

1771.

JAMES LINDSAY *against* JOHN WILSON.

IN the case of a sale of two horses, James Lindsay, merchant in Dysart, *against* John Wilson, the Lord Ordinary pronounced the following interlocutor:—" Finds it proved, That the charger did purchase the two horses in question from the suspender, at the agreed price of £30 sterling: Finds it proved, that, at the time of the sale, the said two horses were both of them lame, and had been so for several months before; but finds it proved, that the lameness was such as might have been observed by any person who had viewed them with ordinary attention: Finds it proved, That the charger did look at, and view the horses, both before and at the time of the sale; and therefore, and in respect that the charger has not proved his allegiance that the suspender had upheld the horses as sound horses, or that he had afterwards agreed to take them back, sustains the reasons of suspension, and decerns."

But, upon a reclaiming petition and answers, the Lords unanimously altered this interlocutor, and found the letters orderly proceeded. It is an implied obligation on the vender, in all sales, *omne vitium abesse*, particularly as to horses. See 16th June 1761, *Ralston against Robertson*.

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1773. November 26. ALEXANDER GORDON *against* SCOTT and HUTCHISON.

IN a question, the Honourable Alexander Gordon, advocate, *against* Messrs Scott and Hutchison, wine-merchants in Leith, concerning the price of a hogshead of claret; the Lord Justice-Clerk, Ordinary, pronounced this interlocutor, 2d August 1773:—" Finds it proved, and admitted by the pursuer, That he bought the hogshead of wine in question at a public sale, upon his own taste, and paid the price thereof; and that the wine was soon thereafter delivered to the pursuer, and bottled in his own cellar; and was, at that time, and when bottled, sufficient, and worth the price paid: Finds no evidence that the pursuer signified to the defenders before, or at the time of the purchase, that he never drank his wine till it was two years in the bottle, or that any thing past between the buyer and the seller which can infer that the seller undertook that the wine should be good and sufficient at the distance of two years from the time of bottling: Finds it proven, That, at the distance of near two years, the above hogshead of wine was found insufficient; but finds, that the supervenient accident discovered at so great a distance of time, the cause of which cannot be discovered, must affect the purchaser, and not the seller; and therefore remits the cause *simpliciter* to the Admiral, and finds expenses due to neither party."

And, upon a reclaiming petition without answers, the Lords adhered.