

No 65. from him without any good reason, he has himself alone to blame, and the defender cannot be made liable for it.

It was *suggested* from the Bench, That when a man sells a horse for full value, there is an implied warrandice, both of soundness and title, nor is there any necessity to prove the knowledge of the seller.

THE LORDS "found the defender liable to the pursuer in the price of the horse."

Reporter, *Lord Kames.* Act. *Macqueen.* Alt. *G. Cockburn.* Clerk, *Gibson.*

J. M.

Fol. Dic. v. 4. p. 255. Fac. Col. No. 38. p. 76.

1765. December 14.

WILLIAM BAIRD, Merchant in Glasgow, *against* JOHN PAGAN and Others, Merchants there.

No 66.

Where goods are purchased for a particular purpose, and through latent insufficiency do not answer the purpose for which they were bought, the purchaser relieved from the price.

IN 1762, John Pagan and others, purchased from William Baird a large quantity of strong ale, in order to be exported to the West Indies; but the ale not being properly prepared for the heat of that climate, great part of it was spoiled and lost; on which account, Pagan and the other purchasers refused to pay the price. Baird brought an action against them for payment; in defence against which, it was

Pleaded for Pagan and the other defenders, That when ale is to be exported to hot climates, it must be prepared with great attention; it must be kept a long time in the cask before it is bottled, in order that the fermentation may be entirely gone; and it must be corked with the best corks, and properly packed; for all which, the purchaser must rely on the brewer from whom he buys; and, as it is impossible for him to know what time the ale has been in cask before bottling, it is understood that the brewer, who sells ale for exportation, shall furnish it of such quality, and pack it in such a manner, as will stand the climate to which it is to be sent; that, in this purchase, the price was considerably higher than would have been given for ale for home consumpt; yet, that furnished was not of proper quality for exportation, or properly corked and packed; and, as it was purchased on purpose to be exported, of consequence, the seller was bound to deliver ale fit for exportation; and not having done so, the purchaser cannot be liable for the price.

Answered for Baird; The ale was sufficient when he sold it; the usual care and attention was paid to bottling and packing it; that he undertook no risque, and could not, therefore, be answerable for any accidents that might occur, or insufficiency that might arise from transporting the ale to a foreign market; that ale, in the West Indies, sells for an extravagant price, which shows, that exporting it is attended with considerable risque; and, as the purchaser has the profits, so he must run the risque; there are no certain rules fixed for managing ale for exportation; every brewer follows the method he judges best.

" 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-

No 67.

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