No. 28. hib. says, Judicium uxoris postremum in se provocare maritali sermone non est criminosum; and L. ult. D. Eodem, Si offensam ægræ 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 allegeance 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 repone a woman against a deed than a man; and at first found the circumstances proved sufficient to repone 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.

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

against some of your tenants for stealing shipwrecked goods; and the reason being referred to Carphin's oath, he acknowleged the bond and discharge were given after he was in the messenger's hands, but that there were neither force nor threats, and whereof there was no need, seeing he only corroborated a prior debt; and as to the discharge, Sutherland, his cedent, had given one before, and it being lost, he only renewed it. This oath coming to be advised, it was contended, for Stewart, that it clearly proved his reason of force and fear. Answered, Execution of law *nemini infert injuriam*, and is always reputed *vis legalis*; and he depones there was no threats used. The Lords found, that whatever security he gave for the debt contained in the caption on which he was taken, the same could never be quarrelled *ex capite vis et metus*, as being legally done; but as to any debt extraneous to the caption, to extort a discharge of that without an onerous cause for it, was utterly unwarrantable and reducible *ob vim et metum*. Then Carphin offered to repone him, by giving him back his discharge. Answered, No security to me, because there is a *jus quæsitum* to the tenants thereby discharged, which could not be taken from them without their own consent; for though retired, they could make it up by Stewart's oath. The Lords found the giving back the discharge not sufficient, unless he also procured a renunciation from the tenants; and if not, then ordained the sum in the discharge to compensate *pro tanto*, and to be deducted out of the bond charged on. Carphin did farther allege, You have no prejudice in granting this discharge, for it bears there was a former. Answered, I am plainly lesed, for my cedent Sutherland, who gave the first discharge, retrocessed me in my own room; and this second discharge which you extorted from me cuts off from my recourse and relief against him. The Lords found Stewart lesed by the second discharge.

No. 29. the debt, granted under caption, are reducible.

Fountainhall, v. 2. p. 433.

1740. *July* 1.

CONVENER and TRADES of ABERBROTHOCK, *against* The MAGISTRATES and COUNCIL.

It was the unanimous opinion of the Court, though there was no occasion to give direct judgment upon it, that as the keeping away a member of a town-council from the meeting by force will void the whole proceeding, so keeping one away by a fraudulent combination, though without force, but with an apparent design to carry an election, will have the same effect.

No. 30. Force or fraud used to keep away a member from an election.

Kilkerran, No. 1. p. 591.