

No 63.
 Victual being sold conform to samples not sealed at making the bargain, and the buyer having then declined to seal them, it was found, that the samples were not the rule of the bargain, and that the buyer relied upon the faith of the seller.

1713. *January 29.*

ANDREW CHEAP, Brother-german to the Laird of Rossie, *against* THOMAS CLEUGH, Brewer in Portsburgh.

IN the process at the instance of Andrew Cheap against Thomas Cleugh, a-
 nent a bargain of victual sold by Cheap to him, conform to samples given to
 him by the seller; the LORDS found, That the samples not being sealed at the
 making of the bargain, and the buyer having then declined to seal them,
 they were not the rule of the bargain; but the buyer relied upon the faith of
 the seller.

Fol. Dic. v. 2. p. 358. Forbes, p. 653.

1735. *June 24.*

PROCURATOR-FISCAL of the Dean of Guild Court *against* Colonel M'DOWALL
 of Castlesemple.

No 64.

WHEN liquor is sold in bottles, the bottles must be of a certain fixed mea-
 sure known in law, and the seller is not at liberty to make use of bottles of an
 uncertain measure. See APPENDIX.

Fol. Dic. v. 2. p. 358.

1761. *June 16.*

JOSEPH RALSTON, Servant to JOSEPH ALLAN of St Laurence Chapel, *against*
 THOMAS ROBERTSON, Tenant in Blackwood.

No 65.
 Repetition of the price of an unsound horse, recently quarrelled, sustained upon the implied warrandice of the contract.
 See Nos 68.
 70. 71. 72.

IN October 1758, Joseph Ralston was sent by Mr Allan, his master, to a fair
 in the town of Ayr in order to purchase a couple of horses for him. He there
 met with Thomas Robertson, the defender, who sold him a horse for L. 8 : 10 : 0
 Sterling. The price was immediately paid, and the horse delivered; and the
 pursuer had hardly gone thirty yards with him when he discovered that the
 horse was racked or slipt in the back, and had also a blemish in one of his eyes.
 Upon this he immediately insisted, that the defender should take back the
 horse and repay the price.

This he refused to do, and said, that the horse had got the rack coming over
 from Ireland in a boat. Upon this Ralston brought a process for repetition of
 the price against Robertson, before the Sheriff, "who assoilzied the defender,
 in respect it was not alleged, that he upheld the horse to be sound; and as the
 faults alleged were not hidden or concealed faults." Soon after this, the horse