on payment of some small expenses; the question was, Whether it could be passed from without writ, or if there was *locus pœnitentiæ? Ratio dubitandi*, that this was *pactum liberatorium*. The Ordinary found it could not be passed from verbally, and we adhered. I thought, that were there no more in it than passing from the L.5 decerned, it might be passed from, but then such verbal paction could not rear up the former claim. Arniston doubted of that, but was for adhering, for sopiting pleas, and that *de minimis non curat prætor*.

No. 4. 1741, June 3. SEATON of Gardenrose *against* CHRISTIE.

A VERBAL transaction of sundry claims, and some on which adjudication had followed, by which transaction 5000 merks was to be paid for the claim, which transaction was never reduced to writing, but one of the parties afterwards wrote a letter mentioning the transaction and the sum to be paid, and promising security; the Lords found there was no *locus pœnitentiæ*, and adhered unanimously to Arniston's interlocutor, and refused a bill without answers, which was pretty similar to the case 13th December 1710, Young against Nisbet, (DICT. No. 38. p. 8434.)

No. 5. 1741, June 19. WALKER *against* LIVINGSTON of Bedlormy.

BEDLORMY having entered into a contract with several persons as nearest of kin of a defunct, whereby for L.100 to be paid by such of them as should be found executors he renounced his own claim of being nearest of kin; and that contract being not signed by one of those persons nearest of kin, they thought Bedlormy had a *locus pœnitentiæ*, and of consequence of that found the other nearest of kin not bound; and, *separatim* before answer to the qualification of fraud, ordained Bedlormy to condescend on his relation to the defunct such as may justify his claiming to be nearest of kin.

No. 6. 1744, Dec. 11. CREDITORS OF HUGH MURRAY *against* GRAHAM.

THE Lords found there was no finished transaction, and found that Balgowan has no retention for the Lady Murray's aliment. But found he has retention till his representatives are satisfied of the household furniture.

No. 7. 1745, July 5. AGNES MOODIE *against* ANN MOODIE.

THREE heirs-portioners intending to sell their lands, for the more easy distribution of the price, agreed that it should be set up to roup among the three so as one of them might still retain the lands; and the second and third made a private bargain that the second should not offer at the roup, but allow the lands to fall into the hands of the youngest, and a definite sum was pactioned to be paid by the youngest if she was purchaser to the second, whether the lands should sell higher or lower. Thereafter articles of roup were made out and signed by all the three without reference to this private bargain. And the youngest became purchaser at the roup. But then the second repented of the bargain and insisted for her full share of the price offered, and contended that as it was a bargain

about a sale of lands there was *locus pœnitentiæ*, since no writ intervened upon the bargain, which was offered to be proved only by her oath, and secondly that that verbal bargain was altered by the subsequent articles of roup,—though without them it could not have been executed; but the Lords unanimously found no *locus pœnitentiæ*.

MANDATE.

No. 1. 1735, July 24. SHERWELL *against* JEFFRAY and GILLESPIE.

THE Lords found the merchant Ellies from whom Sherwell derives right had both Gillespie who bought the goods, and Robertson the factor to whose debit they were ordered to be charged, liable to him, and therefore preferred him to Jeffray. This carried only by my casting vote.

No. 3. 1745, Feb. 6. SANDILANDS and KNOX *against* LINDSAY.

CARMICHAEL, merchant in Edinburgh, commissioned Sandilands and Knox in Bordeaux to send four tons of wine, and send the invoice and bills of lading in Lindsay's name, and to draw on him Carmichael for the value. They obeyed the commission, and in August 1734 drew on Carmichael, payable to Coutts at London, who wrote to Carmichael, and he in answer excused himself wondering that Lindsay had not remitted the money; but Carmichael was then breaking, and in December he settled accounts with Murray, brother-in-law of Lindsay, to whom he owed considerable sums, and debited Murray with this wine as well as several parcels furnished Lindsay in former years as having been commissioned by Murray for Lindsay. Then Sandilands and Knox sued Lindsay, who defended on this payment or rather account betwixt Murray and Carmichael, and Royston had sustained the defence. But the Court on a reclaiming bill ordered all the parties to be brought into the field and all the correspondence extant, and this day finding no evidence of the wines being commissioned by Murray they found Lindsay liable. *Vide* 24th July 1735, Sherwell against Jeffray, (No. 1.) 7th December 1735, Smith in Yarmouth against Fotheringham, (No. 2.)

No. 4. 1753, Nov. 15. LAING *against* THE LORD CHIEF BARON.

THE Lord Chief Baron having employed Laing to repair his house at Dalry, Laing sued him for payment of his account, and the defence was, that the repairs were contrary to his orders. A joint proof was allowed, and I thought there was very sufficient proof that the Lord Chief Baron's orders with respect to the roof of the house were to preserve the ceiling (whereof the plaister was raised work of stucco in 1661 with the Scots Arms and King Charles II.) of the two floor rooms which were immediately below the garrets, otherwise not to meddle with the roof; whereas Laing took off the whole roof