

[11th August 1832.]

No. 13. JOHN REDDIE, Appellant. — *Lushington*. — *Deas*.
 DAVID SYME, Respondent. — *Lord Advocate (Jeffrey)*. —
Kaye.

Sale.—Circumstances under which a purchaser of land, who had accepted a disposition, paid the price, and entered into possession, held (affirming the judgment of the Court of Session) not entitled to damage, on account of being disappointed in one of his alleged views for buying the land, in consequence of the terms of a missive of lease held by the tenant of the land, and the existence of which missive the purchaser averred had not been disclosed to him.

1st DIVISION. JOHN REDDIE of Cuthil, situated in Kinross-shire,
 Ld. Corehouse. raised an action of damages in the Court of Session for breach of contract against David Syme of Cartmore.

In substance the allegations of the pursuer were as follow: —

Bounding the whole of the pursuer's lands on the south side there is a tract of ground extending to about ninety-three Scots acres, commonly called Cuthil Muir, which formerly belonged to the pursuer's ancestors, but had been sold to the late John Syme of Cartmore. After his death, his son, David Syme, advertised these lands for sale. These lands are chiefly valuable as a property capable of improvement by the formation of stripes and clumps of planting, roads, drains, &c.; and accordingly, in the valuation on which it was advertised for sale, this susceptibility was taken into account.

Having a view to these circumstances, and to obtain shelter to the pursuer's contiguous lands, he in July 1828 waited on David Wardlaw, writer in Edinburgh, agent for Syme, and, after some conversation on the subject, made an offer in writing of 1,000*l.* for the property, on receiving a regular sealed disposition thereto, but on the supposition that the lands were not under lease. Wardlaw, however, stated that the lands had been agreed to be let, whereupon the pursuer withdrew his offer for the lands, explaining that his object was to plant and improve them, which of course he could not do if they were unconditionally let to a tenant. Wardlaw then observed that there was full power reserved to the landlord for these and similar purposes in the lease to be granted to the tenant, and exhibited and read the draft of the lease, letting the lands to Daniel Campbell for nineteen years from Martinmas 1824, at the rent therein specified, and which draft contained, inter alia, the following clause:—

“ Reserving power to the said David Syme, his heirs
 “ and successors, to take off ground for planting trees
 “ within the farm, at such places as he or they may
 “ judge proper, and to search for and work coal, lime,
 “ or metals or minerals of any description, to make
 “ roads, and do every other thing necessary for carry-
 “ ing on these operations, and also for taking off
 “ ground for building whatever houses the landlord
 “ may think fit, and for gardens and other grounds
 “ adjacent thereto, to be possessed by such persons as
 “ he may think proper, and likewise to straighten
 “ the marches, or excamb any part of said farm, the
 “ tenant being allowed indemnification for the ground
 “ occupied for any of the above purposes, as the same

No. 13.

11th August
1832.

REDDIE

v.
SYME.

No. 13.

11th August
1832.

REDDIE

”
SYME.

“ shall be ascertained by two arbiters to be mutually
“ chosen, or by an oversman to be named by the
“ arbiters, in case of their differing in opinion.” The
draft also contained clauses in relation to the houses,
fences, &c., and to the cultivation of the lands, and
other clauses restrictive of the rights of the tenant, and
in favour of the landlord.

The pursuer being satisfied with these terms, and
depending on the assurance given him by Wardlaw that
the conditions contained in the draft were those alone
on which the lands were let, agreed to abide by his offer.
Shortly thereafter the pursuer received from Wardlaw
30th July 1828. a letter of acceptance “ of your offer of 1,000*l.* sterling,
“ payable at Martinmas, when your entry is to take
“ place; the stamp duty on the conveyance to be divided
“ according to custom, the title to be accepted of as
“ it stands, without requiring an entry with the supe-
“ rior, and the lease to Mr. Campbell to be confirmed
“ on the terms specified in the scroll which was shown
“ to you when here some time ago. If Mr. Williamson
“ is to make out the disposition in your favour, the
“ title deeds will be sent to him.” Williamson, agent
for the pursuer, wrote next day to Wardlaw on the
subject, requesting that the title deeds and the scroll
of the lease might be sent to him, and inquiring
whether, if the tenant were agreeable, there would be
any objection to the pursuer’s commencing his planting
operations previous to his term of entry. Wardlaw
wrote Williamson in reply, with the title deeds,
and observed — “ The draft of the lease was sent to
“ Mr. Syme two days ago; and Mr. Syme has not the
“ least objection to Mr. Reddie arranging as to his
“ plantation whenever he pleases, and will be glad to

