

S E C T. II.

Rental.

1735. February 13. Captain CHALMERS against Sir JAMES CUNINGHAM.

No 5.

SEVERAL friends of a bankrupt family agreed among themselves to transact the debts, and to take off parcels of the estate for payment. In a count and reckoning betwixt the heir, who acceded *et post facto* to this treaty, and one of the friends who had agreed to take one barony at sixteen years purchase; a dispute arose about the rental in order to fix the charge.—The LORDS found, That the kain ought to be stated in the rental, in case that at the time of making the bargain, a price was exigible for the same when not paid in kind; and also, that the services ought to be stated, if, at the same period, a certain value was exigible when not performed. See APPENDIX.

Fol. Dic. v. 2. p. 356.

1773. July 1.

Mr THOMAS MITCHELL against CHARLES ANDERSON of CandieCraig.

No 6.

IN consequence of a proposal by Mr Mitchell to purchase certain lands belonging to Mr Anderson, the latter gave him the following signed holograph missive: "Aberdeen, December 21. 1770. Sir, I just now acknowledge to have sold you my lands on the south side of Don, at the rate of forty years purchase, conform to the tenants' tacks and missives they have of me; which you, by your acceptation hereof, are bound to pay me against Whitsunday next, which is hereby agreed to be your entry to the said lands."

Mr Mitchell, on the other hand, gave Mr Anderson the following holograph missive, of same date; "Sir, I hereby acknowledge, that I have bought from you, at the rate of forty years purchase, your lands on the south side of the water of Don, and oblige myself to pay you in terms of your letter to me of this date."

Some differences having arisen between the parties respecting the rental of the lands sold, and the mode of ascertaining the same, Mr Mitchell brought a process before the Court of Session against Mr Anderson, concluding, that the value of the lands should be ascertained, the price fixed, and the defender decerned to grant a disposition. After some procedure before the Lord Ordinary, a proof was allowed to both parties; and, upon advising thereof, the LORD ORDINARY pronounced an interlocutor, ascertaining a variety of particulars to-

In a voluntary sale of lands, concluded by mutual missives, for a price to be paid at the rate of a certain number of years purchase; found, that neither the cess paid by the tenants, nor the poultry and services, where there was no conversion, were to be included in the rental for fixing the amount of the price.