

1729. November 18. M'KENZIE and WYLIE *against* TROTTER.

No 40.

A possessor being pursued to remove from a house of which he had got a verbal tack from the pursuer, to last for nine years, *locus poenitentiae* was found competent to the pursuer, though the defender *pleaded*, that *res non erat integra*, in that the house being designed for a meeting-house, he had altered the partitions, and reared up pews to a considerable expense; but consideration of the expenses laid out on faith of the verbal agreement was reserved.—  
See APPENDIX.

*Fol. Dic. v. 1. p. 563.*

1745. February 22. The DAUGHTERS of CHRISTIE *against* CHRISTIE.

No 41.

ALTHOUGH a promise, however absolute, to dispoise lands or any other subject, which requires writ, may be resiled from before writ intervene; yet the case is different of a promise to ratify an informal disposition already granted; for, in that case, the action lies upon the informal deed, and the defender is *personali exceptione* barred from objecting the nullity.

And accordingly, a promise to ratify an informal disposition to land, was, in this case, found relevant by the oath of party.

*Kilkerran, (PERSONAL EXCEPTION.) No 2. p. 382.*

\* \* D. Falconer reports this case.

GEORGE CHRISTIE, tenant in Kinglassy, having purchased the lands of Auchmuir, took the disposition to himself and his wife in liferent, and to George and William Christies, his sons, in fee, with a faculty to himself to dispose of the same, without consent of his sons.

Afterwards, having made another settlement on William, he disposed the lands of Auchmuir to George; but this disposition wanted witnesses, being wrote by William, who had wrote for some time in the town-clerk's chamber in Kirkcaldy, and contained this clause, "And if it shall happen the said George or William to die without heirs lawful of their body, both their provisions shall fall in to the survivor."

After the father's death, the brothers came to an agreement to implement their father's deed, notwithstanding any defect therein, but the writer of this contract was not designed.

Upon George the son's death, his three daughters pursued their uncle to denude of the half of Auchmuir; and he objecting the nullities in the deeds, was ordained to depone, Whether he agreed to subscribe the agreement be-