

No 54. there required, viz. a renunciation of the rest, and till that was done, *est locus poenitentiae*.

THE LORDS considering the case, found, that if the promise were only to restrict the annualrent to a part of the land burdened therewith, it was *pactum liberatorium*, and there was not *locus poenitentiae*; but if it was a promise to accept other lands, or the property of a part of the lands burdened, there was *locus poenitentiae* till the mutual rights were subscribed, whereby the one party disposed the property, and the other the annualrent.

*Fol. Dic. v. 1. p. 564. Stair, v. 1. p. 352.*

1670. January 8.

SCOT against MURRAY.

No 55.

IN a process betwixt Scott and Murray, a husband having granted a tack of his wife's liferent lands, and the wife having promised, after his death, never to quarrel that tack, yet thereafter insisting against the tenants, who *alleged* upon the said promise; it was *answered*, that it being but a verbal promise, not in writ, it can be no more effectual than if it had been a verbal tack, which is only effectual for a year, and thereafter, the setter may resile. It was *answered*, that there is a tack by the husband for several years, and the wife's promise never to quarrel it needs no solemnity in writ, but is valid, as *pactum de non petendo*, or *de non repugnando*.

THE LORDS found the wife's promise effectual, and that she might not resile during the years of the tack.

*Fol. Dic. v. 1. p. 564. Stair, v. 1. p. 660.*

\* \* \* Gosford reports this case.

IN a removing pursued at Jean Scot's instance, against the Tenants of Broomholm, there was a defence proposed for John Murray, heritor, that there being a tack of the said lands set by her husband, she, as liferentrix of these lands, promised never to quarrel the same after the death of her husband. It was *replied*, that the promise being only verbal, could be no more obligatory but for one year, seeing it could operate no more than if she herself had set a verbal tack for many years, which in law could be only obligatory for one. THE LORDS, notwithstanding, did sustain the defence, and found, that a promise made by a liferenter not to quarrel a written and subscribed tack, made by the heritor for several years to run, was obligatory, and being accessory to a principal tack set by the heritor, did prejudice her as to her temporal right of liferent during the whole years of the tack, and was far different from the case where an heritor or liferenter had set lands by a verbal promise or tack without writ, which, by our law, could only be valid for one year.

*Gosford; MS. No 224. p. 90.*