“ give him all the facilities in his power.” On the 6th day of August 1828 Syme wrote to the pursuer, transmitting the draft of the proposed lease, and also another draft, of the existence of which the pursuer was not previously aware, which Syme stated had been prepared by the tenant’s agent, but that in the “ material conditions they do not differ, and that the principal disagreements are as to the management of the lands, more particularly during the four last years of his possession. Perhaps the stipulations of the original draft are not quite applicable to a farm of that kind, while those of the other seem to be rather loose; but of this you are the best judge; and as I have always found the tenant perfectly reasonable and well-disposed, I am sure that you will find no difficulty in getting him to agree to any conditions which are in themselves equitable. Those in which both scrolls agree may be considered as the only ones finally settled.” This draft contained a similar clause with that in the original draft, reserving power to the proprietor, and his heirs and successors, “ to take off ground for planting trees on such places of the farm as they may think proper ;” with the addition of these words, which were not in the draft shown to the pursuer, viz. “ to the extent of acres.” It also contained power to make roads and straight marches, to take off ground for building houses, with gardens, &c., as in the other draft, but differed as to the mode of cultivation. There were also other discrepancies of minor importance. The pursuer returned the draft to Syme with remarks; and Syme answered, “ I shall send the scrolls, with your memorandum, to Campbell, that he may compare them, and say that he is satisfied and agrees.”

No. 13.

 11th August
 1832.

 REDDIE

 v.
 SYME.

No. 13.

11th August
1832.

REDDIE
v.
SYME.

Thereafter the pursuer undertook to endeavour to arrange with Campbell as to the mode of cropping the lands, and in October 1828 the pursuer wrote to Syme—

“ I am sorry that I have not been able to come to an arrangement with Daniel Campbell as to the mode of cropping. We came to an understanding regarding the extent to be planted (without exactly limiting the quantity), and, with a view to please him, I had resolved to plant considerably less than I could otherwise have wished; and, although I did not consider his plan altogether according to the rules of good husbandry, I agreed to let him have it his own way,” &c. . . “ I called on him to subscribe a note, containing the terms on which we had agreed, in order to prevent any objections afterwards, or any misunderstanding, and was surprised to find that he would not even agree to this way of his own, unless I would divide and enclose the lands (with expensive stone dikes) so as to suit this plan of cropping, which I declined.” The pursuer farther described that his object was to have the land planted and improved, and, without this liberty, I would not have been disposed to make the purchase, and must beg leave to refer you to Mr. Wardlaw, who will recollect, when he informed me there was a tack, I withdrew the offer I had made, until he showed me the clause reserving liberty to plant what the landlord should think proper.” In this state of matters, and as Syme or Wardlaw had said nothing to the pursuer which could lead him to suppose that Campbell had it in his power to keep possession, or to force a lease of the lands on any other conditions than those contained in the original draft exhibited to the pursuer, and referred to in the

missives of sale, the pursuer, about the term of Martinmas 1828, when his entry was to take place, paid the price of the lands, and received a disposition thereto from Syme.

The pursuer not being disposed to accede to Campbell's mode of enclosure, and trusting to the clause in the two scrolls, proceeded with his planting and improving operations, procured upwards of sixty thousand trees, and employed a great number of workmen to line off the ground and make the other preparations for carrying the object of his purchase into execution. The pursuer also (taking half the expense) agreed with a neighbouring proprietor to erect a march fence, to the extent of about half a mile, to protect the proposed plantations; but his operations were put a stop to by the following intimation, which he received from Campbell's agent:—“ Kinross, 5th December 1828. Your
 “ tenant Mr. Campbell has called on me this evening
 “ about the improvements which you have begun at
 “ Cuthil. From Mr. Campbell's missive of lease, there
 “ is no liberty reserved by the proprietor to plant or to
 “ interfere with the property in any way whatever;
 “ and if you are still to persist, I am instructed to
 “ make application to the sheriff for an interdict.”

This was the first time the pursuer was made aware of the existence of an unconditional missive of lease in favour of Campbell, and he on the same day wrote Syme, requesting a copy thereof, and also to get back the two scrolls before referred to. Wardlaw wrote in answer — “ In the missive of sale the benefit of the
 “ lease to Mr. Campbell was reserved to him, accord-
 “ ing to the draft of that contract, but without specify-
 “ ing in particular which draft was referred to; and as

No. 13.

