No. 3. 1747, Dec. 2. BOOKSELLERS IN LONDON *against* THE BOOKSELLERS IN GLASGOW AND EDINBURGH.

TINWALD well observed, that the author of a book could have no better title at common law to the property or rather monopoly of his own labours and invention than the first inventor of printing or gunpowder had to the monopoly of that invention, and that this would be a *novus modus acquirendi dominii*. Also observed, as I had done yesterday, that the East India Company could not have action of damages against importers of East India goods. Arniston spoke long and well, and many things new, but in order to hear him I was obliged to change my seat and could not take notes; but we unanimously found, first, that no action lies for offences against this statute more than three months after the offence; 2dly, that no action on the statute lies for books not entered in Stationers Hall as the act directs; and 3dly, that no action lies upon this statute for damages but only for the penalties; and June 7th 1748 adhered, and found that no action lies either upon or in consequence of the statute. *Vide* the judgment on appeal, MS. fol. (now printed) and the printed cases.

No. 4. 1749, Dec. 8. MAITLAND *against* FRASER.

ONE Edgar made a plan of Edinburgh, and after his death his sisters, who were nearest of kin, gave it to George Fraser, auditor of Excise, to get it by assistance of the master of Elphinston reduced to one foot, which was accordingly done. Some time after a creditor of the defunct confirmed the original plan, and had it sold by public roup by the Commissaries, and it was purchased by Maitland, who it was said had first devised the confirming it to make himself master of it, being then writing the History of Edinburgh, and to discourage bidders told publicly that several copies had been taken of it. He then pursued Fraser (who had sent his reduced copy to London to be engraven) to deliver that copy, and Minto the Ordinary ordered him before answer to produce it in the clerk's hands; but on a reclaiming bill and answers we remitted to the Ordinary to hear them on their several rights. I greatly doubted that he had any right in Fraser's reduced copy, for though if he had come unlawfully by the original and taken a copy, that unlawful act might subject him to damages; yet having got it from the nearest of kin to reduce, that was a lawful act, and the purchaser of the original plan had no more right than an inventor of a new-fashioned machine has right to every machine made on that pattern, or the owner of an original manuscript to every copy taken of it, and here he could plead no special privilege; 2dly, As by the act of Parliament nearest of kin getting possession need not confirm, and, as we have found, transmit their right to their executors, we doubted whether the confirmation gave any right after the nearest of kin attained possession.

LOCUS PŒNITENTIÆ.

No. 1. 1737, Nov. 2. KERR of Crummock *against* SKEDDEN.

A DECREET-ARBITRAL being pronounced between these parties determining former difficulties, and decerning L.5 sterling to be paid, which was said to be passed from verbally

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.

BEDLORMY 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