

The interlocutor of the Lord Ordinary was affirmed, (23d November 1804), on advising a petition, with answers. No 49.

To which judgment the Court adhered, (18th December 1804), by refusing a reclaiming petition without answers.

Lord Ordinary, *Hermann*. Act, Solicitor-General Blair, Fletcher. Agent, Ja. Gilchrist, W. S.
 Alt. Geo. Jos. Bell. Agent, Jo. Lang. Clerk, Home.
 F. Fac. Col. No 186, p. 416.

S E C T. IV.

Lesio ultra duplum.—Sale by sample,—weight,—measure, &c.—*Actio redhibitoria et quanti minoris.*

1594. December.

L. of SORNBEG against SCHAW.

THE auld Laird of Sornebeg having disponit certain lands to William Schaw his sone, he band himself be ane several obligation to warrand him fra all uther alienations, wodsetts, takkis, &c. This obligation of warrandice being registrate against this Laird of Sornebeg, oy and aire to the auld Laird, he was chargit be warrant the said William fra certain takkis thairof set to the tennentis be the auld Laird. He suspendit, *alledgeand*, That this persewar could have na warrandice fra the said takis, becaus the samen wer set of his express knowledge, in sa far as at the setting thairof, he ressavit the gressummis, was witness insert in sum of the said takkis, and he had oft tymes ressavit the dewtie thairof, et sic cum scienter emerit prædia hoc onere affecta non debet ei cavere de evictione; whilk reasoun of suspensioun the LORDS fand relevant, albeit it was ane secund suspension, and urgit not the suspendar to verifie it *instanter* or be wreit, bot admittit it to probation be the witnesses insert in the takkis, the wryttars thairof and the delyveraies of the gressummis and duties. Durum id permultis visum est.

Fol. Dic. v. 2. p. 358. Haddington, MS. No 456.

No 50.
Qui scienter emit rem vitiosam has no recourse against the seller.

1629. January 9.

BROWN against NICOLSON.

No 51.

In a pursuit for the price of a horse, an exception was made, That the horse was crooked when he was bought; and the defender offered him back in as
 VOD. XXXII.