

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.

THE LORDS ordained the purchaser to find caution to make the price forthcoming to the creditors, who shall affect the subject sold by real diligence.—
Nota, That no real diligence had followed upon the debts acquired by the purchaser.

No 32.

Fol. Dic. v. 2. p. 312. Forbes, MS. p. 1.

1750. July 18. ARBUTHNOT *against* The CREDITORS of FINNART.

No 33.

JAMES ARBUTHNOT bought the lands of Finnart and Tullichintaul, at a sale before the Court of Session, which were decreed to belong to him, and he to have right to the rents for crop and year 1747, and to be liable in interest for the price, from Whitsunday that year; whereupon he claimed the rent payable at Martinmas 1746, as truly due for the crop 1747, it being the custom of that estate for the tenant entering at Whitsunday to pay then one half year's rent, and the subsequent at Martinmas following, which was for the crop to be sown and reaped next year; at least that he was entitled to so much of the said rent as was payable for the corns sown on the farms.

Purchasers' right to the rents.

THE LORD ORDINARY, 5th July, "Found he was entitled to no part of the rent due at Martinmas 1746."

On a reclaiming bill *observed*, That as this estate consisted of grass-rooms, the legal terms were Whitsunday and Martinmas; viz. that half a year's rent was payable at Whitsunday, when the tenant entered, and the other at Martinmas for that year; and that the price being made payable at Whitsunday, when half a year's rent was due, the purchaser, instead of being lesed, had by the decret gained half a year's interest of his money.

"THE LORDS refused the bill."

Pet. Brown.

D. Falconer; v. 2. No 151. p. 175.

1777. February 14. DOUGLAS *against* DICKSON.

No 34.

THE purchaser of lands at a judicial sale, on a creditor's having petitioned the Court and obtained their act and warrant for payment of his debt, on finding caution to repeat any part if overpaid, having refused to make the payment, and urged to the Court, that till there was a scheme of division made out, he could not pay with proper security; the LORDS, considering that, by act of Parliament 1695, c. 6. a purchaser may be exonerated and receive up his bond of caution on consignation of the price, in respect the purchaser had not offered to consign in terms of the said act, authorised the warrant granted by the Lord Ordinary. *See APPENDIX.*

Fol. Dic. v. 4. p. 212.