 11th August
 1832.

REDDIE

v.

SYME.

No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

“ there were two drafts in existence, one prepared by
 “ us, and another by Mr. Campbell, which is different
 “ in some respects from ours, a difficulty arises as to the
 “ exact tenor of the lease to be granted.” He then
 says, that as there seemed some chance of a law-suit
 between the pursuer and Campbell, he had advised
 Syme not to interfere in the matter. The pursuer then
 wrote Wardlaw, stating that the chief difficulty did not
 arise from there being two drafts, to the least favourable
 of which the pursuer (although not bound) might have
 acceded, but from there being a secret unconditional
 missive of lease in favour of Campbell, which enabled
 him to prevent the whole of the improvements for the
 sake of carrying on which the pursuer had purchased
 the property, and stating, “ I do not wish to go to
 “ law with Campbell, and have therefore, in the mean-
 “ time, put a stop to my operations until I ascertain
 “ if he really has such a bargain. He had till now
 “ carefully concealed it from me, and Mr. Syme was
 “ equally silent on the subject. I have therefore to beg
 “ that you will be pleased explicitly to state if such
 “ document really does exist; if it does, and has not
 “ been set aside by a subsequent agreement between the
 “ parties, it would be in vain for me to go into litiga-
 “ tion with Campbell. I have purchased a considerable
 “ quantity of plants, which will in a great measure
 “ be lost if I am prevented from planting during this
 “ season; and I have made arrangements for carrying
 “ on other improvements on the lands, which, if I am
 “ prevented from carrying into effect, will completely
 “ disappoint the views I had in purchasing the pro-
 “ perty.” The pursuer then reminded Wardlaw of
 the statement which he made at the time of the bargain,

that the landlord had reserved full power to plant, and of the clause which he read from the draft of the lease to that effect. Wardlaw, in replying to this letter, neither denied that such were the terms of the bargain with the pursuer, nor stated whether Campbell had or had not the unconditional missive of lease which he alleged, but merely said he was sorry that he could not give the pursuer a satisfactory answer on the subject.

The pursuer's agent then obtained from Campbell's agent the following copy of the missive of lease:—

“ 27th February 1828. Conditions, Daniel Campbell's
 “ lease. The lease to be for nineteen years; money
 “ rent to be annually for the first five years 25*l.*, for
 “ the seven years following to be 35*l.*, and for the re-
 “ mainder of the lease 40*l.*; to be paid half-yearly in
 “ equal portions, beginning the first payment at the
 “ term of Candlemas, immediately after the separation
 “ of the crop, and the next at the term of Lammas
 “ following, and so on to the end of the lease. There
 “ was to be a suitable tofting put upon the lands the
 “ first year of the lease; the tenant to drive the car-
 “ riages for the sum of 14*l.* if the wood was taken
 “ from the Pottiehill or Blairadam, the stones from the
 “ nearest and most convenient quarry, and the reed
 “ from the Rhind. The fences were to be put in a
 “ good state of repair the first year of the lease, and
 “ were to be left so at the expiry thereof. The tenant
 “ was to have one hundred loads of small or lime coal,
 “ and forty load of chouse, free, at Kelty, when he had
 “ occasion for them. The above are the conditions upon
 “ which I am bound to grant a tack of Cuthil Farm
 “ to Daniel Campbell. He is not answerable for the

No. 13.

11th August
1832.

REDDIE

v.
SYME.

