1769. *February* 8. URQUHART of CROMARTY *against* Lord ELIBANK.

No 7.
Alleged errors in a rental not relevant to diminish the price of lands sold by roup, where the articles of roup contained a clause, bearing that the price was to have no reference to the rental.

MR URQUHART having resolved to sell his estate of Cromarty, advertised the same in the public newspapers, and caused make out a rental; but, to prevent disputes, when the estate was exposed to roup, there was inserted in the articles of roup the following clause; "The price put upon the said lands and estate is not understood to have any reference to the rental; and therefore, the purchasers and offerers must satisfy themselves of the justness thereof, before the roup; and it is hereby expressly declared, that no objections against it shall be competent thereafter."

At the roup, the estate was purchased in name of Lord Elibank, who afterwards paid up the price to about L. 1500, which he refused to pay, *alleging*, That the rent was not agreeable, in some particulars, to the rental exhibited. Mr Urquhart gave a charge for the remainder of the price, which Lord Elibank suspended, and insisted for a deduction of the price.

Pleaded for Lord Elibank; The single question is, with regard to the relevancy of the demand of deduction claimed, or if such claim is precluded by the above-mentioned clause in the articles of roup. Such clauses are usual in sales, and the interpretation upon them is, to prevent sales being afterwards challenged upon small involuntary mistakes, or trivial inaccuracies; but never considered to protect against a challenge, or amendment of the transaction, if fraud should be discovered, or even a defect, which, if known at the time, would have made a material difference in the transaction. In a sale of lands, the rental must be taken upon the word of the seller, the purchaser seldom having it in his power to know the real state of a rental before purchase. Though in cases where there was nothing more but mere inequality between the price and the value of the subject sold, where there was no imposition on the part of the seller, or ignorance on the part of the purchaser, the law gave no relief; yet cases may be figured where the error is such as will found a good claim, both in law and equity, for an abatement *pro tanto* of the price. And, in this case, the suspender offered to prove his allegations of there being errors in the rental to such extent as made a difference in the price of about L. 1500 Sterling, the balance yet due.

Answered for Mr. Urquhart; The estate was neither exposed nor purchased by a rental, but in the way of a slump bargain, whereby the purchaser was to take the estate *tantum et tale* as it stood, without regard to a rental. It was optional to him to sell it in what manner he thought proper, either by public roup, or private bargain, and equally competent to him to prescribe the terms and conditions upon which the estate should be exposed to sale, whether by rental, or by the lump. It has been found from experience, that in sales by rentals, occasion has often been taken to raise disputes in paying the price, on pretence of shortcomings or errors in the rental, which made the charger re-

No 7. solve to expose his estate by the lump; and, in that view, it was expressly conditioned in the articles of sale, that the price was to have no reference to a rental. And, as it cannot be disputed, that a proprietor may expose his estate by the lump, without reference to a rental, so there can be no doubt of that being the case here; the clause in the articles of roup being as clear and explicit to that purpose as can be well conceived. If, in this case, in transcribing the rental, any articles had been omitted, and the error not discovered till after the sale, would the suspender have been bound to pay an excrescent price, purchasing upon articles of sale, such as the present? It is thought he would not; and, if so, of consequence he can claim no defalcation. And that being the case, it would be improper to involve the parties in the expence of an unnecessary and irrelevant proof, although the charger by no means admits the suspender's allegeances to be well founded.

"The Lords found the letters orderly proceeded, with expenses."

For Urquhart, *Lockhart* and *Alexander Elphinston*. For Lord Elibank, *Solicitor Dundas* and *Ilay Campbell*.

A. E. *Fol. Dic. v.* 4. *p* 254. *Fac. Col. No* 84. *p.* 333.

SECT. III.

Actio redhibitoria et quanti minoris.—Error *in substantialibus.*

1757. *June* 23.

Maclean of Lochbuy *against* Donald Macneill of Collonsay.

No 8.
Found to be sufficient ground for diminishing the price of lands, that they did not entitle to a vote, when it was bargained that they should entitle.

Maclean of Lochbuy sold the lands of Ardlussa and Knokintavell in Argyleshire to Macneill of Collonsay.

At the time of the sale, it was averred by Lochbuy, and understood by Collonsay, that these lands were each of them a two-merk land of old extent, so as to entitle the holder of them to a vote in the election of a member of Parliament. This consideration was one of Collonsay's inducements, who had no vote in the county, for making the purchase. The disposition, however, contained no such condition. It only described each of the lands to be a two-merk land of old extent.

It afterwards appearing, that the lands conveyed were not valued at four merks of old extent, nor entitled to a vote in the county, Collonsay suspended, and *insisted*, either for a resolution of the sale, or an abatement of the price.