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ing at the termination of the thirty-eight years of specific endurance, was completely vested in William Grieve, junior, as heir of his father in possession of the farm; and that life interest having suffered a double extinction by his renunciation and by his death, the lease is now completely at an end, and the farm restored to the actual possession of the respondent. 2d. Even supposing that the term "heir," as used in the lease, did not apply to William Grieve, junior, the heir nominated by the deed; and that this nomination amounted, therefore, to a departure from the stipulation of the lease; that deviation from the order of succession established by the lease, could only be called in question by the landlord, and could afford no objection against William's possession available to the heir-at-law. It is in favour of the landlord alone, that such a restriction of the succession to the heir-at-law can be understood to operate. And the ground upon which he is entitled to challenge the assignation is, that the farm is transferred to a person to whom he is not obliged. The right to urge this objection is, from its very nature, confined to the landlord; and the heirs of the tenant have no *jus quæsitum* to insist otherwise; because this right to challenge the assignation, contrary to the terms of the lease, was personal to the landlord. It was so found in Marquis of Tweeddale *v.* Hay, 8th December 1801. The consent, therefore, of the landlord was alone sufficient to validate the right in William Grieve.

Fac. Coll. et M. p. 15, 297.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellant, *Sir Saml. Romilly*, *John Greenshields*.

For the Respondents, *John Fullerton*, *Francis Horner*.

THOMAS MITCHELL, Soap-Manufacturer, Dunbar, - - - - *Appellant.*

Messrs JOHN JAMIESON and SONS, Merchants in Leith, - - - *Respondents.*

House of Lords, 15th June 1814.

SALE—MARKET PRICE—MISREPRESENTATION—COMPENSATION.—Circumstances in which a purchaser of tallow was held not entitled to object to the sale on the ground of alleged misrepresen-

tation as to the market price of the article at the time of the bargain, and his plea of compensation repelled. Affirmed in the House of Lords.

The appellant, a soap manufacturer, had dealt with the respondents in tallow during several years.

On the 12th of November 1804, the respondents wrote the appellant, making an offer to sell him twenty or thirty casks of best yellow tallow, at £74 per ton, or 74s. per hundred-weight, and six months' credit, concluding in these words :— "To wait your answer in course; that price, we do assure "you, is under the present price of the market, Kerr and "Pillans having sold, within these few months, several "hundred-weight at 74s. per hundred-weight, four months. "Scougall and other holders will not sell at £75 per ton." Nov. 12, 1804.

The appellant, though, as he stated, sufficiently supplied with tallow, was induced by the representation of the respondents as to the price, to offer them 73s. per hundred-weight for twenty casks. On the 19th November, they replied to him in the following terms :—"Yours of the 17th we are duly in receipt "of. Our offer, we can assure you, as markets are going for "tallow, you ought to consider very fair at 74s. per hun-"dred-weight, as many sales are making at 75s.; and 74s., "three months. Many holders will not sell at these prices, "and there is little now for sale. As we consider you one of "our best customers, and to show we wish to deal with you, "we shall half the difference, and make the invoice out at "73s. 6d., six months. Annexed you have the particulars "of the same, and bill for acceptance per £549, 2s. 6d., "which beg you will do the needful with, and return it to "yours," &c. Nov. 17, 1804. Nov. 19, 1804.

The appellant further stated, that, relying on the respondents' assurances as to the current price of tallow, he accepted the bill as the price of the twenty casks; but that, in less than three days, he found that he had been imposed on, for, of this date, he received a letter from Mr Sanderson, agent at Dunbar for Messrs Ramsay, Williamson, and Company, Leith, stating —"I am desired by Messrs Ramsay, Williamson and Com-"pany to inform you they can supply you with tallow— "candle tallow—at 71s., credit, and that they sold soap tallow "at 67s., credit. I will be much obliged to you to give an "order." He was also informed that the respondents had purchased the tallow in question recently before from Ramsay, Williamson and Company, at a price below what the respon- Nov. 22, 1804.

