

1775. December 12. LAWSON *against* ROBBS.

No. 90.

A person having purchased a subject from the supposed heir for a small sum, the purchaser taking risk of all debts that might affect the same, and the subject being evicted by a nearer heir, an action was brought by the purchaser against the seller, for repetition of the sum paid. Observed, This was an *emptio hæreditates*, the effect of which is, that the seller is liable to warrant his right to the subject; and though the buyer was obliged to relieve the seller of all debts of the predecessor, that does not import a discharge of the warrantice *hæreditatem subesse*, and that the disponent was true heir. The Court therefore found the disponent liable in repetition of the sum paid.

Fac. Coll.

* * This case is No. 46. p. 2300. *voce* CLAUSE.

1776. January 19.

MUNGO MURRAY, Merchant in London, and his Factor, *against* ALLAN BUCHANAN, Lace Weaver in Edinburgh.

No. 91.

Warrantice notpleadable in bar of payment of the rent against a lessor, whose lessee, an artificer, was forced, by authority, to desist from carrying on his trade in the house let, and afterward deserted by him, on account of its being a nuisance to the neighbours, and endangering the tenement.

The defender, Allan Buchanan, carried on a manufacture of lace and fringes for supplying the coachmakers, and was in the use of having these looms in his house. But the neighbours having made a complaint to the Magistrates of Edinburgh, both of the noise of the looms, and that the working of them endangered the tenement, they, after visiting it, ordained the looms to be taken down, and discharged any more to be erected in the house libelled; which order having been complied with, the defence against the action brought against the tenant for payment of the rent was, that he had taken the house for the special purpose of carrying on his business; and that, when he communed with one Miss Murray, a relation of the owner's, for the lease of the dwelling house, in which he was also to have his looms at work, he acquainted her with the nature of the business which he carried on, and that she was perfectly satisfied with him as a tenant for the house, to be occupied in the manner which he described.

On the other hand, it was denied that she had been informed of the nature of the work which the defender proposed to carry on; and, therefore, as the house was perfectly sufficient for the purpose of a dwelling house, the defence ought to be repelled.

The Court were of opinion, that, if Miss Murray had been informed of the purpose for which the house had been intended, although it were not alleged she had come under any obligation to warrant the house to be fit for that purpose, yet that the defence of the insufficiency was solid; and, with that view, Buchanan was ordained to give in a special condescendence of the facts he offered to prove, with respect to what passed at the time of taking the lease. But when his con-