

with satisfied the debt corroborated, that would have inferred homologation. The case of the last decision is, where a minor cautioner did obtain only a decree of relief against the principal debtor but no payment; which if he had recovered, the Lords would never have reponed him against his bond, seeing he could not pretend lesion.

No. 27.

The Lords found the suspender had transacted the debt for which his father was prisoner, and had homologated his own bond of corroboration, so as he could not quarrel or reduce the same *ex capite vis et metus*; and therefore found the letters orderly proceeded.

*Forbes, p. 122.*

1708. June 29.

JOHNSTON *against* NAPIER.

Katharine Johnston, wife to Montgomery of Crivock, being proprietor of some shops in Glasgow, there is a disposition thereof signed by her, with her husband's consent, to Provost Napier, in the year 1683; whereof the said Katharine now repenting, raises a reduction, on this reason, that it was impetrated from her by concussion, frowns, and undue importunities and solicitations, and being taken to a tavern at five o'clock at night, she was detained there till twelve at night on a Saturday's evening, before she could be prevailed with to put her hand to the alienation of her heritage, to pay her husband's debt, who was presently going to America to shun captions; and so it was elicited on promises to give her the price, which she never got; and thus being *spe numerandæ pecuniæ*, it was null. Answered, That the bargain was fair and honest, and no force nor compulsion used to procure it, not being done *intra privatos parietes*, but, in an open tavern, in presence of many witnesses, and acquiesced in without quarrelling by the space of 24 years, which she would never have done by so long silence, if there had been the least ground for reclaiming. The Lords, before answer, allowed a probation of the points of facts, that it might appear if any force, terror, or impression of fear were used; and witnesses being adduced, and their depositions coming to be advised, it was objected, That they had proved nothing relevant to infer any concussion, nor did they concur in the same acts and circumstances; unus singularis testis est nullus testis, etiamsi esset papa, aut imperator maximæ dignitatis honore præfulgeat; for all they depone is, that one of them thought she was very sweer and grieved to sign it; and the other says, that he saw her husband frown on her, and pull or touch her by the coats to come forward to the table to subscribe; but all of them agree in this, that they neither heard any threatenings, nor saw violence used; and they agree in nothing else but this, and the Jewish Sanhedrim, though highly enraged against our Saviour, yet would not proceed on witnesses discording amongst themselves; and all that is here deponed, does scarcely amount to a *reverentia maritalis*, which, by no law in the world, annuls wives' deeds. The Roman law is very clear, L. 3. C. Si quis aliquem testari pro-

No. 28.

What degree of influence used by a husband will entitle a wife to reduction of a deed executed by her?

No. 28. hib. says, *Judicium uxoris postremum in se provocare maritali sermone non est criminisum*; and L. ult. D. Eodem, *Si offensam agræ mulieris placaverit*. And the learned Voet. ad Tit. Quod. metus caus. lays it down as a rule, that marital reverence affords the wife no restitution, nisi fines excedit gravioribus minis, et uxorem se adegisse probetur; and if little appearances of a reluctance were sustained, it would break down the banks of law, and let in an infinite shoal of pleas, there being few such consents given by wives by a full spontaniety. Hope in his Practics, Tit. Husband and Wife, observes, that a wife was not reponed, though she proved that her husband was *vir ferox*, and a divorce followed; and this is cited by my Lord Stair, Book 1. Tit. 7. § 8. and much more, where the reposition is sought against a third party lawfully purchasing for a price, though the money come not to the wife's use, 28th June, 1673, Arnold against Scot, No. 303. p. 6091; and 12th July, 1671, Murray against Murray, No. 68. p. 5689. especially *post tanti temporis intervallum*; for women being very keen where they think themselves injured, will not readily digest it for 24 years without quarrelling, as she has done here. Answered, There is as much of compulsion proved, as is sufficient *ad victoriam causæ*; for *esto* marital reverence were not sufficient, here are very pregnant qualifications of intimating his displeasure, by frowning and keeping her seven long hours in a tavern, from 5 to 12, till she did it; and pulling her by the gown, which, though they might not amount to force as to a man, where the law requires such a fear *qui cadere potest in fortem et constantem virum*; yet the Doctors and interpreters, Ad L. 3. Dig. Ex quib. caus. major. in integ. agree, that much less force will make impressions upon a woman's fragility than a man: It is true, where women appear judicially, and ratify upon oath, *extra præsentiam mariti*, that cuts off all pretence or allegiance of force or fear; but here the purchaser was so conscious of her unwillingness and aversion, that he never ventured to seek her judicial ratification. The Lords all agreed, that much less force would repon a woman against a deed than a man; and at first found the circumstances proved sufficient to repon the wife against this disposition giving away her heritage for nothing; but this being carried by a scrimp plurality, upon bill and answers the Lords changed, and sustained the disposition, and assoilzied from her reasons of reduction. This variation oftentimes falls out by the change of the quorum; some of the Lords present at the first vote being absent at the second, and others present who were not at the first.

*Fountainhall, v. 2. p. 445.*

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1708. December 18. ARCHIBALD NISBET against STEWART.

No. 29.

Execution of the law is *vis legalis*, but deeds unconnected with

Archibald Nisbet of Carphin charged Stewart of Tockoy in Orkney, for paying a sum contained in his bond. He suspends, that it was extorted *vi et metu*, when he was going to prison, in the messengers' hands, and at the tolbooth door; and besides this bond, you then forced me also to give a discharge of a decree I had