

*LOCUS PŒNITENTIÆ.*

---

1734. *February 20.* M'DOUALL of Crichen *against* Ross.

No. 1.

BARGAIN of victual for a number of years executed by a null writing, though performed for some years, may be resiled from as to subsequent years.

---

1736. *July 16.* BARRON *against* PETRIE.

No. 2.

PETRIE sold BARRON a house and some land in Huntly, with absolute warrandice, when he had no right to the house, and put him in possession; and the seller having pursued for repetition of the price because Petrie could not give him a right; Petrie pursued one Strachan, who had right to the half, to perform a verbal agreement, whereby Petrie became bound to defend Strachan against a process concerning that very house, for which and a sum of money to be paid, Strachan was to make over her share of the house, which agreement, and his having defended the process, he referred to oath. The Lords found, that it being a bargain of sale of lands, and no writ adhibited, there was *locus pœnitentiæ* to either party, notwithstanding the alleged *rei interventus*, the defending the process by Petrie a writer; and therefore assoilzied Strachan, and found Petrie liable to Barron in repetition of the price of the house.

---

1737. *November 2.*

KERR of Crummock *against* SKEDDEN of Marshalland.

No. 3.

DECREET-ARBITRAL betwixt two parties having mutual claims determining them all, and L.5 sterling to be paid by one party being passed from by the parties verbally, the question was, whether there was *locus pœnitentiæ*, since it was not passed from by writing. On the one hand, as to the L.5 sterling, it was *pactum liberatorium*. But then on the other hand, the setting aside the decreet-arbitral was rearing up all the former claims *hinc inde*; and sopiting of pleas was favourable. The Lords found that it could not be passed from verbally.