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dents had represented the current country price to be. In these circumstances he resolved to have deduction from the respondents, and for this purpose he bought other two casks at 71s. per hundred-weight, which offer the respondents accepted.

The respondents refused to give deduction for any overcharge of price of the twenty casks out of the price of the two casks; and the appellant refusing to pay without such deduction, the respondents raised the present action.

In defence to this action, the appellant stated his claim of deduction for gross overcharge, and to that extent compensation was pleaded, expressing his willingness to pay the balance.

Dec. 13, 1806. The Lord Ordinary (Glenlee) repelled the defences, and decerned; and afterwards, on representation, answers, &c., he

July 7, 1807. pronounced this interlocutor:—"Finds that, although the "defender does state, and state truly, that the certificates "produced by the pursuers are not legal or admissible evi- "dence of the entries in the books of Ramsay, Williamson "and Company, and other merchants, respecting the price at "which they made sales of tallow at the period to which the "dispute between the parties relates, yet he does not expli- "citly aver that the entries in the books of the said merchants, "or in those in the pursuers themselves, are different from "what the pursuers state them to be. Finds it admitted by "the defender that, within three days of his having concluded "the former bargain, on the 19th of November 1804, he was "fully apprised of the circumstances on which he now founds, "in order to show that, in said former bargain, the pursuers "had overcharged the tallow, and that nevertheless he made "no complaint to them whatever, but, on the contrary, with- "out saying a word, made a new purchase from them, on the "6th December 1804, of the tallow for the price of which "the present action was brought; further, that although his "bill for the price of the tallow purchased on the 19th of "November remained all along in the hands of the pursuers "themselves, yet, when it fell due, at the distance of six "months, it was paid by the defender's banker without any "objection whatever. And the Ordinary is of opinion that, "under these circumstances, the defender's plea of compensa- "tion on account of the alleged overcharge on the price of "the tallow purchased by him on the said 19th November "1804, cannot now be listened to. And on the whole matter, "refuses the said representation, and adheres to the interlo- "cutor complained of. Finds the defender liable in expenses,

" and remits to the auditor to ascertain the amount thereof, " and to report. Supersede extract till November next."

The Lord Ordinary refused short representations of these dates. On reclaiming petition to the Court, their Lordships adhered.

From these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—The appellant was induced to make the purchase of the tallow in question at the price mentioned by the representations of the respondents, that such was below the market-price. These representations were false and fraudulent; the contract, therefore, was invalid, and the appellant is entitled to compensation to the extent of the difference between what he paid, and the actual average market-price at the time, which price only he intended to give, and for which he was fraudulently persuaded by the respondents to believe he was actually contracting. 2d, He did not surrender his right to demand such compensation by paying his bill when due, as any person holding that bill, for a valuable consideration, could have compelled him to pay it. 3d, There is no evidence that the sales made by the merchants mentioned by name were such as the respondents held out; but if there were, these sales would not prove the market-price; and it was by the representations of the respondents as to the market-price, that the appellant was induced to make his purchase at the rate he did. 4th, The circumstances of the price at which the respondents bought these goods, the price at which they sold him the last parcel, and the price at which Messrs Ramsay, Williamson and Company, offered to supply him,—were sufficient proof of what the true market-price actually was. But if not, the appellant offered to prove that the market-price was such as he stated, and this averment he ought at least to have been admitted to support by competent evidence.

