

1668. July 1.

ALSTON against ORR.

No 54.

JOHN ALSTON having given bond to one James Orr for L. 90, as the price of lint-seed, and being charged, did suspend upon this reason, That the seed was insufficient and did not grow, and being *vitium latens* by the civil law, *De empt. et vend. actionibus*, the buyer is not liable in payment. This reason was found not relevant, unless that the suspender could prove that all those persons to whom he sold in retail the rest of that parcel of seed, did sow the same and had no increase; and that it was not enough to say, that a part thereof was insufficient.

*Fol. Dic. v. 2. p. 356. Gosford, MS. p. 6.*

1669. June 23.

ROBERT FAIRIE against JAMES INGLIS.

No 55.

ROBERT FAIRIE having charged James Inglis, younger of Mordiston, for 1000 merks due by bond, he did suspend, and raised reduction upon minority, lesion, and circumvention. Litiscontestation was made upon the reason of minority, and the term was circumduced, and he decerned. He suspends again, and insists upon the second reason of reduction, upon circumvention, and qualified it thus, That albeit the bond bear borrowed money, yet he offers to prove by Fairie's oath, that the true cause was the boot between a horse and a mare interchanged betwixt the parties; and, albeit the suspender have as good as he got, yet he was induced to give this bond of 1000 merks to boot, so that he is lesed *ultra dimidium justii pretii*, which in law is a sufficient ground alone to dissolve the bargain and restore either party *actione redhibitoria et quanti minoris*; and next in so gross inequality *ex re præsumitur dolus*. The charger answered, That the reason is no way relevant, because our law and custom acknowledges not that ground of the civil law, of annulling bargains, made without cheat or fraud, upon the inequality of the price; neither can there be any fraud inferred, upon the account of the price of an horse, which is not *quantitas* but *corpus*, and has not a common rate, but is regulated *secundum pretium affectionis*; and now the horse and the mare not being to be shown in the condition they were in, the suspender cannot recal the bargain; 2dly, The reason ought to be repelled, because by a ticket apart with the same date of the bond, the suspender declares upon his soul and conscience, that he should never impugn the bond; and thereafter by his second bond produced, he ratifies the same, and passes from any revocation thereof, or quarrel against the same. The suspender answered, That he was content to refer to the charger's own oath, whether, in the charger's own esteem of the rate, the suspender was not lesed above the half; and as for the two tickets, the first was obtained when he was minor, and both *laborant eodem vitio*, the inequality still remaining without satisfaction.

A charge of circumvention not sustained where parties had made a bargain, though it was offered to be proved by the defender's own oath, that the pursuer was lesed one half, and that he was a minor.