

1622. July 6.

MURRAY *against* ADAMSON.

No 90.

SIMULATION of escheat cannot be opposed against a third party who acquires *bona fide*.

Fol. Dic. v. 2. p. 70. Kerse.

*** This case is No 54. p. 3658. *voce* ESCHEAT.

1632. June 27.

CASSIE *against* FLEMING.

No 91.

ONE Cassie, relict of one Hamilton, cordiner in Glasgow, reducing a contract and infestment of a wadset of a tenement in Glasgow, granted to Fleming by her husband and her, so far as concerns her consent to the alienation, she being conjunct fiar thereof, upon a reason of *metus causa*, *alleging*, that she was compelled to give her consent by her husband, upon just fear, she being beaten by her husband to the effusion of her blood, and menaced by him, and otherwise abused, and expelled out of his house, so that she behoved to consent; likeas, after her husband's decease, she revoked. This reason and qualification of fear, without that clause of the revocation, was found relevant and sustained, being *specifice* libelled, as was found necessary to be by the Lords, that the deeds libelled were done by the husband to her, for refusing to consent to this alienation, and for this cause expressly, albeit that, at the time of her subscription, she exprest no such cause of compulsion, and albeit the party, receiver of the wadset, knew no such compulsion, neither was the same ever intimated or signified to him, neither by the wife, nor no other, at her subscribing, or before, without which had been done, he *alleged*, that the reason libelled of *metus causa* could not be received against him, who had truly bargained with this party, and had really delivered to him the sums contracted for the wadset; and that it were against reason that he should be defrauded of his money, who had made a lawful bargain, and dealt *bona fide*, and was neither partaker of the violence enforced, nor cause of fear, neither knew thereof. This allegiance was repelled, and this qualification sustained; and thereafter the defender *alleged*, that she freely and voluntarily, of her own accord, gave her consent to the alienation, and received the money herself from the defender, never expressing any cause of discontent, but appearing to be well pleased therewith; and the pursuer opposing the reason of fear libelled, the deeds libelled being so done to her before her consent, that she behoved to consent thereafter, and durst not then express any contrary signification, so that she ought to have the prerogative of probation, the Lords found, that they would *ex officio* examine both the parties' witnesses, to be produced *hinc inde*, both anent the voluntary consent and coercion, and thereafter they would

A woman having consented to a disposition granted by her husband, it was found relevant against the dispoonee to elide the consent, that the wife offered to prove, that she was compelled by her husband.