

part of the oath of redacting the bargain into writ, was no competent quality, but an exception, Douglas raised reduction upon iniquity ; and as it was then represented to the Lords, That such a bargain needed no writ, seeing the assignation was in Douglas's name only, and Campbell, upon payment of the money, was only to give back the back-bond, and that Douglas was to give precepts for a part of the money, which was not Campbell's fault that it was not done ; therefore the LORDS remitted the cause, and the Bailies decerned. Douglas now suspends, and repeats the reason of iniquity, and *alleges*, That albeit a bargain, by its nature, require no writ, yet if the parties expressly commune and agree to perfect the bargain by writ, till the writ be subscribed, *est locus poenitentiae*, and either party may resile ; and this being a part of the bargain, was a most proper and intrinsic quality, and the suspender ought not to have been put to prove it ; but his oath being the only mean of probation, did sufficiently prove it.

No 63.

THE LORDS having considered the oath, as it is repeated in the Bailies' decret now produced, bearing, ' That the bargain should have been perfected in writ,' they found, That though writ is not necessary to perfect an agreement ; yet if parties expressly commune and agree to perfect it in writ, there is place for either party to resile till the writ be subscribed ; and that this being a part of the bargain, was intrinsic and competent by Douglas's qualified oath : But in respect the oath did only bear, ' That the bargain should have been perfected ' in writ,' which might have been Douglas's conjecture, They ordained Douglas to be re-examined, whether it was expressly communed and agreed by the parties that this bargain should be perfected in writ. See QUALIFIED OATH.

*Fol. Dic. v. 1. p. 564. Stair, v. 2. p. 396.*

1681. June 16.

CATHCART against HOLLAND.

ELIAS CATHCART pursues Ralph Holland for payment of the price of the eighth part a ship sold to him. The defender *alleged* absolutor, because there was *locus poenitentiae*, seeing the bargain was never perfected in writ ; *2do*, The defender was never put in possession of the ship.—It was *answered*, That a ship being moveable, requires no writ to the sale thereof, for jewels, though much more valued, pass without writ ; and as to the possession, though it were not yet delivered, it cannot dissolve the sale ; but there needs no delivery, seeing the defender was already a part owner, and so was in possession ; and the other partner's share accresced to him by the bargain, without necessity of any other delivery.

THE LORDS found the vendition of the ship required no writ, and that there is no *locus poenitentiae*, unless it had been agreed by the parties that there should be a written vendition ; and found, that there was no necessity of tradition, the buyer being already in possession as a part owner.

*Fol. Dic. v. 1. p. 564. Stair, v. 2. p. 876.*

No 64.

*Locus poenitentiae*, before the vendition of a ship was put into writing, not sustained, because a ship is a moveable which requires no writing.