

No. 14. used, that it should be without prejudice to reduce or repeat; and if the compensation had been expressly passed from, there could have been no question, and the passing from suspension is a general comprehending it.

The Lords repelled the reason of compensation, in regard of the bond of corroboration, excluding suspension, albeit the compensation itself had been unquestionably relevant, and that the suspender had intimated his charge to his creditor before he had assigned the debt to this charger, or before the intimation thereof, but suspended the penalty of £.500 in the bond of corroboration.

*Stair, v. 2. p. 92.*

\* \* See a similar case, Thomson against Moubray, 2d December, 1675, No. 164. p. 12370. *voce* PROOF.

No. 15. 1674. *January 24.* MURRAY *against* JAFFREY.

*Reverentia maritalis*, joined with *luctus et mæror*, was not found relevant, the deed having been granted by the wife, while her husband was upon death-bed.

*Gosford. Stair.*

\* \* This case is No. 82. p. 6525. *voce* IMPLIED DISCHARGE.

1674. *February 19.* BARCLAY *against* BARCLAY.

No. 16.  
Deeds elicited in *privato carcere*.

The Laird of Towie disposes his estate to his only daughter, which was provided before to heirs-male; but his uncle the tutor of Towie having first granted a disposition to that daughter, and thereafter to others; there was a gift of recognition taken in favours of the daughter Elizabeth Barclay, both upon the disposition made to her by her father, and by the tutor, whereupon infeftments were taken without confirmation. It was alleged for the Lord Barclay's son, (to whom the tutor hath now disposed) that the tutor's disposition could not infer recognition, because it was extorted *vi et metu*, in so far as the tutor being a weak and old man of 80 years, was kept prisoner in a close room, under lock and key, or under a guard in the house of Towie, till this disposition was subscribed, and none of his friends permitted to come to him, whereupon he hath a reduction raised, and repeats the same by way of defence. It was replied, That in fortification of the King and donatar's right, it was offered to be proved, that the tutor while he was at the house of Towie, was at full freedom, and went out and in at his pleasure, without any guard, and cheerfully subscribed the disposition.