

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.

BEDLOEMY 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