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.

1674. *January* 24. MURRAY *against* JAFFREY.

No. 15.

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

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 dispones 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 disponed) 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.

The Lords did prefer neither party in the probation, but granted a joint probation by witnesses, above exception, for proving the manner of the tutor's abode at the house of Towie, and the manner of subscribing of the disposition. No. 16.

Stair, v. 2. p. 268.

1677. *January* 10. STUARTS *against* WHITEFOORD and The DUKE of HAMILTON.

No. 17.
A disposition of lands granted *in privato carcere* reducible; and it is no defence, that there was a prior obligation to execute the deed.

James Stuart, younger of Minto, being infeft in fee of the £.5 land of Coats, disponed the same to Sir John Whitefoord, for a discharge of some debts, and for an annuity of 400 merks yearly, during his lifetime: Thereafter, he disponed the same lands to Castlemilk upon that narrative, that Sir John Whitefoord's disposition was extorted from him: Whereupon Castlemilk raised a reduction; but thereafter Duke Hamilton enters in another agreement with Sir John Whitefoord, and the said James Stuart, and takes a right to Sir John's disposition, and becomes obliged to pay Sir John Whitefoord 10,000 merks for his interest, and James Stuart 15,000 merks for his. Castlemilk insists in his reduction *ex vi et metu* which by the libel is qualified thus; that Sir John Whitefoord, without any order, or warrant of law, did apprehend the said James Stuart, and did keep him two days prisoner in his own house of Milnetoun, and thereafter brought a messenger with a caption, at the instance of one Stuart, upon a decreet obtained before Sir John himself as Sheriff-depute of Lanark, to his own behoof, and therewith carried him to Lanark, but did not imprison him, but sent two officers, who carried him from place to place in the night, till he obtained this disposition from him, in which condition he was detained without the knowledge or access of any of his friends, and for many days. In this process compearance was made for Sir John Whitefoord, and the Duke of Hamilton, who produced his infeftment, and was admitted for his interest, for whom it was alleged, 1*mo*, That the libel is not relevant, because law doth require, that in extortion, the act must be unjust, and such violence used, which may infer a fear, as being the true cause of the deed done, and which must be such a fear that may befall a constant man, as being the threatenings of death, mutilation, or the like, which are not alleged in this case, where a caption was only used, and the party carried towards Edinburgh; and though he was detained some days, it was a favour done to him, and can import no force. 2*do*, Though force had been used, it is not relevant, unless there had been damage inferred thereby, as is clear by the 12 and 14 laws, *D. Quod metus causa*, and here there was no damage, because it was offered to be proved, that there was a prior minute, whereby James Stuart disponed to Milnetoun the lands in question, and the disposition now quarrelled is in the same terms with the minute, and has nothing added, but a procuratory of resignation; likeas the minute at the subscribing of the disposition was called for by James Stuart, who tore his name therefrom. 3*tio*, No way granting, that any force was used, it was offered to be proved, that James Stuart was 4 hours at full freedom, and subscribed most cheerfully. 4*to*, There are produced discharges of James Stuart's, posterior to the alleged