doubt binding upon the conscience of an honest man, the intendment of the law was, to admit, in certain cases, of *locus pœnitentiæ*; which, if matters were entire, he was entitled to take advantage of. No 49.

THE LORDS found, "that as the subject in question is an heritable subject, the letter libelled on is not binding."

Lord Ordinary, *Elliock.* For Muir, *Lockhart.*
Clerk, *Ross.* For Wallace, *Boswell.*

R. H. *Fac. Col. No 26. p. 60.*

1779. *July* 29. MAITLAND *against* NEILSON.

NEILSON, by a missive not holograph, became bound to enter into a tack with Maitland, containing all the usual clauses, and a counter missive agreeing to that proposal was signed by Maitland, though not holograph of him. A scroll of the lease was made out, but they differed on some articles, and Maitland did not obtain possession. In a pursuit against Neilson by Maitland to implement and assign the tack, the LORDS held the missive not probative, though Maitland acknowledged the subscription, and found, that as it was covenanted there should be a tack in writing, there was still *locus pœnitentiæ*. *See* APPENDIX. No 50.

Fol. Dic. v. 3. p. 395.

1790. *May* 22. MALCOLM M'FARLANE *against* JAMES GRIEVE.

No 51.
The acknowledgement of subscription, not sufficient to supply the want of any of the statutory solemnities of deeds.

M'FARLANE granted a lease to Grieve. Before possession had followed, however, the former instituted a reduction of it on this ground, that it had been omitted to insert in the deed the name and designation of the writer, a requisite, it was said, essential to its validity by the statute of 1681. The defender

Pleaded; That statute, it is true, has enacted, 'that all such writs wherein 'the writer and witnesses are not designed, shall be null, and are not supplia' able by condescending upon the writer, or the designation of the writer and 'witnesses.' But though the term *nullity* does in our statute law sometimes import an intrinsic nullity, yet generally by that word nothing more is meant, than a circumstance affording an exception or reason of reduction. Thus, deeds null according to the terms of the acts 1621 and 1696, are yet never set aside without a formal process. In like manner, with respect to entails, many contraventions are expressly declared by the statute of 1685 to infer an *ipso facto* forfeiture, but in order to give effect to them, a declarator is required.

If such were not the case, it would be *pars judicis* to advert to objections of this kind, and no decree in absence where they occurred would be of any a-