

SALE.

1776. July 23. MURDOCH *against* RICHARDSON.

A MERCHANT in Lochmaben having, *anno* 1771, commissioned a cargo of lintseed from a merchant in Rotterdam; the lintseed was sent, and being, to all appearance, good and sufficient, was sold out in retail by the Lochmaben merchant; but when tried, *anno* 1772, whether owing to the soil, to the weather, or to some inherent fault in the seed, it did not thrive. Complaints being made to the Lochmaben merchant by his customers, he refused, *anno* 1775, payment to the Rotterdam merchant; but the Lords repelled the defence. They thought, that where the lintseed is *ex facie* good, and is bought and used without challenge, or any visible defect, neither the Dutch merchant, nor the Scotch retailer, can be liable for more; especially after so long a space,—see Dict., *voce* Sale; and that, if the law was otherwise, all foreign commerce of this kind would be for ever at an end. They found the Lochmaben merchant liable in expenses.

1774. SHAW and FRASER *against* WONTER.

IN another case, Shaw and Fraser *against* Wonter, &c., The Lords decided, Summer Session 1774, on the same principles. It was a cargo of lintseed from Rotterdam, and the delay of demanding payment was only six months. The Ordinary found that the Dutch merchant could not be subjected in warrandice, although the lintseed did not grow; as this would be imposing on him the sea risk, and risk from improper keeping after landing, and improper culture. The Lords adhered, and gave expenses.

1772. SIR WILLIAM FORBES *against* DRUMMOND.

SIR William Forbes and Others, proprietors of certain areas in the New Town of Edinburgh, contracted with Drummond to build, for them, houses on said areas, at a determined price: the price to be paid in certain proportions, according as the building advanced. Drummond proceeded accordingly, and received payment *seriatim*; but his affairs having gone into disorder, the Lords found, that the materials of wood, which he had collected for carrying on the building, while they remained unfixed in the houses, were liable to be pointed