

against some of your tenants for stealing shipwrecked goods ; and the reason being referred to Carphin's oath, he acknowledged the bond and discharge were given after he was in the messenger's hands, but that there were neither force nor threats, and whereof there was no need, seeing he only corroborated a prior debt ; and as to the discharge, Sutherland, his cedent, had given one before, and it being lost, he only renewed it. This oath coming to be advised, it was contended, for Stewart, that it clearly proved his reason of force and fear. Answered, Execution of law *nemini infert injuriam*, and is always reputed *vis legalis* ; and he depones there was no threats used. The Lords found, that whatever security he gave for the debt contained in the caption on which he was taken, the same could never be quarrelled *ex capite vis et metus*, as being legally done ; but as to any debt extraneous to the caption, to extort a discharge of that without an onerous cause for it, was utterly unwarrantable and reducible *ob vim et metum*. Then Carphin offered to repon him, by giving him back his discharge. Answered, No security to me, because there is a *jus quæsitum* to the tenants thereby discharged, which could not be taken from them without their own consent ; for though retired, they could make it up by Stewart's oath. The Lords found the giving back the discharge not sufficient, unless he also procured a renunciation from the tenants ; and if not, then ordained the sum in the discharge to compensate *pro tanto*, and to be deducted out of the bond charged on. Carphin did farther allege, You have no prejudice in granting this discharge, for it bears there was a former. Answered, I am plainly lesed, for my cedent Sutherland, who gave the first discharge, retrocessed me in my own room ; and this second discharge which you extorted from me cuts off from my recourse and relief against him. The Lords found Stewart lesed by the second discharge.

No. 29.
the debt,
granted un-
der caption,
are reducible.

Fountainhall, v. 2. p. 433.

1740. July 1.

CONVENER and TRADES of ABERBROTHOCK, *against* The MAGISTRATES and COUNCIL.

It was the unanimous opinion of the Court, though there was no occasion to give direct judgment upon it, that as the keeping away a member of a town-council from the meeting by force will void the whole proceeding, so keeping one away by a fraudulent combination, though without force, but with an apparent design to carry an election, will have the same effect.

No. 30.
Force or
fraud used to
keep away a
member from
an election.

Kilkerran, No. 1. p. 591.