

S E C T. VI.

Whether the sale understood a lump bargain or by rental. When subjects turn out disconform to the rental. When part of the subject has been evicted. Relief to a purchaser for an incumbrance not known at the time of sale.

No 24. 1697. July 20. WILLIAM HAY of Drummelzier *against* SIR JAMES COCKBURN.

WILLIAM HAY of Drummelzier and Sir Patrick Aikenhead having bought the lands of Dunse, a part of Cockburn's estate, by roup, and afterwards discovering several material errors in stating the rental and price, they craved rectification of the same, and allowance or deduction conform. *Alleged* for Sir James Cockburn and the creditors, That *esto* there were some lesion and over-valuation in the rental, the same ought to have been examined before the roup, and the offerers knowing all the public conditions of the sale, cannot now reclaim, seeing the next bidder will take it off their hand; and if this were allowed, all sales may be branled and subverted, which was become one of the surest ways of purchasing. *Answered*, This were a strange iniquity, if undeniable errors be made out, and yet the Lords shall not have liberty to reform the same; and this is no new thing, for the like was done in the roup of Carloury, Cockburn's path, Leswade and Others. THE LORDS would not review any errors in the testimonies of the witnesses, or the probation; but if there was any material error *in calculo*, or in the misapplication of the probation, the plurality inclined to reconsider the same; as where a house in Dunse is given up to belong to Sir James in superiority, and it is proved to hold of the Town of Edinburgh and the like; though this latitude may be of a very bad preparative.

Fol. Dic. v. 2. p. 311. Fountainhall, v. 2. p. 788.

1725. January 13. JAMES COUTS, Purchaser of Halgreen, *against* The CREDITORS of Halgreen.

No 25.
No deduction allowed where the rental decreased after probation, but before the sale.

THE estate of Halgreen having been long in the hands of creditors, was at last brought to a public judicial roup; and one for Mr Cout's behoof was preferred, as the highest offerer, and Mr Cout's gave bond for the price. The purchaser finding that there were considerable inlacks and deficiencies of the ren-