1775. *December* 12. LAWSON *against* ROBBS.

No. 90.

A person having purchased a subject from the supposed heir for a small sum, the purchaser taking risk of all debts that might affect the same, and the subject being evicted by a nearer heir, an action was brought by the purchaser against the seller, for repetition of the sum paid. Observed, This was an *emptio hæreditates*, the effect of which is, that the seller is liable to warrant his right to the subject; and though the buyer was obliged to relieve the seller of all debts of the predecessor, that does not import a discharge of the warrandice *hæreditatem subesse*, and that the disponer was true heir. The Court therefore found the disponer liable in repetition of the sum paid.

Fac. Coll.

*** This case is No. 46. p. 2300. *voce* CLAUSE.

1776. *January* 19.
MUNGO MURRAY, Merchant in London, and his Factor, *against* ALLAN BUCHANAN, Lace Weaver in Edinburgh.

No. 91.
Warrandice notpleadable in bar of payment of the rent against a lessor, whose lessee, an artificer, was forced, by authority, to desist from carrying on his trade in the house let, and afterward deserted by him, on account of its being a nuisance to the neighbours, and endangering the tenement.

The defender, Allan Buchanan, carried on a manufacture of lace and fringes for supplying the coachmakers, and was in the use of having these looms in his house. But the neighbours having made a complaint to the Magistrates of Edinburgh, both of the noise of the looms, and that the working of them endangered the tenement, they, after visiting it, ordained the looms to be taken down, and discharged any more to be erected in the house libelled; which order having been complied with, the defence against the action brought against the tenant for payment of the rent was, that he had taken the house for the special purpose of carrying on his business; and that, when he communed with one Miss Murray, a relation of the owner's, for the lease of the dwelling house, in which he was also to have his looms at work, he acquainted her with the nature of the business which he carried on, and that she was perfectly satisfied with him as a tenant for the house, to be occupied in the manner which he described.

On the other hand, it was denied that she had been informed of the nature of the work which the defender proposed to carry on; and, therefore, as the house was perfectly sufficient for the purpose of a dwelling house, the defence ought to be repelled.

The Court were of opinion, that, if Miss Murray had been informed of the purpose for which the house had been intended, although it were not alleged she had come under any obligation to warrant the house to be fit for that purpose, yet that the defence of the insufficiency was solid; and, with that view, Buchanan was ordained to give in a special condescendence of the facts he offered to prove, with respect to what passed at the time of taking the lease. But when his con-

No. 91.

descendence came in, it turned out that, in place of a full explanation of the nature of the defender's looms, the whole that had passed was, that Miss Murray said she knew the nature of a twist-wheel or mill; for she had seen one Miss Hay making twist for fringes. This was evidently a very different species of manufacture from what Buchanan proposed to carry on; and, for any thing that appeared, the walls of the house might have been sufficient to have supported the stress of any work of that kind.

Observed on the Bench: It is a principle founded in good sense, that an artificer is presumed to know his own business, and whether it is of such a sort as to be a nuisance to another. A landlord is not presumed to know it. Indeed the fact is now admitted that she did not know the nature of the work to be hurtful to the tenement.

"The Lords adhered to the Lord Ordinary's interlocutor, decerning for payment of the rent.

Act. *Ilay Campbell.* Alt. *Wight.* Clerk, *Campbell.*

Fac. Coll. No. 216. *p.* 165.

1780. *January* 14. JOSEPH SYMINGTON *against* ANDREW CRANSTON.

No. 92.
Whether a proprietor is bound by a general clause of warrandice to relieve his tenant of a thirlage?

Cranston let to Symington a dwelling house, with a malt-barn, kiln, &c. situated within the precincts of the Abbey of Holyroodhouse, warranting his possession against "any stop or impediment whatsoever;" but no mention of any thirlage was made in the lease. After he had possessed some years, however, a claim for multures was made on the tenant by the proprietor of the mills of the Barony of Broughton, the premises making part of the Barony, and being thirled to its mill.

Symington then sued Cranston in an action of relief, founded on the clause of warrandice in the tack, and on an allegation of his total ignorance of the existence of the thirlage, while that fact must have been well known to his landlord.

The Court, however, found, That the landlord was not bound to relieve the tenant of the thirlage; and therefore "Assoilzied the defender."

Act. *G. Ferguson.* Alt. *Wight.* Clerk, *Campbell.*

S. *Fac. Coll. No.* 100. *p.* 192.

1780. *July.* JAMES DEWAR *against* JOHN AITKEN.

No. 93.
Absolute warrandice, what its extent?

Johnston, after granting to Geddes an heritable bond over a house belonging to him, sold the house to Aitken.