

No 70. 1791. June 16. BROWN *against* LAURIE.

WHERE the seller acknowledged the horse to be very old, and on that account sold him for a low price, &c. ; yet the horse being found very useless, the seller was found liable in repetition of the price upon the implied warrandice. See APPENDIX.

Fol. Dic. v. 4. p. 255.

No 71. 1791. June 29. DURIE *against* OSWALD.

WHERE the seller upheld a horse to be sound, except a burn on his leg, which he averred was of no consequence, the horse being immediately discovered to be lame, the seller was found liable in repetition of the price upon the implied warrandice. See APPENDIX.

Fol. Dic. v. 4. p. 255.

No 72. 1791. July 9. BROWN *against* GILBERT.

THE seller was found liable in repetition of the price of an unsound horse which had been sold at a public auction to the highest bidder, though it was argued, that in such case, where the seller runs the hazard of the price that may be offered, and must take it whether it be equal or not, the buyer ought to take the commodity *talis qualis* as he finds it. But in this case, the seller had previously advertised, that the owner was parting with his horse for no fault, but merely because he had no occasion for him, as he was leaving the country. See APPENDIX.

Fol. Dic. v. 4. p. 255.

No 73. 1799. May 14. DUNCAN ADAMSON *against* CHRISTIAN SMITH.

A person found liable in damages for selling annual rye-grass seed, without explaining its nature to the purchaser.

DUNCAN ADAMSON purchased 50 bolls of rye-grass seed from William Neish. The seed turned out to be of that species which is called annual, from its giving only one crop.

On discovering this, Adamson brought an action of damages before the Sheriff of Forfar, stating, that when the bargain was made, Neish had said that "it was not annual seed, and that it was as good seed as any in the country, on the faith of which alone the pursuer bought it."

The pursuer having failed in a proof at large, referred the terms of the bargain to the oath of the defender, who deposed as follows: "Interrogated, Whether in the communing respecting the seed in question, the pursuer asked the deponent if or not it was annual seed, and told him that if it was annual seed, he would not purchase it on any account? Depones, That the pursuer in the communing alluded to in the interrogatory said, if the seed was annual seed he would not take it: That as the deponent had sown the seed from grass he had cut the first year after sowing, he did not know if or not it was annual seed, and he did not uphold it to be so; all that he said was, that he upheld the seed to be well win, and well kept seed; but had he known it to be annual seed, he would rather have thrown it into the dunghill than to have sold it to any person: That he saved the seed on purpose to have sown it, but as he sold the lease of the farm he had no use for it."

The Sheriff assoilzied the defender.

In an advocacy, the pursuer restricted the damages claimed by him to the price of the seed, with interest.

Lord Meadowbank "refused the bill; but being of opinion that it is sufficiently ascertained by the defender's oath that it was perennial grass seed which the complainer asked to purchase, and that the defender offered to sell the seed in question, without explaining his own uncertainty as to its possessing that quality, so that a bargain was concluded by the complainer, believing the grass seed to be perennial, while the defender knew it to be altogether uncertain whether it had that valuable quality or not, and must have judged it necessary to conceal this uncertainty, in order to induce the complainer to conclude the bargain; remitted to the Sheriff to alter the interlocutor complained of, and find the defender liable in damages, and in the expenses of process to the complainer; but, on account of the restriction as to damages in the bill and replies, to modify the same to the price of the seed, and interest thereof since payment; as also to decern for L. 3. 10s. Sterling for expenses incurred in the Bill-Chamber, in addition to the other expenses of process."

On the defender's death, the action was transferred against Christian Smith his widow.

The Sheriff found damages and expenses due, in terms of the remit.

A bill of advocacy against this was refused by Lord Anker ville.

And a petition against his Lordship's judgment was refused by the Court without answers.

Lord Ordinary, *Anker ville.*

For the Petitioner, *Hagart.*

Clerk, *Colquhoun.*

D. D.

Fac. Col. No 122. p. 180.

* * See the case of M'Lean, No 8. p. 14164, relative to the subject of *actio redhibitoria et quanti minoris.*