

S E C T. XI.

Vis et Metus how Proponable.

No 47.

Metus may be proponed, not only by way of exception, but reply, and that against a third party, possessor of the thing extorted, but *qui metum intulit*, seeing it is *actio in rem scripta*.

1543. December 7. TENANTS OF COCKBURNSPATH *against* LORD HOME.

IN causa spoliū intentati per tenentes de Colbrandspath *contra* Dominum Home et suum primo-genitum pro cunctis victualibus per ipsos ab iisdem spoliatis, *exceptum fuit* pro parte reorum quod actores renunciarunt sponte dictam actionem spoliū. Sed pars tenentiam *replicaverunt*, Quod metu cadente in constantem virum per reos, eis relat. fecerunt dictam renunciationem. *Duplicatum* fuit pro Domino et Magistro de Home, Quod metus via exceptionis non esset hic admitendus; sed quod deberunt hunc tenentes agere per viam actionis quod metus causa ad retractandam renunciationem predict. *Triplicata* fuit, Quod per viam exceptionis vel replicæ metus opponi potest. DOMINI interlocuti sunt, de metu agere posse via exceptionis vel actionis ad libitum metum possi, juxta jura ff. quod metus causa, et de dolo mali et metus exceptione.

Fol. Dic. v. i. p. 173. Sinclair, MS. p. 109.

No 48.

The contrary found.

1554. March 18. OLIPHANT *against* BOCHTIE.

ANENT the actione persewed be Sir David Oliphant *against* the Ladie Bochtie, for holding frae him an yearly annwell annailziet to him be her husband with her consent; it was *alleged* be the said Ladie, That the land that paid the said annwell was her conjunct-fee; and, if she consented to the alienation thereof, it was for fear of her lyfe, and therefore she had just cause to with-hold the samen. It was *replied* be the said Sir David, That the said Lady sould not be heard to propone that exception, *per viam exceptionis, sed per viam reductionis*, whilk was admitted be the LORDS, and the said Lady's exception repelled.

Fol. Dic. v. i. p. 173. Maitland, MS.

1591. June. FORBES *against* TENANTS.

No 49.
Decided in conformity with No 47. *supra*.

FORBES of Monimusk wairnit certain tenants dwelling upon the lands and baronie of Monimusk, alleging them to be tenants to the Earl of Huntly, to flit and remove. The persewar producit, for his title to instruct his warning, ane retour and service, where he was retoured as nearest air to his father Mr Duncan Forbes in the said lands. It was *alleged* *against* the retour, That it