

No 19. ' or sums on account of penalties, for failure of payment, at the day it became due, or for any other penalty whatsoever.'

Replied, Mr Allan will recover no part of the penalty in his bond of relief; but what he has paid of the penalty of his own bond the Lord Balmerino was bound to relieve him of; and it is no penalty.

THE LORDS sustained the claim.

D. Falconer, v. 2. No 188. p. 227.

S E C T. IV.

Whether an obligation or a resolution only?

No 20. 1662. July 25. NASMYTH *against* JEFFREY.

A LEGACY left in terms 'I wish, &c.' was found sufficient, and was not considered as a desire only, or recommendation left in the option of the heir.

Fol. Dic. v. 2. p. 16. Stair.

* * * This case is No 53. p. 5483, *voce* HERITBLE AND MOVEABLE.

No 21. 1681. December.
BEATRIX TUNNO and BROTHERSTONS *against* ANDREW TUNNO.

ONE having received a letter abroad from his friend, that there was a treaty of marriage with his sister on foot, and the man desired 400 merks of portion; he wrote back to that friend, that he was willing to give 200 merks to forward the design; who giving the letter to the suitor, the parties were afterwards married, and they pursued the brother upon it for payment of the 200 merks. It was *alleged* for the defender, That the letter was no positive obligation, but the declaration of a bare resolution, and though it were thought to import a promise, the offer was not accepted.

THE LORDS decerned the defender to pay the 200 merks.

Fol. Dic. v. 2. p. 16. Harcarse, (CONTRACTS OF MARRIAGE.) No 339. p. 82.