

No 9. reduction, but also by the above-mentioned exception from the warrandice in the tacks. There is no pretence therefore for making him a *bona fide* purchaser upon the faith of the records. *2do*, By the laws of all countries, a real action which concludes that the defender's right be reduced and the pursuer's declared, interpels the defender from making an alienation *judicii mutandi causa*, and third parties from dealing with him. The decree declares the right as it stood at the commencement of the action; and no intermediate act of the defender can prejudice it. Nor is this any infringement upon the security intended to be given by the records. They give a rational security to purchasers; but the law does not intend that purchasers should keep their eyes shut against every thing else that passes before them. Neither can any argument be drawn in favour of the defenders in this case, from the two decisions quoted by them. For, not to mention, that, by a later decision, viz. 8th December 1736, Wallace *contra* Barclay, No 85. p. 8388. adjudications have been found to have the privilege of litigiousity, though they have lain over for nine years without infestment; the cases referred to proceed upon principles not applicable to the present. A denunciation of apprising, or summons of adjudication, is only a temporary bar or interpellation against dealing with the debtor, because the decret itself is no more; and the reason of both is, that being only steps of diligence intended for recovering payment of a debt, though the debtor cannot *in cursu* disappoint them, yet if the creditor desert his diligence for a considerable tract of time, the debtor is released from the fetter, as it is naturally to be presumed that the creditor has operated his payment some other way. But this will not apply to a real action, or reduction of a real right. The decree obtained upon such action is perpetual, though the obtainer of it should not insist for possession till the approach of the long prescription; and, as the decree is perpetual, so the action must have its full effect as long as it depends in Court; and though the dependence should be intermitted for years, yet as the process is still in Court, and may be wakened by either party *ad libitum*, the decree which passes upon it being declaratory, will have effect from the summons, and will exclude any intermediate deeds of the defender.

" THE LORDS refused the desire of the petition, and adhered."

Act. Menzies, Jo. Craigie, Ferguson. Alt. Wight, Advocatus, Lockhart. Clerk, Justice.
I. C. Fol. Dic. v. 4. p. 255. Fac. Col. No 210. p. 378.

1781. July 4.

HEPBURN and SOMMERVILLE *against* CAMPBELL of Blythswood.

No 10.
Error in substantialibus.

UPON the death of James Campbell of Blythswood, his apparent heirs of line were advised to bring the unentailed estate to sale, under the act 1695;

cap. 24. Part of this estate, consisting of some borough-acres in the neighbourhood of Renfrew, was purchased by Mr Campbell, the heir of entail; but, before the sale came to be reported, or any interlocutor pronounced, it was discovered, that a mistake had been committed in fixing the upset price according to the proved rental of two acres and a half; whereas the subjects really amounted to seven acres. A question, therefore, arose, whether Mr Campbell, in virtue of his purchase, had right to the whole, or to a part only of these acres?

No 10.

Mr Campbell *contended*, That he had right to the whole; because the different parcels composing the seven acres, were all specially enumerated in the summons of sale; and because, in the letters of publication, and in the minutes and articles of roup, all the unentailed acres are said to be exposed.

The apparent heirs, on the other hand, referred to the advertisement in the newspapers, wherein the lands exposed to sale were limited by a specification of their proved rental, and to the state of the process, to show that said rental applied to no more than two acres and a half.

Observed on the Bench; Every sale, whether voluntary or judicial, may be set aside by an error *in substantialibus*; nor will even a decree of sale be sufficient to bar a purchaser from pleading such an error; as was determined in the case of Dalmahoy*. But here no decree has been pronounced; there seems to have been an error on both sides; and neither party is entitled to take advantage of the other's mistake.

THE COURT found, "That no more of the borough-acres were sold than to the extent of two acres and a half, and that the remainder of these acres still remained to be sold; but that it was optional to Blythswood, either to hold the purchase, or to reject the same, as he should think fit."

Lord Ordinary, *Monboddo*. Act. *Hay Campbell*. Alt. *Tait*. Clerk, *Campbell*.
L. *Fol. Dic. v. 4. p. 257. Fac. Col. No 69. p. 113.*

S E C T. IV.

Sufficient progress.—Sufficient title.

1676. June 13:

NAIRN against SCRIMGEOUR.

IN a suspension, at the instance of a person who had bought lands, upon that reason, that the seller who charged for the price was obliged by the contract to give him a perfect progress, and that the progress exhibited to him was de-

No 11.
It is necessary
to give a pro-
gress in every
respect com-

* See APPENDIX.