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

as Drummond's property; but, after being fixed in the houses, became a part of the houses, for which the furnishers had no claim upon the houses, but only an action against Drummond,—having furnished them upon his credit.

The case had been different, had the right of the area been in Drummond: in that case, *inedificatum solo cedit;* so that the furnishers of the materials would have had a claim upon the houses, and not personally, only against Drummond. And so the Lords thought in a cause decided *24th July* 1776, *Brown* against *Johnstone.*

BLACKLOCK *against* ALEXANDER GOLDIE.

IN the case of a minute of sale, where the seller becomes bound to grant a disposition with procuratory and precept, and the purchaser, on the other hand, becomes bound to pay the price, the right is not completely vested in the purchaser, nor is the one party entitled to force implement of the transaction, until he himself is ready to implement his part. In such a case, *fides non est habita de pretio,* nor is the property transferred. But, where the seller dispones the lands *de presenti,* with warrant to take infeftment, and takes the purchaser bound to pay the price at the agreed terms, nothing more remains to be done on the part of the seller; but the purchaser can take infeftment when he pleases, and, by doing so, the full property is vested in him. In this case, *fides habita est de pretio,* and the seller relies entirely upon the personal security of the purchaser for his payment. The seller has no preference upon the subjects to the other creditors.

According to these principles, the Court decided in a case betwixt Blacklock and Alexander Goldie, Writer to the Signet; See 4 *New Coll.,* p. 290. Goldie purchased Blacklock's lands, and was intrusted by Blacklock to write out the disposition. He did so. The disposition bore, that the price was paid and receipt granted for it; but, instead thereof, Goldie gave his bond for the price, upon a narrative, that, though the disposition bore that it was paid, yet it was not paid. He took infeftment. His affairs afterwards went into some confusion,—but the Lords found, that, in this case, *fides habita erat de pretio;* and that Blacklock was entitled to no preference. No creditors interfered: the question was with Mr Goldie.

The judgment went upon this, that Blacklock was totally denuded in favour of Goldie, and that too by infeftment; and the security of the records requires, that rights of lands should not be incumbered by latent personal deeds.