

No 65.

1682. *November.* CORSBURN *against* POLLOCK.

POLLOCK, Maxwell, and Corsburn having verbally agreed to take a tack of some rents belonging to the Duchess of Lennox, and that Pollock should go to London for procuring thereof, who having gone and taken the tack wholly to himself, Corsburn raised a process for the half of the tack-duty; for that he was diverted by the said agreement from prosecuting the designs he had of getting the tack to himself.

Allegd for the defender, That there was *locus poenitentiae*, no writ having intervened.

Answered, *Res* was not *integra*, seeing the pursuer could not now procure the tack for himself, which at first he stood as fair for as Pollock.

THE LORDS found there was no *locus poenitentiae*, and ordained the defender to depone anent the terms of the agreement. The like was found formerly in a cause between Mr John Campbell and Dr Moore, No 30. p. 8421. See FRAUD.

Harcarse, (LOCUS POENITENTIAE.) No 674. p. 191.

No 66.

1685. *January 2.* GRAHAME and ERSKINE *against* BURN.

A TENANT of my Lord Panmuir's enters into a contract of marriage with a woman called ———, under a penalty; and afterwards he deserts the bargain, and refuses to accomplish it. She pursues him for the 200 merks of penalty, at least for damage and interest, in so far as she was put to expense in entertaining his friends, and taking off bridal cloaths, &c.—THE LORDS, though they found *matrimonia debent esse libera*, and that there is *locus poenitentiae*; yet, under that pretence, one ought not to be damnified, therefore they admitted her expense to probation; and she having proved, that she was put to L. 80 Scots of charges *eo nomine*, the LORDS, at the advising for that expense, and for her loss of the market, modified L. 100 against him, in regard especially that he could give no rational ground why he gave over the bargain. This decision seems equitable, though it be new.

Fol. Dic. v. 1. p. 565. Fountainhall, v. 1. p. 328.

No 67.

1703. *February 20.* WATT *against* STEWART.

Even after
arles, a man
was allowed
to give up
a house
he had taken,
having done
so 40 days

MR ADAM WATT pursues John Stewart glover in Edinburgh, for a house-mail. His defence was, That as I took your house in March to enter at the Whitsunday after, so I gave it over to you by way of instrument *de recenti*, more than 40 days before the term, and that, by the general custom within the town of Edinburgh, such over-givings have been sustained as legal; and there