

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