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. *Ilay Campbell.* Alt. *Tait.* Clerk, *Campbell.*
L. *Fol. Dic. v. 4. p. 257. Fac. Col. No 69. p. 113.*

SECT. IV.

Sufficient progress.—Sufficient title.

1676. *June* 13. NAIRN *against* SCRYMGEOUR.

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 progress in every respect com-

* See APPENDIX.

No 11.
plete. The buyer is not obliged to accept of absolute warrandice to supply a defective title.

fective, in so far as the lands did hold of the bishop, and the original right was not produced, but only a charter of confirmation *in anno* 1611; and the charter confirmed was not produced; and the progress, since the charter of confirmation, was but late, and some of the charters had no sasine following upon the same, and some sasines wanted the warrants of charters and precepts; and albeit it was *alleged*, That the charters would be found registered in the bishop's register, that defect was not supplied thereby, seeing the bishop's register was not authentic, and ought to have no other respect than a register of any other lord or baron, of the writs granted by them;

The Lords found, That, though much may be said upon the progress foresaid, to defend against any person that will pretend right to the lands, and to found prescription upon them; a buyer nevertheless was not obliged to accept and acquiesce to the same as a sufficient progress, seeing the buyer ought to have a right; and prescription, with 40 years possession, doth not amount to a right, and there may be replies upon interruption; and, at the best, prescription is not a right, but *exceptio temporis*.

But the Lords did allow to the charger, a time for making out a better progress; and found, That the suspender could not be forced to acquiesce in absolute warrandice, which was offered in supplement of the progress, in respect the same is only the ground of a personal action, and may become ineffectual, if the person, obliged to warrant, should become insolvent. *In præsentia.*

Act. *Falconer.* Alt. *Stewart, &c.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 358. *Dirleton, No* 356. *p.* 170.

1682. *March.* Paton *against* Gordon.

No 12.
Found that a purchaser could not retain any part of the price upon alleged defects in the progress, in respect the lands had been disponed with warrandice, and a 40 years progress was delivered, where no incumbrances appeared.

George Paton having bought the lands of Grandhome, Dansie, and others, from Sir Robert Gordon of Gordonstoun, and having given bond for 1800 merks as the remainder of the price, whereupon Paton being charged, he suspended upon this reason, That Gordonstoun having disponed to him the lands, with absolute warrandice, yet, notwithstanding, the heritors, and possessors of Barnfield, having a servitude and moss-live upon the moss of Danstoun, from Gordonstoun's author, which will in a short time exhaust the moss, is a prejudice to the suspender's tenants of these lands, a moss being of great value in that country, without which the tenants cannot labour the land; and the moss is liable to serve both the suspender's tenants, and the heritor's, who has that servitude upon the moss; and therefore the suspender ought to have retention of this sum, with the damage and prejudice that he sustained by that moss-live: As also the charger has not delivered to him a sufficient progress of the rights of the lands, which at least ought to have been for the space of 40 years. *Answered*, That albeit the charger did dispone the lands with the muir and