

an adjudication proceeds on this, that the debtor had become bound to pay, and had neglected to fulfil his personal obligation. There was no personal obligation on the wife, and therefore an adjudication cannot proceed against her lands.

On the 10th December 1772, "The Lords found that the adjudication cannot proceed on the personal obligation of the wife, and therefore sustained the defences, and assoiyled;" altering the interlocutor of Lord Monboddo.

*Act. J. Douglas. Alt. J. M'Laurin.*

1772. December 10. JOHN HEBBURN and WILLIAM CHEAP *against* GEORGE AIKMAN.

SALE.

Case where a purchaser of an heritable subject was held bound, either to accept of the disposition, and progress offered, or to depart from the bargain.

[*Fac. Coll. VI. 103; Dict. 14,179.*]

PITFOUR. When I was consulted as to defects in progress, I always told the parties, You must either take the progress or quit the bargain. When they said they would not quit the bargain, because it was a good one; then I advised them to keep their charter-chests shut, and try to make a good title to themselves by the aid of prescription.

AUCHINLECK. The rule, *loco facti imprestabilis subit damnum et interesse*, only takes place when a purchaser is led ignorantly to buy the subject. Here Mr Cheap knew that the progress was bad, and indeed bought because he knew it was bad. If he prevails, he may call the tenement Cheap-House; for he will retain the price, and is in possession of the subject *qua* tacksman. After the purchase he is no longer tacksman, so will pay no rent. As the seller cannot give him a progress, he will retain the price in his own hands.

HAILES. If Mr Cheap will not say that the seller can complete a progress, he must submit to have the bargain set aside.

PRESIDENT. Here is a *factum imprestabile*: Mr Cheap does not say that the progress can be made better, neither does he say that he has suffered any damage. He has got into possession, and says that he will hold the subject, and not pay the price.

On the 10th December 1772, "The Lords found that Cheap must either take the subject or give up the bargain, and found expenses due;" altering Lord Kennet's interlocutor.

*Act. J. M'Laurin. Alt. R. Sinclair.*