

Case No. 5,989.

HAMILTON v. RUSSELL.

{1 Cranch, C. C. 97.}<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1802.<sup>2</sup>

WITNESS—COMPETENCY AND CREDIBILITY.

Possession of the goods by a witness, does not create such an interest in the witness as to render his testimony inadmissible in favor of the party under whom he holds the possession.

Trespass for ordering an execution to be served on the plaintiff's goods, at the suit of the defendant [James Russell], against James and Robert Hamilton. The goods had been taken in the possession of Robert, and the defendant alleged that the deed of conveyance under which the plaintiff [Thomas Hamilton] claims, was fraudulent as to the creditors. The plaintiff offered Robert Hamilton as a witness. The defendant objected that he was interested, because, if the plaintiff recovered, Robert would still remain in the possession and use of the goods by permission of his brother, (the plaintiff,) as he had done heretofore.

But THE COURT were unanimously of opinion that the possession, or the probability that his brother would suffer him to remain in possession, was not such an interest as affected his competency, but went only to his credibility. (See the other points of this case in the report of it in the supreme court of the United States, 1 Cranch [5 U. S.] 309, where the judgment of this court was affirmed.)

{The question of the competency of the witness does not seem to have been raised in the supreme court.}

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

<sup>2</sup> [Affirmed in 1 Cranch (5 U. S.) 309.]