in the Bounds of his ministerial Function, cannot be pretended to be done
Violence l. 3. §. 5. ff. quod met. caus. Because we should pay Obedience to
those who are in Authority over us. For the same Reason legal Force,
a Caption or Imprisonment for Civil Debt is not allowed as a Reason
Reduce a Deed in Favour of the Creditor l. 3. §. 5. ff. quod met. Caus.
Mascard de prob. Conclus. 1656. n. 31. Stair Lib. 4. Tit. 40. §. 27. Quia
culpa sua Metum passus est. Yet a Bond granted by a Person taken
with Caption, when sick and unable to travell without Hazard
his Life, was found reducible ex capite metus 27 January 1667. Mu
contra Stewart of Shambelly. Because a Caption ought not to be
cuted in such a Case. Stair Ibid. And Imprisonment by Virtue
Caption at one Person's Instance, will not legitimate another's ex
torting a Right from the Prisoner. Mascard Ibid. n. 32. And
Person being taken by a suspended Caption, and detained in gre
Hardship and Hazard of his Life, till his Sons granted Bond to rel
him: That Bond was found reducible ex causa metus, albeit the M
Messenger had another effectual Caption at a third Party's Instance
against the Prisoner at the Time he was apprehended; seeing that th
Caption was not executed, and the Owner had not given Orders for the
Effect 8 Decemb. 1671. McIntosh's contra Spalding and Farquharson.
Vain and foolish Fear doth not furnish a Reason of Reduction l. 5.
ff. quod met. Caus. Stair Lib. 1. Tit. 9. §. 8. Such are the simple Acts
of Vexation l. 7. pr. ff. eod. or the Threats of an empty and imp
Bragadochio l. 9. C. de his quæ vi met. caus. Mascard Ibid. n. 19. Nor are
the Ways which have Nothing of Violence and Injustice in them but only make
pressions to induce People to a Compliance by other Lawful and honest Mot
as reverential Fear or Respect to the Persons who interest themselves
persuading and inducing Persons to enter into some Contract, as Magistrates
Fathers, Husbands, sustained as sufficient Motives to annull Contracts. Th
a Son who by the Father's Persuasion becomes Surety for him, or he wh
becomes bound to a Person in great Power cannot pretend that his Obliga
is the less valid upon that Account l. 6. C. eod. Joh. Voet Comm. ad ff.
4. Tit. 2. n. 11. Stair Lib. 4. Tit. 40. §. 25. A Wife's Deed in Favour of
her only Daughter at the Desire of her dying Husband, was not reduced ex ca
to reverentia maritalis, where the Husband's Influence upon her, or her
row for her Condition could not be thought over great from his long sickness
and her marrying again intra annum luctus 24 January 1674. Murray
contra Jaffery and Murray 27 January 1681. Stewart contra Hutcheson.

Sect. 2.

What legal Remedy is competent to Persons who are forced or justly intimidated to grant Deeds against their Wi

By the Civil Law, the Action or Exception quod metus causa was not competent, if the Party concussed could qualify no Prejudice thereby

as when an Obligation for or Discharge of a true Debt is granted l. 12. §.
ult. l. 14. pr. ff. quod met. caus. But then the Julian Law de vi took
Place and the Creditor violently exorting what was owing to him was puni
shed with the Loss of his Debt, l. 13. ff. eod. By our Law, qui jus suum
in hoc Manner, one who uses Violence in Stead of legal Means to force
another's Compliance with a Thing that is just, as a Debtor to pay what he
owes, doth not forfeit his Debt, but is liable to the Creditor for Damage and interest
sustained thro' the Violence used, to be estimated by his Oath in Litem, and further
may be subjected to an arbitrary Punishment according to the Degree of the Vio
lence, Dic. Vol. 2. pag. 572. The Action quod metus causa among the Romans
did lie for the Discovery of the Thing extorted within four Years l. 14. §. 1.
ff. quod met. caus. just. l. ult. C. de temp. in integ. rest. and afterwards only
for the single Avail d. l. 14. §. 5. But with us such an Action is at no Time
competent for more than the single Avail. Extortion by the Civil Law is
not like Fraud which affects only the Particulars to reach, but is without re
ale transitions contra singulares Successores. All that has been done by Force
will not only be null with Respect to those who know the Force, but also
with Respect to all and every Person who pretend to take Advantage thereof:
For what is effected thereby cannot consist in favour of any Person
whatsoever, even other Persons who have done no Violence can
profit by it l. 9. §. 5. & ult. l. 14. §. 3. & 5. ff. quod met. caus. But the
Lord Stair (Lib. 4. Tit. 3. §. 20.) wants to have it determined in our
Law whether Infeftments extorted by illegal Violence or Concussion,
are reducible against singular Successors as well as against the first Dis
poser and his Heirs. And his Lordship inclines to think that an innocent
Acquirer should be secure against Force as against Fraud used by his
Author: But at the same Time he owns that Force being Lates realis
by the common Law, Purchasers bona fide are not secure without an ex
press Statute. Sir James Stewart (Answers to Direct. Doubts Tit. rec. ex
cap. met.) will have a Reduction ex capite doli aut lecti aut metus, to af
fect a Singular Successor, who is not in the Case of an Acquirer from a
Confident, against whom the Deed is not quarrellable as against the Confident,
and that he resolute pure dantis, resolvitur jus accipientis. Thus our Law
makes a Distinction between Singular Successors in personal Rights,
and Singular Successors in heritable Rights: The former being liable
to any Objections that lay against their Authors; whereas the latter re
gularitor are affected only with real Deeds or Burdens extant upon Record.
However Reduction of an extorted Disposition was sustained effectual
against a third Person getting Right thereto for an onerous Cause from
the first Receiver after the Matter was rendered litigious by the resci
sory Process 10 January 1677. Stewart's contra Whitfoord and D. Hamilton.
Yea a Wife's Consent to her Husband's Disposition of her conjunct Fee
was reduced against a Purchaser for an onerous Cause, upon the Rea
son of precedent Acts of Force used towards her by her Husband, al
beit he the Purchaser was ignorant of it 27 June 1632. Lapsie contra
Fleeming.