-No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

“ expense of erecting the tofting.” (Signed) “ DAV.
 “ SYME.” The pursuer’s agent wrote Wardlaw, with
 a copy of this missive, in December, stating, “ We
 “ have not seen the original, and it will now be abso-
 “ lutely necessary that Mr. Syme distinctly say how
 “ this matter stands;” and thereafter a great deal of
 correspondence ensued between the parties. The pur-
 suer maintained that there was ample evidence to show
 that Syme and Wardlaw were perfectly acquainted with
 the inductive reason of his buying the land; that at the
 very time of the purchase they were quite aware of the
 existence of the unconditional missive of lease to Camp-
 bell, and on which Campbell was actually in possession;
 and that the secret missive of lease was subscribed by
 Syme after the draft, called Campbell’s scroll, had been
 prepared and submitted to him, but not agreed to, and
 after Campbell had refused to agree to the terms of the
 draft which was shown to the pursuer when he pur-
 chased the lands as the lease agreed on between the
 parties, but without effect. The defender would not
 consent to annul the sale, or take back the property and
 repay the price. Indeed, that would have been no com-
 pensation for the breach of contract. Alleging on these
 grounds that, in the purchase of these lands, he had
 been deceived and misled by Syme and Wardlaw his
 agent, and had suffered great loss and damage, and his
 favourite plans for improving his family estate had been
 disconcerted and destroyed, the pursuer concluded, that
 the defender, David Syme, ought and should be de-
 cerned and ordained to make payment to the pursuer
 of the sum of 800*l.* sterling in name of damages, and as
 a solatium for the loss and injury sustained by him,
 together with expences, reserving to the pursuer to

bring a supplementary or other action against the individual creditors of John Syme or others, as jointly or severally liable to the pursuer, if he should be so advised.*

In defence Syme set forth, that by disposition of 15th November 1828 the defender sold and disposed to the pursuer “all and whole that part of the lands of Cuthil called Southfield of Cuthil, consisting of ninety-three acres and upwards, all as formerly possessed by the said David Reddie, and now by Donald Campbell, with the whole privileges and pertinents thereto belonging.” The disposition also contained, inter alia, the following clauses: “Which lands and others above disposed, with this right and disposition of the same, and infestments to follow hereon, I bind and oblige myself and my foresaids to warrant to the said John Reddie and his foresaids, at all hands, and against all mortals; and farther, I hereby make and constitute the said John Reddie and his foresaids my cessioners and assignees, not only in and to the whole writs, titles, and securities of the said lands and others, made and granted in favour of me, my predecessors and authors, and whole clauses therein contained, with all that has followed or may be competent to follow thereon for ever, but also in and to the rents, mails, and duties of the said lands and others due and payable for and furth thereof, from and after the term of Martinmas last, and in all time coming thereafter, surrogating hereby and substituting the said John Reddie and his foresaids in my

No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

* John Syme had died in debt, and the estate was sold by the son for the behoof of the creditors.

No. 13. “ full right and place of the premises for ever; which
 11th August “ assignation above written I bind and oblige myself,
 1832. “ and my heirs and successors, to warrant as follows;
 REDDIE “ viz. in so far as concerns the writs and evidents, at
 v. “ all hands and against all mortals, and in so far as
 SYME. “ concerns the rents, mails, and duties, from my own
 Dec. 23, 1828. “ proper facts and deeds only.”

And beyond this the defender came under no obligation whatever in the pursuer's favour.

At this time Campbell the tenant was in actual possession of the farm. In the course of the communings and correspondence which took place between the parties the defender did not undertake or become bound to warrant to the pursuer that Campbell should cede possession of any part of the lands then held by him as tenant, or that he should pursue any particular rotation of cropping, or that he should in any other respect accede to or co-operate in the execution of the pursuer's alleged plans in regard to the improvement of the property.

On the contrary, it was understood on both sides that the pursuer was to stand precisely in the defender's shoes as landlord, and that in that capacity he was to have every right which might be competent to the defender himself against the tenant, but no more. The pursuer was distinctly made aware that though Campbell was in possession there had never been any concluded contract of lease executed between him and the defender, and that the terms in which such lease was to be extended were yet in a great measure under discussion. Two drafts of the proposed lease were shown to him, one as prepared by Wardlaw, the other as prepared by Campbell himself, the latter being holograph

of Campbell, and actually subscribed by him; and both these drafts were transmitted to the pursuer, and accompanied by the defender's letter of the 6th August 1828, the terms of which should have left no doubt on the pursuer's mind. The defender could, without difficulty, have arranged every matter at this time debatable between landlord and tenant, but the pursuer took Campbell into his own hands.

For nearly two months and a half the pursuer went on treating with Campbell, and during all that time the defender was incessant in his endeavours by every means to advance his views. At last the main point of dispute on which the present action hinges was conceded by Campbell, and the pursuer writes, "We came to an understanding regarding the extent to be planted." But the parties differed "as to the mode of cropping;" but even as to that the pursuer and Campbell ultimately agreed, and the point on which they at last broke off was the pursuer's not being disposed to accede to the new demand of Campbell's, that the property should be subdivided by substantial stone dikes. To this cause of dispute the defender was no party, and is not to blame, nor is liable for its consequences.

