

S E C T. II.

Locus poenitentiae until the Writ be perfected.

1583. June.

THAINE against CANT.

THERE was one called Thaine, that pursued one Cant, the spouse of umquhile Colonel Balfour, for delivering of a tack and assedation made by form of contract to the said pursuer. It was *alleged* by the defender, That the said tack ought not to be delivered, because the said tack and assedation was made contracting for her part liferent, and her son pupil, as fiar, and his tutor for his interest; and true it was, that neither her son, as fiar, nor his tutor, had subscribed the same, it ought not to be delivered *prout de jure C. De fid. instrum. L. 17. nam contractus non aliter vires sumunt nisi in mundum fuerint recepti et subscriptionibus partium confirmati*, and into that time that they be perfected, and *summa manus* be imposed unto them *locus est poenitentiae*; and so the said tack ought in no manner of way to be delivered. To this was *answered*, That the defender ought not to be heard to allege that the tack was imperfected, because she had ended it, subscribed and perfected for her part; and as to the pupil and his tutor, during her lifetime, they could have no interest, because she was liferenter of the lands, which were set in tack and assedation *et utile per inutile non debuit vitiari*.—THE LORDS found by interlocutor, that in respect the said tack was imperfected and unsubscribed by all the hail parties contained thereintill, that the same should not be delivered *licet nannulli dominorum fuerunt in contraria opinione*.

Fol. Dic. v. 1. p. 561. Colvil, MS. p. 365.

1626. December 16.

BYRES against JOHNSTON.

JAMES JOHNSTON having subscribed a letter of alienation of some lands to John Byres of Cotes, which letter was delivered by the said James to Mr Francis Hay writer, to the behoof the said John Byres, to the effect that charters might be formed thereupon in favours of the said John; and after the said charters were written out, the said James having come to the said Mr Francis, and borrowed from him the said letter of disposition, to the effect he might confer the same with the charters, promising to re-deliver the same; and that diverse times since, the said James promised to the said John to re-deliver the same, and to fulfil the whole conditions thereof; the said John Byres pursues the said

VOL. XX.

46 X

No 14.

A contract was made between a liferentrix, her son, and his tutor, on the one part, and a third party on the other. Though she subscribed, and was in possession, found null even as to her, not being subscribed by the tutor.

No 15.

A bond of alienation was subscribed and delivered to a writer for behoof of the purchaser. It was got back by the seller under promise to return it. Found there was still *locus poenitentiae*.