

No. 1.

the second table, because they had not adoe in the first as said is ; and there the said Earl by the said second table desired process, and the Lords decerned the same for the causes foresaid, and the said second table was put up upon the doors long before the said summons calling in the said Earl's cause. He alleged he was compelled to resign his lands and lordship of Morton in the King's hands, compulsus regio metu qui poterat cadere in constantem virum ; and to prove that the King had before long great and ardent desire to his lands, and devised divers causes to get them to himself, and that he was before the resignation made in the King's hands in favours of the Laird of Lochleven, lawfully charged by the King to waird in winter at,

and might not sustain the said travel and waird, but danger of his life ; and that incontinent after he had made that resignation, viz. *eodem die* he got a discharge of his waird and passing thereto, and a little afore the resignation made in favours of the said Laird of Lochleven, he resigned the same in the King's hands to remain perpetually with his Grace, and that he was charged to waird for no other just cause, and could get no relaxation and discharge of the waird while he had made that resignation, wherethrough of these presumptions he alleged was sufficiently proved that he did the same for just dread and fear of his life ; and so the Lords gave sentence *definitive*, and thereafter retreated both the resignations foresaid, and reponed him in the same estate he was in before the making of them.

Sinclair MS. p. 83.

No. 2.

1555. July 4. MARION CRAIG *against* JAMES MOWAT.

Discharge of ony debt, sowmis of money, or obligatioun maid be ony persoun beand in captivitie or prisoun, is null be way of exceptioun.

Balfour, p. 151.

1586. April. LOVE *against* DOWNIE.

No. 3.
What is given by a person in ward is presumed to be *metus causa*.

John Love, indweller in Leith, pursued one Downie in Leith to restore and deliver to him again the sum of 400 merks, which sum he was compelled to give to the said Downie, being put in ward into the Castle of Edinburgh by James Stewart, sometime Earl of Arran ; and so he having given the said sum of money, ought to have the same restored, *L. 22. D. Quod metus causa*. It was answered, That the said Downie being hurt and bled by the pursuer, the said sum was given to him as a satisfaction. It was answered, That it was not relevant except

they would allege transaction by writ, or that the same was given *interposita judicis auctoritate*. The Lords otherwise repelled the objection, and found that the pursuer had action of repetition of the same being gotten from him in ward.

Colvil MS. p. 405.

No. 3.

1606. February 21. EARL OF ORKNEY against VINFRA.

The Earl of Orkney charged Andrew Vinfra to pay to him 2000 merks. He suspended that the contract was null, because it was extorted by fear and dead-dome; because the Earl having caused send this Vinfra to him to his castle in Zetland, presented to him this contract subscribed by the Earl, and commanded him to subscribe it, which the said Andrew Vinfra refused, wherewith the said Earl was so offended, that with terrible countenance and words, and laying his hand upon his whinger, he threatened with execrable oaths to bereave this Vinfra of his life, and stick him presently through the head with his whinger, if he subscribed not, and so for just fear he being compelled to subscribe it, the same was null. It was excepted by the Earl against the reason, that the same was not relevant to stay the execution of his decreet; which the Lords repelled, because it was only a decreet of registration of the contract by compearance of a procurator. Next he alleged, That the same could not come in the way of exception, especially because there was no fact nor deed libelled, but only boisterous words which could not be thought just fear, chiefly seeing he offered him to prove, that the said Andrew Vinfra, by his missive letter, had offered to contract upon these conditions before the date thereof. The Lords found the exception of fear very relevant, and sufficiently qualified; but in respect of the answer founded upon the missive letter, they ordained to produce the same before interlocutor.

Haddington MS. v. 1. No. 1064.

No. 4.
The exception of *metus* sustained, arising from boisterous words only, used by a person of superior power.

1612. June 17.

A. against B.

A reduction at a woman's instance who had consented to an alienation made her husband of her life-rent lands, and which she had revoked after her husband's decease, was sustained *super capite metus reverentialis*, notwithstanding she had ratified the infestment by her oath given in judgment.—See APPENDIX.

Haddington MS.

No. 5.