tal contained in the letters of publication, insisted against the Creditors for a deduction from the rental, and of L. 23 Scots of the schoolmaster's salary, which had not been allowed, *alleging*, That by the fraud of the Creditors he was led in to make so disadvantageous a purchase; for, though the rental in the letters of publication was agreeable to the proved rental, yet the proof having been taken seven-and-twenty years before the sale, the rents in that time had fallen considerably; and of this the creditors were in the knowledge, as appeared from their inserting an unusual clause in the articles of roup, viz. that the purchaser was to take his hazard of the deficiencies of the rental, and of any superplus burdens thereon, which might have happened since leading of the probation; which article, though it was struck out by authority of the Lord Ordinary before the roup proceeded, yet it was a sufficient evidence, that they knew what disadvantage would attend the purchaser. No 25.

It was *answered* for the Creditors, That there was no ground for any abatement, since the sale had proceeded after all the solemnities required in law; that the rental in the letters of publication was agreeable to the proved rental; and that being the only rule that creditors have to walk by, in exposing of bankrupt estates to sale, the purcharer must take his hazard of any deficiencies happening betwixt the proof and sale. As to the schoolmaster's salary, it was abundantly compensated by other advantages.

THE LORDS found, that the purchaser could have no deduction from the proved rental, by falling lower after the probation, and before the sale; but found, that there must be a deduction given of any burden not formerly allowed before the sale.

Reporter, *Lord Pancaitland.* Act. *Graham*, sen. Alt. *Horn.* Clerk, *Gibson.*

Edgar, *p.* 148.

1732. *December* 22. COCKPEN *against* CREDITORS of COCKPEN.

No 26.

AFTER the proof of the rental was fixed, a tenant having quitted his possession, and the Lord's factor having let the same, at a public roup, L. 100 less than the proved rental, after intimating the same in the gazettes, and at the adjacent parish churches, but without applying to the Lords for a warrant, which regularly ought to have been done; whereby it happened that the lands were exposed to sale at the proved rental; and having been bought at 27 years purchase, the purchaser, when he came to understand that the judicial rental was erroneous, insisted for a proportional abatement of the price; and here it was not alleged but that the factor had let the room at the true worth; and L. 100 yearly was a considerable article in an estate of 2000 merks a-year. The Creditors, who were his parties, *pleaded*, 1*mo*, That sales before the Lords are of the nature of lump bargains, where the rule is, *ut caveat emptor*; 2*do*, If they are

No 26.

underrtood as sold by a rental, the proved rental is the rule; to fortify which, the decision of the Creditors of Hallgreen was cited, 13th January 1725, No 25. p. 13328, where the LORDS found, in general, that the purchaser can have no deduction from the proved rental by the rents falling lower, after the probation, and before the sale. To the *first* it was *answered*, That public sales are plainly by a rental. The first step taken is to fix the rent, the next, to fix the number of years purchase the lands may be worth. To the *second*, The proved rental is indeed the rule, but still upon supposition that it is the true rental at the date of the purchase; and truly selling by a rental implies as much; for what has the purchaser ado with any but the present rental? This is plainly the case of private sales, and no good reason can be given to difference public sales. THE LORDS found, that the purchaser is not entitled to any abatement of the price on account of any diminution of the rental betwixt the time of the judicial proof of the rental and the purchase. See APPENDIX.

Fol. Dic. v. 2. p. 312.

1764. *November* 14.

WILLIAM WILSON, &c. *against* The CREDITORS of Sir JAMES CAMPBELL of Auchinbreck.

No 27.

In a judicial sale, the Court refused to the purchaser any deduction from the price, on account of certain diminutions in the rental, which had happened between the date of the proof, and the time of the purchase; but allowed deduction for some teinds, the right of which was proved never to have been in the person of the debtor.

MR JOHN M'LEOD of Muiravenside being creditor to Sir James Campbell, commenced a process of ranking and sale of his estate of Auchinbreck before the Court of Session. A proof of the rental was led in the month of April 1739; but the lands were not sold till the 24th of February 1761, when William Wilson, writer in Edinburgh, and two other gentlemen, became purchasers. Mr Wilson, after having particularly examined the subjects, discovered that some houses, which had been added to the judicial rental, as yielding a considerable sum when the proof was led, had, since that period, become entirely ruinous, and of no value; that some of the lands had been over-rated, and yielded a rent considerably inferior to what they were stated at in the judicial rental; and that one-fourth of the teinds, the whole of which he had bought and paid for along with the lands, did never belong to the bankrupt, but were the property of the Crown, as coming in place of the bishop of Argyle. On account of the houses becoming ruinous, and the diminution of the rent of the lands, Mr Wilson in particular claimed a deduction, and the other two purchasers, in conjunction with him, demanded that allowance should be granted on account of the teinds.

It was *argued* for Mr Wilson, That he was justly entitled to restitution, upon the principles of common sense, natural equity, and positive law. Common sense dictates, that, in a purchase, the seller must deliver all he sold, for a very obvious reason, viz. because the delivery and the payment make part of the same contract, and wherever there is a stop in the one, there must be a propor-