

S E C T. III.

What writing sufficient to bar *Locus Pœnitentiæ*.—*Ubi res not est integra*.—*Rei interventus*.—Oath.—An informal writing does not bar *Locus Pœnitentiæ*.—Promise to ratify an informal writing bars *Locus Pœnitentiæ*.

1553. July 13.

A. against B.

No 23.

HE who enters and has paid his grassum to his laird for certain years, five or three years, long or short, conform to the use of the land where the grassum was paid; in case the man die before the ish of the tacks permitted for the grassum, the bairns of the man that paid the grassum shall bruik and enjoy the rest of the years that are to run when the father died, howbeit there be no tack in writing.

Fol. Dic. v. 3. p. 383. Maitland, MS. p. 117.

No 24.

1587. January.

SCOT against SCOT.

ROBERT SCOT of ——— pursued William Scot burgess of Edinburgh, for the fulfilling of a contract and appointment, wherein the said William, as executor with the said Robert, of umquhile Mr James Scot, Provost of Corstorphin, bound and obliged him to take the whole burden upon him of the office of executry, and to discharge the said Robert of his intromissions; and the said Robert was bound on the other part, to give him ———, and to pay certain legacies, whereof the said William had already received the most part.—It was alleged by the said William, *contra ingressum litis*, That the said contract was no perfect evident, because it took not effect; and the said Robert had never yet subscribed the same, it being a mutual and reciprocal contract, and lain over by the space of 20 years unsubscribed by the said Robert, and so could give him no action, and cannot be holden a perfected evident, *quia nihil dictum perfectum, quamdiu superest aliquid agendum*.—It was answered by the said Robert, That the said William could not be heard to propone any thing against the said contract, because he had subscribed it, and had also received from the said Robert the sums of money which he was obliged in the contract to deliver to him, *et sic res non fuit integra*; and as to that which was alleged, that the said Robert had not subscribed the same, the said Robert was content presently to subscribe the same.—THE LORDS found the reply relevant, and that it was sufficient that the said Robert might subscribe presently, and that the said William might not pass from the said contract *quia res non fuit integra*.

Fol. Dic. v. 1. p. 563. Colvil, MS. p. 418.