After the pursuer and Campbell had thus finally come to an open rupture, the former accepted of the disposition from the defender, and by virtue of that disposition entered into possession of the property, having first paid unconditionally, and without any deduction or qualification whatsoever, the full stipulated price. The pursuer, having thus got into possession, now attempted to carry his plans into execution in spite of Campbell. The result was resistance on the part of the latter. Whether in this resistance Campbell was right or wrong

No. 13.

 11th August
1832.

 REDDIE

 v.
SYME.

No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

in law, the defender was under no obligation to stand between him and the pursuer. But it seems plain that this missive was never intended nor understood to supersede a formal lease, or to embody the whole detail of the mutual obligations between landlord and tenant, but was a mere memorandum of the primary conditions of a verbal lease previously concluded between the parties, and under which Campbell was at that moment and had for years been in possession.

Accordingly Campbell is under a legal obligation to subscribe a lease as the pursuer's tenant, in terms, at all events, not less favourable for the pursuer than those contained in Campbell's holograph draft; and it is the pursuer's own fault if he fail to enforce the execution of that lease, and to compel implement of its stipulations, whether in regard to his right of planting the property or otherwise. Nevertheless, to avoid dispute, the defender twice formally offered to annul the sale, take back the subject, and repeat the price with interest; but this was expressly declined.

The parties repeated their statements, in the shape of revised condescendence and answers, but still remained entirely at variance as to the facts of the case. The case was then transmitted *de plano* to the Jury Court, but there the defender moved that the case should be re-transmitted to the Court of Session to have the law on the question decided, on the facts as presented, and which, the defender maintained, barred the action. Being transmitted, cases were ordered by the Lord Ordinary and *avizandum* made to the Court.

On the case being advised, LORD BALGRAY observed—
 “ I never saw a clearer case, nor a looser transaction.
 “ I was at first a good deal misled by the statement

“ which is made on the part of the pursuer. If it had
 “ so happened that the seller of the lands had come to
 “ the purchaser, and said, ‘ Here is a scroll of a lease
 “ of the lands, which I take you bound to confirm ;’
 “ and if it had afterwards turned out that there existed
 “ a different lease, this would have been a case of gross
 “ misrepresentation. But I never saw a looser trans-
 “ action. I don’t know which draft it is that is referred
 “ to in the missives. A squabble took place between
 “ the tenant and the purchaser, so that the latter must
 “ have known how matters stood ; and yet he goes on
 “ and accepts of the disposition, and pays the price,
 “ without saying one word by way of complaint as to
 “ being deprived of the power of planting ; and how
 “ can he now go beyond the disposition and come upon
 “ the seller ?” LORD PRESIDENT — “ I am of the
 “ same opinion.” LORD CRAIGIE — “ The only dif-
 “ ference between the pursuer and the tenant was as to
 “ the mode of cropping. They had none as to the
 “ planting.” Thereafter the Court sustained the de-
 fences, assoilzied the defender from the conclusion of
 the action, and decerned with expences.*

No. 13.
 ———
 11th August
 1832.
 ———
 REDDIE
 v.
 SYME.

Feb. 10, 1831.

Reddie appealed.

Appellant.—(1.) The pursuer having purchased the lands in question on the express understanding and condition that the lease to be granted to the tenant was to be in terms of the draft shown to him at the time of the purchase, and referred to in the missives of sale, the defender was bound to implement that bargain ; and having failed to do so, he is liable in damages to the

* 9 Shaw and Dun. 413.

No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

pursuer. The reference in the missives of sale to the draft of a lease shown to the pursuer makes it competent for him to prove, *pro ut de jure*, what were the terms of the draft so shown, and generally gives him right competently to introduce parole testimony to explain or explicate the terms of the contract; and the payment of the price, and acceptance of that disposition by the pursuer, formed no bar to his action of damages, nor prevents him from going back on the previous communings and correspondence, as showing the terms of the contract between the parties. — Ferrier, March 9, 1823 (1 Shaw's Ap. Ca. p. 455); Stewart, May 15, 1829 (S. & D.); M'Lean, June 23, 1757 (F. C.)

(2.) This is not an *actio quanti minoris*, but a claim arising from the breach of mutual contract, the terms of which were perfectly understood by both parties at the time when the same was entered into, and the pursuer's part of which has been duly implemented. — See cases cited above.

