

1642. February 12. GRANT of Ballindalloch against LESLIE.

John Grant, fiar of Ballindalloch, being taken treacherously by James Grant and his accomplices, and remaining in obscure and private captivity, every hour under fear of his life, transacts with one Leonard Lesly, who was one of his actual takers, and one of his keepers, and promises by a great oath, to give him a bond of 4,000 merks, if he would concur to relieve and put him to liberty; according whereto, with the hazard of his own life, he plotted his liberty and escaped with him; whereupon within 14 days after his escape, he gave the said bond of 4,000 merks to the said Leonard, and about a year thereafter paid 1,000 merks thereof, and retired his own bond, and then renewed to him another new bond of 3,000 merks; which being now charged to pay, he suspends, alleging the promise was extorted *ob metum*, and the bond following thereupon was *ob turpem causam*, for the promise was for fear of his life, done when he was in captivity, and the subsequent bond depending thereupon, was for an unjust cause, for relieving of a lawful subject, barbarously and unjustly taken by sorners and out-laws. The reason was rejected, and the bond sustained, for the charger had hazarded his own life in helping to put the suspender to liberty, and fled away with him.

Act. Stuart.

Durie, p. 892.

1642. July 8. AGNES GRANT against ———.

In a reduction of a disposition of a tenement in Perth, which was provided to one in conjunct-fee, by her contract of marriage; which land being thereafter disposed by her husband, to Andrew Balvaird, she consented thereto, which, together with the judicial act, made before the Bailies of Perth, bearing, "That she had ratified that disposition, and sworn that she did it voluntarily, without any coercion," she desired to be reduced *ex capite metus*, being compelled both to subscribe the disposition, and also to ratify the same judicially, and to swear that she did it voluntarily, &c; from the which the Lords assoilzied *simpliciter*, in respect that the disposition foresaid, so subscribed by the woman was ratified as said is, in presence of the Bailie of the town, and sworn by her to have been done voluntarily, conform to the 83d act of 11th Parl. James 3; which consent of hers so ratified and proved, the Lords found sufficient to purge all action *super metu*, although the woman replied, that the same ratification and oath was extorted also, *per eandem vim et metum*, and which then still continued; and the Lords respected it not where the woman replied, That the ratification was made within a house, and not done in judgment,

Act. Cheap.

Alt. Mowat.

Clerk, Hay.

Durie, p. 898.

No. 9.

A man was kept in captivity by sorners. He granted to one of them a bond, who accompanied him in his escape. The bond found good.

No. 10.

Judicial ratification by a wife excludes reduction *ex capite metus*.