

And, accordingly, in this case, which was a process at Caddel's instance against Sinclair, his servant, for deserting the service which he had undertaken for three years, and which, in the inferior Court, he had acknowledged on oath to be true, the LORDS, in respect no writ had intervened, " Found him only bound to serve for one year."

No 239.

The case is the same with respect to tacks. A tack for more than one year can only be proved by writ; and if the writ be null, it cannot be supplied by the oath of party. Or where a verbal agreement is made for a tack of three or more years, but with this provision, that it is to be reduced into writing, till writ follow, the agreement is of no effect; but if, in consequence of such verbal agreement, the tacksman be permitted to enter into possession, it will be effectual for one year, though writ should never follow.

Fol. Dic. v. 4. p. 161. Kilkerran, (PROOF.) No 10. p. 445.

No 240.

1750. January 12.

KINGAID against STIRLING.

A PERSON having built a dam-dyke, resting upon the ground of another, whose consent he alleged he had obtained, and offered to prove the agreement by witnesses; it was questioned, whether a real servitude of this kind could be constituted by a verbal agreement, probable by witnesses. THE LORDS thought, that, even if such agreement were admitted, there is always a *locus poenitentiae* till writ be adhibited; but that, in this case, if it should appear, that, in consequence of such verbal agreement, the complainer had suffered the dyke to be built, he would now be barred, *personali exceptione*, from having it demolished; and, for that end, they allowed a proof of the agreement.

Fol. Dic. v. 4. p. 161. Kilkerran.

*** This case is No 13. p. 8403. *voce* LOCUS POENITENTIAE.

No 241.

1773. June 24.

FRASER against WILLIAMSON.

A VERBAL submission was found not probable by the oath of the arbiters.

Fol. Dic. v. 4. p. 161. Fac. Col.

*** This case is No 73. p. 8476. *voce* LOCUS POENITENTIAE.