(3.) The pursuer was not bound, in the first instance, to have discussed with the tenant the validity of the secret missive of lease. It is the defender alone with whom the pursuer has to deal.

(4.) Suppose there had been, as there was not, a restitution in integrum offered: Cases of *restitutio in integrum* have been merely those of simple error, but not where there was fraud in the conception of the contract, and concealment and deceit in the execution of it. Repayment of principal and interest is no restitution. The Court below, in the reason given for *assoilzieing* the defender, forgot that this was a question of relevancy, in which the averment of the pursuer must be assumed as true. The Court admitted that if this had been a case

of gross misrepresentation, the pursuer would have been entitled to be relieved; but the pursuer offered, but was not allowed, to prove that very charge. The pursuer was not bound to give up the bargain, nor to forego his reasonable prospects of profit from the purchase of the lands in question. The defender was, besides, liable to the pursuer for all loss and damage which the pursuer has sustained by the non-implementation of the contract on the part of the defender, and likewise in a solatium to the pursuer for the disappointment of his views and plans.

Respondent. — (1.) There is no ground whatever for any claim of damages against the defender. He has duly implemented every obligation incumbent on him as seller of the subject in dispute. The disposition granted by the defender to the pursuer conveys the subject as possessed “now by Donald Campbell,” of course subject to all Campbell’s rights as tenant. The defender nowhere becomes bound to warrant, either that the pursuer should be enabled to effect a certain extent of planting, or that, in the face of any right competent to the tenant, he should be entitled to plant at all.

It matters not what has been the pursuer’s purpose or expectation, or even the defender’s mistaken impression, for the disposition contained no stipulation on the defender’s part. The rule of law is *caveat emptor*. The pursuer had it in his power to satisfy himself from the tenant as to the extent of his supposed rights, and indeed did come into personal contact with the tenant, regarding the very point now in dispute. If he proceeded, and proceeded erroneously, he has done so at his own risk. The pursuer cannot be permitted to go

No. 13.

11th August
1832.REDDIE
v.
SYME.

No. 13.
 11th August
 1832.
 REDDIE
 v.
 SYME.

back to the written correspondence and verbal communications of the parties, and out of these informal and imperfect communications to make a contract different from the contract ultimately executed. — Gordon, June 15, 1815 (F. C. and 1 Bligh, 287); (1 Shaw's Ap. Ca. 317); 2 Barn. & Cres. 627.

(2.) The claim insisted in by the pursuer is of the nature of the *actio quanti minoris*, which has no place according to the law of Scotland. — Ersk. III. 3. 10; Gray, 23d Jan. 1801 (Mor. Voce Sale, App. No. 2); Hannay, 26th Jan. 1785 (Mor. 13,334); Inglis, 27th June 1788 (Mor. 13,335); Gray, 23d Jan. 1801 (Mor. Sale, App. 2.)

(3.) The pursuer is in no view entitled to insist against the defender in the first instance, and while he has taken no legal measures to compel implement of the obligations incumbent upon the tenant.

(4.) At all events the pursuer could ask no more than a *restitutio in integrum*, and that was offered to him, and rejected.

If there has been error in *essentialibus*, there is no contract, and matters fall back to their original state. The pursuer cannot make out a case of fraud, and most assuredly there is not upon the record averments to afford substance and relevancy to such a charge. Even, therefore, were it to be held, in the face of the disposition which the pursuer has accepted, that he has unwittingly entered into a contract which neither party meant that he should enter into, it is quite manifest that at the utmost he is entitled only to restitution, and that if he reject that he is entitled to nothing. — See authorities already cited.

LORD CHANCELLOR:— My Lords, I took time to consider this case farther, because I was desirous of looking into the papers to see whether there had been really an offer to rescind the bargain, and take back the lands. That is positively stated, and there was created great suspicion in my mind that such an offer, in fact, had been made. All that the appellant, under such circumstances, could have required, was a real and substantial restitution to his former situation. I am satisfied that was offered to him; and upon a full view of the circumstances of this case, I am clearly of opinion that the interlocutor of the Court of Session is correct, and that it ought to be affirmed, with costs.

No. 13.

 11th August
 1832.

 REDDIE
 v.
 SYME.

The House of Lords ordered and adjudged, “ That the
 “ interlocutor complained of be, and hereby is affirmed,
 “ with costs.”

JACKSON — MONCREIFF and WEBSTER, — Solicitors.