

1771. ———.

LINDSAY *against* WILSON.

No 68.

FOUND, That where a horse is sold for full value, there is an implied warranty, both as to soundness and title. See APPENDIX.

Fol. Dic. v. 4. p. 255.

1788. February. 13.

ANDREW BAIRD *against* ROBERT AITKEN and Others.

No 69.

ROBERT AITKEN and others purchased a quantity of lint-seed, for sowing, from Andrew Baird, who had imported it from Riga. It had been inspected, in the usual manner, by the public officers appointed for that purpose; but in general it turned out extremely ill, and in some instances its insufficiency appeared before it was sown.

The price of flax-seed found due, though it was insufficient, the purchasers not having complained till after it had been sown.

An action having been brought for the price, it was

Pleaded in defence; Every merchant is understood to warrant the sufficiency of the goods which he has sold at the ordinary price; and therefore, when these have proved altogether unfit for the uses of the purchaser, he is liable in damages. Surely then, in such a case, he can have no claim for the price. It is true, that with respect to some articles, if they are not returned within a reasonable time, the purchaser will not be allowed to complain; but this rule cannot hold in the case of flax-seed, the goodness of which can only be known with certainty from its growth.

Answered, It is not from the bad quality of the flax-seed, but from the rash and precipitate conduct of the purchasers, that any damage has here arisen. For if it had been duly returned, as, after its insufficiency was observed, it ought to have been, or if, as is commonly practised where there is any doubt, a proper experiment had been made before sowing the whole; the merchant, on receiving it from the purchaser, would have been enabled to return it to the original furnisher, and thus matters would have been brought to the same state as if it never had been imported into this country.

It was also stated for the pursuer, that of all those who had purchased flax-seed from him, the defenders alone had offered to complain; from which he inferred, that the badness of their crops must have been, in a great measure, occasioned by some neglect in their method of cultivation. But the case was decided on the general principle, That the purchasers of articles of this sort were bound to make a proper trial, before they proceeded to sow in any considerable quantity, so that, if insufficient, the goods might be returned to the seller.

“THE LORDS repelled the defences, and found the defenders liable in expenses.”

Lord Ordinary, *Eskgrove*.
G.

Act. Maconochie.

Alt. Hay.

Clerk, *Menzies*.

Fol. Dic. v. 4. p. 256. Fac. Col. No 19. p. 33.