

" THE LORDS found the pursuer, the seller, in respect the ale libelled was bought for exportation, is obliged to uphold the same to have been sufficient and fit to be exported to the markets in America and the West Indies."

No 66.

A reclaiming petition for Baird was refused, without answers.

For Baird, *James Montgomery and Joseph Williamson.*
A. E.

For Pagan, *Jo. Dalrymple.*

Fol. Dic. v. 4. p. 256. Fac. Col. No 27. p. 245.

* * * Lord Kames reports this case :

A LARGE cargo of strong ale was purchased from a brewer in Glasgow, in order to be exported to New-York. In a suit for the price, the following defence was sustained, That it was not properly prepared for standing the heat of that climate, and that accordingly it had bursted the bottles and was lost. It was not supposed the brewer had been guilty of any wilful wrong ; but this defence was sustained upon the following rule of equity, That a man who purchases goods for a certain purpose, is not bound to receive them unless they answer that purpose ; which holds *a fortiori* where the vender is himself the manufacturer. And where the insufficiency cannot be known to the purchaser but upon trial, the rule holds even though the goods be delivered to him. It was also in view, that if the brewer be not answerable for the sufficiency of ale sold by him for the American market, that branch of commerce cannot be carried on.

Sel. Dec. No 234. p. 309.

1771. August 8.

JOHN SWORD, Merchant in Glasgow, *against* ROBERT and ALEXANDER SINCLAIRS, Merchants in Greenock, and ALEXANDER CAMPBELL in Glasgow.

THE Messrs Sinclairs having got a quantity of tea from London, wrote to Campbell at Glasgow, desiring him to sell part of it for them not under certain prices annexed. In writing out the note of the prices a mistake had been made, the ordinary bohea being stated at 2s. 8d. instead of 3s. 8d. per pound. Campbell, not adverting to this, sold 600 pounds at 2s. 8d. to Sword ; upon which the parties interchanged missives, the one to make delivery, and the other to pay the price.

Whenever the error was found out, Messrs Sinclairs refused to make delivery at the above low price ; and Sword having brought an action against them and Campbell, concluding for delivery and damages, the LORD ORDINARY " found the defenders, Archibald Campbell, and Robert and Alexander Sinclairs, con-

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Error in pretio,
a sufficient
ground to void
a contract of
sale.

No 67. junctly and severally liable to the pursuer for the damages sustained, by the entering into and not implementing the bargain libelled on.

In a reclaiming petition, Messrs Sinclairs and Campbell *pleaded* ;

Two of the necessary ingredients in the contract of sale were the consent of the parties, and that they should agree about a certain price. Without these essential requisites there could be no agreement ; and as it was a *bona fide* contract, so that if they should even name a price, or seemingly agree as to the other requisites ; yet if fraud, or error, had given occasion to this agreement, or if a mistake was discovered in the substantials, relief would be given of course. This doctrine was laid down by Upius, in L. 9. D. De contrahenda emptione, who, in express terms, says, that *error in pretio*, if it was such an error as shewed that the parties had never really agreed upon one price, was sufficient to void the contract. Voet. L. 18. Tit. 1. § 5. L. 52. D. Locati Conducti. The same principles obtained in the law of Scotland. Lord Stair and other writers laid it down, that *error in substantialibus* was a clear ground of voidance in sale or other commercial contracts ; and it was always understood, that *error in calculo*, or in figures, must, in every transaction whatever, be rectified.

Sword, the pursuer, *answered* ;

There was no evidence to shew that a mistake had been committed by the defenders with regard to the price of the goods, as stated in the invoice produced at making the bargain. It could not be alleged that any fraud or deceit had been practised by the pursuer ; and it would be attended with much inconveniency and bad consequences, if, after a bargain had been fairly reduced into writing, the party should have liberty to draw back, merely because he had not paid proper attention, and had agreed to part with the property at a less price than he could afford.

The authorities referred to from the civil law did not apply to the present question. A sale was no doubt void when the parties had not concerted or concurred *in eandem rem* ; the same rule held when the parties were at variance as to the price ; but, in the present case, both the price and the thing sold were fixed by writing ; so that as every one was entitled to make the best bargain he could, there was no relevant ground stated, either for reducing the sale, or to oblige the pursuer to give more than what had been expressly covenanted and agreed on.

Upon advising the petition and answers, August 8. 1771, the LORDS “ sustained the defence for the petitioners ; assolizied them from the present process ; and further found the respondents liable in expenses.” Thereafter they refused a petition for the pursuer, without answers.

Lord Ordinary, *Barjarg.* For Sword, *Macquenn.* For Sinclair, &c. *Ilay Campbell.* Clerk, —
R. H. *Fac. Col. No 102. p. 307.*