

esse restituendum ei, a quo res petitur auferri, per hanc actionem, antequam restituatur: et hoc est notandum L. velle, 4. D. De regulis juris, quæ sic dicit, velle non creditur, qui obsequitur imperio patris vel domini; nam licet coacta voluntas dicatur etiam voluntas, non est tamen proprie et simpliciter voluntas; eâ enim, ex libero mentis arbitrio, et proprio motu procedit, et non ad alterius petitionem: quare voluntas coacta, est voluntas qualificata, et secundum quid, quæque instante necessitate fit; sic vero facta, non dicuntur in jure voluntaria; quod enim fieri debet ex voluntate, non est imponendum ex necessitate; L. Si per vim 4. Cod. de his quæ vi &c. requirit, ut actus æstimetur voluntarie factus fuisse, ut adhibeatur consensus ejus, qui dicitur compulsus, illi actui ex intervallo: idem authent. sive a me, sub. L. 21. Cod. ad Senatus Consult. Velleianum: ubi dicitur alienationem a marito, cum consensu mulieris factam, soluto matrimonio, illi non præjudicare, sed eam posse rem repetere, nisi duo concurrant. viz. nisi post biennium alienationi consentiat, et nisi aliæ res viro supersint, ex quibus illi plene possit satisfieri, alioqui licet frequenter consentiat mulier, non illa prejudicatur alienatione, quod et obtinet in alienatione rei dotalis; et authent. si qua. Cod. eodem: dicit oportere constari pretium fuisse conversum in rem mulieris, ut et jura canonum, nullum consensum admittunt, nisi juratum; ut cap. cum contingat. extra: de jurejurando: quod et convenit cum praxi, et legibus nostris, siquidem qui caute acquirunt rem, in cujus acquisitione requirunt uxoris consensus, solent coram judice hunc consensum adhibere, et juramentum ab ea exigere, consensumque hunc esse voluntarie præstitum ab ea, et non coactum, idque si ab illa præstatur extra viri præsentiam; ita est in statuto, 83. P. 11. Ja. III. And this action, upon the 19th of July 1632, was so decided; and the reasons of reduction *super metu* therein qualified, albeit long preceding the alienation, were sustained, and the exception of voluntary consent, albeit proponed for a wadsetter who was ignorant of the coaction, and alleged, that, at his contracting, she did willingly consent, which he offered to prove by the witnesses insert in his contract, was repelled. See VIS et METUS.

Clerk, Gibson.

Fol. Dic. v. 2. p. 69. Durie, p. 634.

1662. June 24.

WOODHEAD against BARBARA NAIRN.

WOODHEAD pursues Barbara Nairn, for the mails and duties of certain lands. The pursuer *alleged*, Absolvitor; because the defender stands infeft in liferent of these lands. It was *replied*, The defender's husband disposed these lands to the pursuer with her consent, subscribing the disposition. It was *duplicated*, The defender's subscription and consent was extorted, *metus causa*, whereupon she has action of reduction depending, and holds the production satisfied with the writs produced,

No 92.

Found in conformity to Cassie against Fleming, No 91. p. 10279. *supra*.

No 92.

and repeats her reason by way of duply, viz. If she was compelled by her husband, it was by just fear; because she offered to prove by witnesses, that he threatened her to consent, or else he should do her a mischief; and that he was a fierce man, and had many times beaten her, and shut her out of doors; and offered to prove by the notary and witnesses insert, that at the time of the subscription, she declared her unwillingness.

THE LORDS found the defence and duply relevant.

*Fol. Dic. v. 2. p. 69. Stair, v. 1. p. 113.*

1662. July 23.

LORD FRASER *against* PHILORTH.

No 93.

It being *pleaded*, That payment made by the debtor is not sufficient to extinguish an infestment upon an apprising *contra singularem successorem*; and that intromission with the mails and duties of the lands appraised has this effect by statute only, not by common law; this was repelled.

*Fol. Dic. v. 2. p. 71. Stair.*

\*\*\* This case is No 62. p. 938. *voce* BANKRUPT.

1667. December 18.

AUCHINLECK *against* WILLIAMSON.

No 94.

REDUCTION upon the head of fraud is good against gratuitous acquirers, tho' not partakers of the fraud.

*Fol. Dic. v. 2. p. 69. Stair.*

\*\*\* This case is No 243. p. 6033. *voce* HUSBAND and WIFE.

1672. July 16.

DUFF *against* FOWLER.

No 95.  
A right granted by a son to his father, *contra fidem tabularum nuptialium*, cannot be challenged upon that head in the person of a singular successor, purchasing *bona fide* from the father.

DONALD FOWLER of Culnald, in his son's contract of marriage, provides him and his future spouse to certain lands for their entertainment, during the father's life; but takes a tack from the son of the same lands, for a tack-duty far within the worth, which he assigns to his brother, and he transfers the same to William Duff, who pursues the son for mails and duties. The son *alleged*, *imo*, That this tack not being granted to assignees, the pursuer as assignee could not make use thereof, because tacks are *stricti juris*. It was *answered*, That life-rent tacks by many decisions are excepted from that rule; and that they do extend to assignees, if they be not excluded, though they be not expressed.

THE LORDS repelled this defence, in respect of the reply.