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solve to expose his estate by the lump; and, in that view, it was expressly conditioned in the articles of sale, that the price was to have no reference to a rental. And, as it cannot be disputed, that a proprietor may expose his estate by the lump, without reference to a rental, so there can be no doubt of that being the case here; the clause in the articles of roup being as clear and explicit to that purpose as can be well conceived. If, in this case, in transcribing the rental, any articles had been omitted, and the error not discovered till after the sale, would the suspender have been bound to pay an excrement price, purchasing upon articles of sale, such as the present? It is thought he would not; and, if so, of consequence he can claim no defalcation. And that being the case, it would be improper to involve the parties in the expence of an unnecessary and irrelevant proof, although the charger by no means admits the suspender's allegiances to be well founded.

“THE LORDS found the letters orderly proceeded, with expenses.”

For Urquhart, *Lockhart* and *Alexander Elphinston*. For Lord Elibank, *Solicitor Dundas* and *Ilay Campbell*.
A. E. *Fol. Dic. v. 4. p 254. Fac. Col. No 84. p. 333-*

S E C T. III.

Actio redhibitoria et quanti minoris.—Error in substantialibus.

1757. June 23.

MACLEAN of Lochbuy against DONALD MACNEILL of Collonsay.

No 8.

Found to be sufficient ground for diminishing the price of lands, that they did not entitle to a vote, when it was bargained that they should entitle.

MACLEAN of Lochbuy sold the lands of Ardlussa and Knokintavell in Argyleshire to Macneill of Collonsay.

At the time of the sale, it was averred by Lochbuy, and understood by Collonsay, that these lands were each of them a two-merk land of old extent, so as to entitle the holder of them to a vote in the election of a member of Parliament. This consideration was one of Collonsay's inducements, who had no vote in the county, for making the purchase. The disposition, however, contained no such condition. It only described each of the lands to be a two-merk land of old extent.

It afterwards appearing, that the lands conveyed were not valued at four merks of old extent, nor entitled to a vote in the county, Collonsay suspended, and insisted, either for a resolution of the sale, or an abatement of the price.

Pleaded for Lochbuy; The allegation, That it was *actum et tractatum* at the time of the sale, that the estate sold should entitle to a vote, was neither relevant to resolve the sale, nor abate the price; in respect Collonsay could not qualify any damage he sustained by the want of a vote; and that to say a vote had a value in money, was an allegation in itself indecent, and contrary to the spirit of the British constitution.

Answered for Collonsay; The privilege of electing, and the capacity of being elected into Parliament, are the privileges that distinguish the subjects of Great Britain from those of almost all other nations. By them a man may become a part of the Legislature, to guard the honour and property of himself and his fellow-citizens; and accordingly, in advertisements of estates to be sold, this privilege, when it attends the subject offered to sale, is always mentioned as a circumstance to enhance the estimation of it.

“ THE LORDS found it relevant to diminish the price of the lands, that it was intended by the parties, that the lands should entitle the purchaser to a qualification as a freeholder having right to vote at elections.

N. B. An averment was afterwards made by Lochbuy, that the lands at the time of the sale did entitle to a vote.

Act. Wedderburn, Craigie, Ferguson. Alt. Jo. Dalrymple, Hamilton-Gordon, Lockhart.

J. D.

Fol. Dic. v. 4. p. 255. Fac. Col. No 28. p. 49.

1760. January 9.

Mr MICHAEL MENZIES, Advocate, Trustee for Charles Renton, *against* JAMES MACHARG of Kiers, and the CREDITORS of the deceased John Gillespie of Greenhill.

MARY YOUNG, proprietor of the lands of Greenhill, was married to Alexander Renton, who went to America in the year 1725 or 1726, leaving a factory with his wife, empowering her to manage his affairs, to grant provisions to their younger children, to contract debts, and to sell his land in Edinburgh, or in the country.

John Gillespie having advanced considerable sums to Renton before his departure for America, for which he obtained security over the wife's lands of Greenhill, did thereafter advance other sums to her, for which she granted heritable bonds over the same lands.

Upon the 15th of December 1732, Mrs Renton granted a disposition to Gillespie, of these lands of Greenhill, for the price of 19,600 merks; and upon this disposition Gillespie was immediately infest.

Gillespie continued in the quiet possession until the year 1742; when Renton having returned from America, concurred with his wife in a reduction of the sale, upon the head of fraud and circumvention; but he having died soon

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Challenge of a sale upon the head of fraud and circumvention, found good against singular successors of the buyer, who had contracted with him during the dependence, though there was an alleged *mora* on the part of the pursuer.