

1796.

EARL OF  
DUNDONALD  
v.  
BUSHBY, &c.

ARCHIBALD, EARL OF DUNDONALD, - *Appellant* ;  
JOHN BUSHBY and JOHN LOUDON MACADAM, }  
Esqs., Trustees of the late Hon. Admiral }  
Keith, and ROBERT WATSON, Writer in } *Respondents.*  
Edinburgh, Common Agent in the Pro- }  
cess of Ranking and Sale of the Estates }  
of the said Earl of Dundonald, - }

House of Lords, 27th December 1796.

RANKING AND SALE—VALUATION OF THE ESTATE.—Circumstances in which the mode adopted in valuing the estates in the ranking and sale, for the purpose of fixing the upset prices at which the same was to be set up for sale, was unexceptionable, and objections repelled.

A ranking and sale having been brought of the appellant's estate of Culross by his creditors, the common agent, in conducting the business for the general behoof of the creditors, proceeded in the usual manner to take a judicial valuation of the estate, for the purpose of fixing the upset price for which it was to be exposed by judicial auction.

Valuators were accordingly appointed, who proceeded to value,—1st. The wood or forest of Culross ; 2d. The ground or land occupied by the forest ; and 3d. The mansion house or abbey of Culross.

1. In regard to the first, the valuator valued a certain part of the forest at 4d. per cubic foot, and another part at 4d. per running foot, and the whole at £30 per acre.

2. In regard to the ground occupied by the forest of Culross, they valued the 729½ on an average at £15 per acre.

3d. In regard to Culross Abbey, the valuator took the aid of an architect. Having measured the new and the old parts of the abbey over walls, they found it to contain 245,000 cubic feet ; and valued the new part at 5d per foot, and the old part at 3d. per cubic foot.

It was stated by the appellant, in objecting to this valuation, that the whole had been valued a few years before (in 1780) by Sir Ralph Abercromby, George Abercromby, and John Clerk, Esq. of Eldin, at a very different value, these gentlemen having valued the wood and forest at £41 per acre, and offered to prove that the proper price of wood was 8d per foot.

The appellant's objections were, 1st, to the forest and

forest lands as too low; and, 2d, to the Abbey of Culross as too high priced.

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In these circumstances, the appellant petitioned the Court to see the plans and abstract of the proof, and to lodge objections. He got till the next sederunt day in next November, to lodge objections; and this time was further prolonged till 6th July thereafter, but no objections having been lodged, in consequence, as the appellant stated, of being obliged to leave Scotland on affairs of national importance, the Court, of this date, pronounced this interlocutor: “ Upon the report of Lord Meadowbank, and having “ advised the state of the process, testimonies of witnesses, “ writs produced, scheme of probation, and memorial and “ abstract given in, in terms of the act of sederunt, the “ Lords find it proven, that the total gross value of the “ forest and forest lands of Culross, part of the subject of “ the second lot, extends to £16,610. 14s. sterling. “ Find it instructed by a certificate of David Ireland “ produced, that the ground occupied by this plantation, “ is holden feu of the burgh of Culross, for payment of a “ yearly feu-duty of £13. 8s. 8d., which the Lords value at “ twenty years’ purchase, and which extends to £268. 13s. 4d., “ and that, after deduction of that sum, there remains as the “ net value of the forest, the sum of £16,342. 0s. 8d. “ Find it proven that the total value of the wood and wood- “ lands in neighbourhood of Culross Abbey, extends to “ £1389. 11s. 8d., and that the total value of the subjects “ contained in the second lot, amounts to £17,731. 12s. 4d., “ Find it proven that no deduction appears to affect the “ subject of the third lot, being the Abbey of Culross, and “ which the Lords value at £5466. 13s. 4d. sterling. More- “ over, the Lords, from the evidence produced, value the “ tenth lot, being the aisle in the church and tomb, or “ burial place of the family, at £1200. Therefore the “ Lords ordain the foresaid subjects to be exposed to sale “ by way of public roup, within the Parliament House, on “ the 1st day of December next, between the hours of four “ and six o’clock, and remit to the Lord Ordinary on the “ bills for the week, to be judge of the said roup, with power “ to adjourn the same as they shall see cause, and to ad- “ just the articles and conditions of roup, and to sell the “ said subjects jointly at the aforesaid price of £39,528, 16s., “ or separately, at the foresaid valuations put thereon by “ the Lords, or at higher prices, if the same can be had

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“therefor, but not under the above price or prices. And, to the effect that all concerned may be duly certified of the said roup, ordain letters of publication and intimation thereof, to be expedite.” At the same time, the Court refused the desire of the appellant’s petition for delay to give in objections to the valuation.

