

the said pain; the LORDS, by interlocutor, sustained the act of the Session, and pecunial pain therein contained; and also it was found, that she should pay the said pain therein contained, of her own proper money, notwithstanding the act was made in her husband's time, the fault also committed *ipso vivo*; and found, that the said pain should noways be exacted of the said husband's executors, *quia noxa caput sequitur*. Kerse, MS. fol. 63.

No 274.

* * * This and the preceding case have no date, but must have been prior to the one following.

1613. *June 16.*HEPBURN *against* NASMITH.

No 275.

IN an action pursued by Elizabeth Hepburn, relict of umquhile Thomas Henderson *contra* John Nasmith, to hear and see her reponed against the consent given to the alienation of her conjunct-fee lands, the LORDS granted absolvitor from the summons as they were libelled, because it was not qualified *relative* that she was compelled *justo metu*, and to remember that the reason of reduction bore a disposition made *stante matrimonio contra jus commune*, and the practice of the country. *Item*, that her husband was *homo ferox*, &c. *3tio*, A revocation. *Item* when we would have replied *super metu*, the LORDS refused.

Kerse, MS. fol. 64.

* * * Haddington reports the same case :

A WOMAN having consented to an alienation made by her husband, of lands wherein she was infeft by her husband, before her marriage, in liferent or conjunct-fee, *intuitu matrimonii*, or an annualrent of 400 merks yearly during her lifetime; the woman, seeking thereafter reduction of the security made by her husband, with her consent, of that tenement, as done by her *metu reverentiali*, for fear of an awful answer, and cruel husband, and upon her revocation made since her husband's decease;—THE LORDS assolizied from the summons, albeit she had never ratified the infeftment by her oath given in judgment; because the LORDS found that judicial ratification not necessary, and were not moved with the reason founded *super metu reverentiali*, unless she had libelled *verum et expressum metum*, by relevant circumstances and deeds, and proved the same by lawful and ordinary means.

Haddington, MS. No 2497.

1613. *July 27.*LO. ROXBURGH *against* LADY ORKNEY.

No 276.

IN an action betwixt the Lo. Roxburgh and La. Orkney, for declaring of her liferent lands, holden of the La. of Brughton, as fallen in his hands by her rebellion, for year and day; the LORDS fand a horning of lawburrows, executed