

the price or rent for the subject, was contrary to equity, more especially that Cheap purchased from Hepburn, conscious of the flaw in the title; and as there is no evil without a remedy, and that neither party could allege direct damage, dissolving the contract seemed an equitable relief within the power of the Court.

No 20.

Against this judgment, and a subsequent one of the Lord Ordinary, 'appointing the defenders to declare their option, whether they will accept of the disposition and progress offered, or depart from the bargain in terms of the interlocutor of the whole Lords,' an appeal having been taken by Cheap, the judgments were affirmed by the House of Lords, April 30. 1773, with L. 100 costs.

Act. R. Sinclair.

Alt. M. Laurin.

Clerk, Tait.

Fol. Dic. v. 4. p. 249. Fac. Col. No 39. p. 103.

1783. July 10. JOHN HAY *against* PATRICK PANTON.

MR HAY, as trustee for the creditors of a bankrupt, exposed to sale the subject possessed by the latter, and, among others, a ruinous tenement in the burgh of Kelso, which had been adjudged by his creditors.

By the articles of roup it was provided, that the creditors should assign to the purchasers their debts and rights, with warrandice to the extent of the price; and that the purchaser should accept such titles as were in the possession of the creditors, which were specified by an inventory.

Patrick Panton having become purchaser of the tenement above mentioned, and discovering that the inventory contained no right vesting the subject in the common debtor, brought a suspension, in which the LORD ORDINARY found, "that the suspender was not barred by the articles of roup from objecting, that no right whatever, in the person of the common debtor, is produced, or, though such title were produced, from objecting the nullity thereof, if such should appear."

Against this judgment the charger applied by reclaiming petition.

*Observed* on the Bench, A purchaser is not, in the common case, obliged to pay before the seller has delivered to him a sufficient title to the property of the subject sold. Here, however, it having been agreed that eviction alone should entitle the purchaser to recourse against the seller, no reason occurs why this paction should not be effectual.

Upon advising the reclaiming petition for the charger, with answers for the suspender,

THE LORDS found the letters orderly proceeded.

Lord Ordinary, Alva.

Act. Elphinston.

Alt. Tait.

Clerk, Menzies.

C.

Fol. Dic. v. 4. p. 249. Fac. Col. No 112. p. 175.

No 21.

Where it had been agreed that eviction alone should entitle the purchaser to recourse against the seller, the purchaser was found obliged to adhere to the sale without a sufficient progress.