

Mr Hannay, the purchaser, offered to prove, that there was a deficiency of 96 acres, of which 46 were woodlands, the estate extending in all only to 1614 acres. He therefore claimed a proportional deduction from the price, and

No 30.

*Pleaded*, Although the action *quanti minoris* is not sustained in Scotland, where a purchaser has been disappointed in the value of the subject sold, a different rule justly prevails, where, from its being either erroneously or fraudulently described, he has been deceived with regard to its extent or quantity, Erskine, Book 2. Tit. 8. § 10.; 23d June 1757, Maclean against Macneil, *voce* SALE; Wilson against the Creditors of Auchinbreck, No 27. p. 13330: And this, though the bargain should still remain a beneficial one, the buyer being equally entitled to all the advantage he had reason to expect, as to be relieved from every loss to which he has been exposed, by receiving, in this manner, a false or inadequate notion of his purchase.

*Answered*, The value put on this estate, and the articles of roup, which alone formed the contract between the creditors and the purchaser, were here fixed, without regard to any measurement, this having been referred to merely as descriptive of the subject. An intention, therefore, cannot be presumed, of making the dimensions contained in it an essential condition of the bargain. Even in a voluntary sale, the circumstance above stated could not have justified an abatement of the price.

But in the case of lands sold judicially such a claim is inadmissible. It has been there wisely established, on account of the ignorance of creditors as to the nature and extent of their debtor's estate, that no deduction shall be given, unless where a separate value has been affixed to the right which is evicted, or found to be defective. In every other case, the purchaser's only remedy is by renouncing the bargain altogether, February 13. 1782, Lloyds against the Apparent heir of Paterson, *supra*.

Mr Hannay's petition, insisting for this deduction, was, with answers for the creditors, remitted to the Lord Ordinary in the action of sale, who found no abatement due. Mr Hannay reclaimed; but his petition was refused without answers.

Lord Ordinary, *Hales*.For the Petitioner, *H. Erskine*.For the Creditors, *Rolland*.Clerk, *Orme*.

C.

*Fol. Dic. v. 4. p. 210. Fac. Col. No 195. p. 306.*

1788. June 27. HUGH INGLIS, and others, against GEORGE DEMPSTER.

No 31.

BETWEEN the year 1780, when a judicial rental of the lands of Skibo was made up, and the subsequent sale in 1786, the rents had fallen about a sixth part.

No diminution of the judicial rental sufficient to annul a judicial sale.

No 31.

On this ground Mr Dempster, the purchaser, offered a bill of suspension, insisting, if he could not obtain a proportional abatement of the price, that he should be allowed to renounce the bargain altogether. He *contended*, That as so remarkable an alteration, if not intimated by the seller, would vacate a private sale, there was no reason for giving a different effect to one carried on under the authority of the Court of Session.

THE COURT, however, were unanimously of opinion, agreeably to many former determinations, that the plea here urged for Mr Dempster was inadmissible. As it was known that the chief object of the judicial rental was to ascertain the bankruptcy, and that in the interval which preceded the actual sale many alterations would necessarily happen, it was the business of intending purchasers to make a proper enquiry into the matter; and nothing but an undue concealment of the facts could annul a judicial sale, otherwise unexceptionable.

“THE LORDS found the letters orderly proceeded.”

Lord Ordinary, *Hailes.* Act. *Blair.* Alt. *Geo. Fergusson.* Clerk, *Sinclair.*

G.

*Fol. Dic. v. 4. p. 210. Fac. Col. No. 26. p. 43.*

## S E C T. VII.

Purchasers must find caution for the price.---Purchasers' right to the rents.---Effect of a judicial sale as to payment of the price.---Is the purchaser obliged to pay before a scheme of division is made?

1713. *November 10.*

WILLIAM SYME, Merchant in Banff, Supplicant, *against* The CREDITORS of the deceased PATRICK SYME, Merchant there, his Father.

No 32.

Purchaser must find caution for the price.

WILLIAM SYME represented by bill, that in an action of sale and roup of a tenement of land in the town of Banff, belonging to the deceased Patrick Syme, his father, raised at the petitioner's instance as apparent heir, upon the act of Parliament in favour of apparent heirs, the whole supposed creditors of the defunct being cited, the term was circumduced against all except two, whose debts exceeded the value of the roup'd tenement; and, in respect the land was adjudged to the petitioner, as highest offerer at the roup, and he had got assignation to the two exhausting debts aforesaid, he craved to be free of his enactment to find caution.