

No. 19.

1681. *November 29.*HERIOT *against* BIRD.

In the suspension Heriot against Bird, Heriot being charged upon a bond and disposition, granted when he was under captions raised upon his tack for payment of his bygone rent, and at the instance of the said Bird his master, he did grant a disposition of his corns and other moveables for the master's payment of the bygone rent, and for his security in time coming during the years of the tack, and also obliged himself to find a new cautioner, in regard the cautioner in the tack became insolvent, his reason of suspension being, that he offered to prove that the bygone rent was paid, which was the ground of the caption; and as to the disposition of his moveables, and the obligation to find a new cautioner, the same was null as being extorted when he was under caption. The Lords found, That although whatever was done in relation to the ground of the caption, could not be said to be done *ex vi aut metu*; yet these extrinsic deeds elicited from the poor tenant, viz. the disposition of his hail moveables for security of the rent for the years to come, and the obligation to find a new cautioner, were null, as being *vis et metu* extorted while he was under caption.

P. Falconer, No. 4. p. 2.

* * Sir P. Home reports this case :

1682. *March.*—Heriot being charged at the instance of ——— Bird his master, upon a bond granted to him for payment of his bygone rent, by which likewise he did dispone to his master his hail goods, for the master's further security of the payment of his rent in time coming;—as also, he obliged himself to find a new cautioner, in respect the cautioner in the tack was become insolvent; and the tenant having raised a suspension and reduction of the bond and disposition, upon this reason, that the bygone rent was paid, and that the bond and disposition of the moveables and obligation to find a new cautioner were *ipso jure* null, being extorted from him when he was under caption at his master's instance upon the tack, for his bygone tack-duty;—the Lords found, That the bond being granted when the charger was using legal diligence upon his tack, could not be reduced *ex vi et metu* so as to infer any crime; but found, that the right as to the disposition of the suspender's hail moveables, and obligation to find new caution being granted when the suspender was under caption, was null, and did not oblige him.

Sir P. Home, v. 1. No. 243.