Pleaded for the Respondents.—The defence set up by the appellant is irrelevant and inadmissible. Besides, on the merits, the letter of the respondents, which offered the appellant twenty casks of tallow at 74s. per hundred-weight, is dated the 12th November. The letter of the agent of Messrs Ramsay, Williamson and Company, which informed him that they had tallow for sale at 71s. per hundred-weight, is dated 22d November. Of an article, the price of which frequently fluctuates, it does not follow that the market price was not 74s. upon the 12th November, because a particular house offered it at 71s. ten days afterwards. But if any inquiry

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could be instituted upon this ground, the representation of the respondents was to be judged of, not by a letter of the agent of Ramsay, Williamson and Company, but by the sales of that house at the period in question; and the respondents asserted that the sales of this house, at this period, proved the truth of the representation made by them, as the following note of the sales of this house, from the 5th November to 6th December 1804, established. [Here the note of sales was given.] But further, this letter of the agent of Ramsay, Williamson and Company, was received by the appellant, two days after he had sent his acceptance for the tallow in question, but before that tallow was delivered. If the circumstance of which he was therein apprized, could have any effect upon his bargain with the respondents, he might and ought to have refused to receive the tallow, and have insisted to have his acceptance delivered up to him. At all events, they ought to have been immediately apprized of it; but according to his statement, as the truth was, they were not apprized of it until a demand was made for payment of the two casks of tallow, for which the present action was brought; that is, not until the month of January 1806, upwards of a year afterwards. The receiving delivery of the tallow in question without complaint, after the appellant was in possession of the ground upon which he has now attempted to raise an objection, was of itself alone sufficient to negative his present defence. Besides, he might have insisted for redelivery back of his bill. A bill at six months could not be discounted within two days after its date. The bill was still in the respondents' hands; at all events, he might have received the tallow under protest, or upon notice reserving his objection. He did not bring an action for redelivery of the bill. He did not reject the tallow. He did not even receive it under protest. He takes it, and gives no notice whatever of the objection as to the fairness of the bargain and sale. Instead of this, he orders two casks more at 71s. per hundred-weight, maintaining a perfect silence at the time, of his intention to claim deduction from the price of these of the alleged overcharge. These, the respondents contend, are circumstances, which, in law, totally exclude the claim made by the appellant.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellant, *Sir Saml. Romilly, J. P. Grant.*
For Respondents, *M. Nolan, W. G. Adam.*

NOTE.—Unreported in the Court of Session.

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JAMES JAMESON, Merchant, Leith, - *Appellant;*

JOHN RUSSEL and JAMES THOMSON,
Builders in Leith, - - - - *Respondents.*

House of Lords, 17th June 1814.

FEU CONTRACT FOR BUILDING—STIPULATION—ARTICLES OF ROUP—PLAN—DECREE ARBITRAL.—In a sale of feus for building houses, there was a stipulation in the articles of roup, that the houses built should be conform to a uniform plan, and of a certain elevation. The respondents, builders, purchased the ground for building, and proceeded to erect their houses. In a suspension and interdict, held that they had not, in substance, deviated from these conditions as to building. Affirmed in the House of Lords, with £170 of costs.

A sale of feus for building houses of grounds on Leith Links, was made by the appellant to the respondents, builders in Leith, in which there was a stipulation in the articles of roup, that the houses built should be conform to a uniform plan, and of the elevation of 39 feet in front, and a plan was drawn out and subscribed, as relative thereto.

It appeared that the builders, as they proceeded to build the houses, found that an alteration, both on the levels and on the elevation of the cellars of the houses would be necessary, and these, no sooner than discovered, were communicated to the appellant, and his acquiescence obtained to the several deviations as they occurred. A new plan was made out, embracing these elevations, and it was subscribed by the appellant, and lodged in the Dean of Guild's office.

Even this latter plan was not strictly adhered to; because when the respondents began to build, several alterations occurred to them as desirable, which they communicated to the appellant, and he yielded in many respects to these alterations. The alterations to which the appellant consented were: 1st, Front to be rustic work, instead of plain; 2d, Cellar windows permitted, contrary to the plan, &c. Accordingly, in these circumstances, four houses on the west were actually built and finished, with the alterations now specified and sundry others, but there was no alteration made on the height of the side or gable walls, which, by the articles of roup, were stated to be