Against these interlocutors the present appeal was brought, craving a reversal, and a remit to the Court of Session, to allow the appellant to give in his objections to the valuations, and to allow him a proof of the true worth and value of the subjects.

*Pleaded for the Appellant.*—The great difference between the value in 1780 and the judicial valuation, ought to have induced the Court to give time to the appellant to prepare his objections, and to lead proof as to the proper valuation. 2d. Besides, the value put upon the Abbey or mansion house, is most extravagant, and the mode of computing the value improper and unusual. Whether it is meant to sell it along with the estate, or separately, the appellant does not know, but, in either case, the high valuation is injudicious. If sold with the estate, it will be a clog when so valued. If put up to sale separately, who will purchase a large house without land annexed, without even a garden? 3d. To the sale of the burial place of his family, the appellant cannot object, if his creditors insist upon it; but he does object to the way in which the tomb of his forefathers has been valued, and by the interlocutor is ordered to be put up to sale, as the tomb is evidently devoted to destruction, and in the appellant’s humble apprehension, a sort of authority is given for the commission of sacrilege.

*Pleaded for the Respondents.*—This process of ranking and sale has been carried on and proceeded in with an exact conformity to the act of sederunt, and the present appeal is solely got up for the purpose of retarding the sale of the appellant’s estates, and delaying that justice he owes to his creditors, of receiving payment of their just debts. 2. Besides, every indulgence in the way of delay has been conceded to the appellant, for the purpose of correcting any mistakes in the valuation. It would therefore be adverse to the interests of the creditors to delay the sale longer, which has depended for so many years before the Court, and even prejudicial to the appellant himself. 3d. The respondents have taken the most proper measures for ascertaining and adjudging the true value of the debtor’s estate; and if he was

dissatisfied with the evidence brought forward of the value, it was incumbent upon him to bring contrary evidence, if it was in his power.

After hearing counsel, it was

Ordered and adjudged, that the appeal be dismissed, and that the interlocutors therein complained of be affirmed. And it is further ordered the appellant do pay to the respondents £50 for their costs in respect of said appeal.

For Appellant, *Sir J. Scott, W. Grant, J. Anstruther.*  
*W. Adam.*

For Respondents, *David Williamson, Wm. Dundas.*

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FERGUSON  
v.  
MOSSMAN, &c.

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WILLIAM FERGUSON of Raith, Esq. - *Appellant* ;  
HUGH MOSSMAN, ESQ., and J. ANDERSON, } *Respondents.*  
W.S. - - - - -

House of Lords, 17th Feb. 1797.

**JUDICIAL SALE—ERROR—MISREPRESENTATION—ADVERTISEMENT OF SALE.**—The teinds were represented in the memorial and abstract of a ranking and sale, and in the advertisements of the sale of the estate, to be valued and to be exhausted, and subject to no further burden from stipend. Held, on discovery of an informality fatal to the sub-valuation, and which deprived the lands of exemption from such burdens, namely, that the sub-valuation and report of the sub-commissioners had not been approved of by the high commission of teinds;—that the purchaser was not entitled to abatement from the price, there being no *mala fides* on the part of the seller.

The appellant was purchaser of the lands of the Macfarlane estate, at a judicial sale, including the lands of Upper and Nether Arrochar, in the parish of Arrochar. The upset price was £19,756. They were knocked down to him at £28,000, and were bought under the representation that the teinds were valued, and the value of them exhausted by the stipend of the minister; and this was set forth in the advertisements of the sale, and was proved by the sub-valuation of