about a sale of lands there was *locus pœnitentiæ*, since no writ intervened upon the bargain, which was offered to be proved only by her oath, and secondly that that verbal bargain was altered by the subsequent articles of roup,—though without them it could not have been executed; but the Lords unanimously found no *locus pœnitentiæ*.

MANDATE.

No. 1. 1735, July 24. SHERWELL *against* JEFFRAY and GILLESPIE.

THE Lords found the merchant Ellies from whom Sherwell derives right had both Gillespie who bought the goods, and Robertson the factor to whose debit they were ordered to be charged, liable to him, and therefore preferred him to Jeffray. This carried only by my casting vote.

No. 3. 1745, Feb. 6. SANDILANDS and KNOX *against* LINDSAY.

CARMICHAEL, merchant in Edinburgh, commissioned Sandilands and Knox in Bordeaux to send four tons of wine, and send the invoice and bills of lading in Lindsay's name, and to draw on him Carmichael for the value. They obeyed the commission, and in August 1734 drew on Carmichael, payable to Coutts at London, who wrote to Carmichael, and he in answer excused himself wondering that Lindsay had not remitted the money; but Carmichael was then breaking, and in December he settled accounts with Murray, brother-in-law of Lindsay, to whom he owed considerable sums, and debited Murray with this wine as well as several parcels furnished Lindsay in former years as having been commissioned by Murray for Lindsay. Then Sandilands and Knox sued Lindsay, who defended on this payment or rather account betwixt Murray and Carmichael, and Royston had sustained the defence. But the Court on a reclaiming bill ordered all the parties to be brought into the field and all the correspondence extant, and this day finding no evidence of the wines being commissioned by Murray they found Lindsay liable. *Vide* 24th July 1735, Sherwell against Jeffray, (No. 1.) 7th December 1735, Smith in Yarmouth against Fotheringham, (No. 2.)

No. 4. 1753, Nov. 15. LAING *against* THE LORD CHIEF BARON.

THE Lord Chief Baron having employed Laing to repair his house at Dalry, Laing sued him for payment of his account, and the defence was, that the repairs were contrary to his orders. A joint proof was allowed, and I thought there was very sufficient proof that the Lord Chief Baron's orders with respect to the roof of the house were to preserve the ceiling (whereof the plaister was raised work of stucco in 1661 with the Scots Arms and King Charles II.) of the two floor rooms which were immediately below the garrets, otherwise not to meddle with the roof; whereas Laing took off the whole roof

and took down that ceiling and loft which was within the roof, the ceiling being fixed to the lowest baulks of the couples, and gave the house a split new roof. Laing again proved to the satisfaction of the Court the rottenness and insufficiency of the roof, both lath and couples, though the heart of the wood of many of the couples was so fresh they were employed in repairing the roof of another office-house. And Lord Chief Baron proved that the roof might have been repaired without taking down all the couples, at least without taking down that ceiling, by putting in new couples and joining them to the old ones, or by joining them to the old baulks to which the ceiling was fixed. Some of us were for repelling the defence *simpliciter*, but others of us, particularly Justice-Clerk, Kilkerran, and I, thought that Laing had acted contrary to orders, and therefore in strict law had no action, (which is agreeable to L. 24. C. *De Negotiis*, and L. 40. *D. Mandati*. But yet we thought that he had action in equity so far as the defender was profited by the work, (which also Mr Craigie for the defender yielded) and therefore I moved that his counsel should give in a special condescendence what articles they objected to; and 2dly, a condescendence attested by some tradesmen of character in this place, what would have been the expense of repairing in the manner the defender proposed by supporting that ceiling and interlining the old joists and couples with new ones, and imagined that the expense would have been at least as great that way, because the operation was much more difficult. However the majority would not agree to the motion, but upon a vote sustained the account as it was, reserving to the Lord Chief Baron to object to any particular articles that either they were not furnished or were overrated; and repelled the defence.

MANSE.

No. 1. 1734, Nov. 28. Mr Maul *against* The Children of Charters.

Nothing appears in the Notes in relation to this case. Lord Elchies has preserved the printed papers which are in vol. vi. fol. 154. The counsel were Graham and Craigie.

By the act 21, Parl. 1663, it is declared, that manses being once built and repaired and the building or repairing satisfied and paid by the heritors, the said manses shall thereafter be upholden by the incumbent ministers during their possession. The Court on report of Lord Coupar had found in substance, that certain repairs which had been made, (followed by a visitation of the Presbytery, and a declaration by them that the manse was free,) had proceeded upon an erroneous report of the state of the buildings, and consequently that the heritors continued liable.

It was contended on the part of the heritors, that in terms of the act of Parliament the declaration of freedom conclusively relieved them. It was however found that it was still incumbent on them to prove, that the repairs had been sufficiently made.—Ed.