

1772. *December 10.* GEORGE AIKMAN *against* WILLIAM CHEAP.

WILLIAM Cheap was tenant of a ware-room in Edinburgh, belonging to George Aikman. Aikman offered it to sale. Cheap offered L. 100 for it; but John Hepburn, having offered L. 150, was preferred; and thereupon George Jeffrey, agent for Aikman, accepted of Hepburn's offer, and, in a counter-missive, became bound that Aikman should execute the deeds necessary with the first conveniency, and that the disposition should bear absolute warrandice. There was no mention of a sufficient progress, but it was held, in the dispute, to be implied. Hepburn's doer objected to the progress, and refused to rest upon the warrandice, though this was undoubtedly good. As to this point, a submission was agreed upon: meantime, Cheap, hearing of this dilemma, interfered, and took the bargain from Hepburn at an advance of price; and afterwards most ungenerously resiled from the submission, and would neither pay his rent as tenant, nor give up his bargain as purchaser; while Aikman had it not in his power to remedy the defect in the progress, but by the running of the long prescription. 28th January 1772, Lord Kennet, Ordinary, found, "That Cheap was not liable for the price of the subject till a sufficient progress was produced." But the Lords found, "That Cheap was bound, either to accept of the disposition and progress offered, or to depart from the bargain, and to re-pone the petitioner to the possession; and, in respect it appeared that he knew the defect in the progress at the time when he made the bargain with Hepburn, therefore found him liable in expenses."

It appeared to the Lords, that Cheap purchased with his eyes open, knowing beforehand the defect in the progress.

See 14th November 1738, *Earl of Morton*; Dict., *voce* SALE.

SASINE.

1776. *March 8.* JOHN HENDERSON *against* CAPTAIN DALRYMPLE.

In Captain Dalrymple's sasine of the lands of Powgild and others, in the county of Fife, upon which he claimed a vote in the election for that county in January 1776, Robert Reid was said to have appeared as attorney for Captain Dalrymple, and John Morres as Sheriff. Yet the clause of delivery reversed these characters, and made Reid give sasine to Morres, and not Morres to Reid, as it ought to have done. It was said that this was a mere blunder of the writer in extending the instrument; and as it appeared evidently that sasine was truly given, it ought not to be cut down upon niceties and critical constructions.

"The Lords repelled the objection."