and therefore this being an accidental fire, wherein the seller was no ways in *culpa* nor in *mora*, in respect, that at that time there was a liferenter living, whose liferent was reserved in the disposition. It was *answered*, That albeit in some cases the peril be the buyer's, yet where there is an express obligation, that no payment shall be until possession, by that express paction payment cannot be sought. It was *answered*, That the buyers had taken possession after the burning, and had built the house. It was *answered*, That the possession of the ground cannot be said the possession of the house; *terra non est domus*; and therefore, this being but a small part of the price, in such a calamitous case the suspenders ought to be liberate thereof.

Notwithstanding of all these allegiances, the LORDS found the letters orderly proceeded. Here the buyer was infeft before the burning, and did voluntarily take possession after the burning.

Fol. Dic. v. 2. p. 56. Stair, v. 1. p. 493.

NO 1.
A house being bought, and thereafter burnt, the damage was found to fall on the buyer.