

much; for this would liberate all cautioners, and annul hundreds of deeds given for love and favour; besides her negligence in letting it be lost in her house, on the edict *nauta caupones*. Neither is it of any weight, that it is only a verbal legacy; for that restriction only holds where it is left payable after their death; but here the bank-note was called for to have been instantly delivered in her lifetime; and her promise needed no present acceptance; for they may be made to infants, idiots or absent, and yet bind; and it is a mere quibble to say he did not declare his acceptance; for who in his right wits would reject and repudiate such an express offer? THE LORDS found the promise obligatory, and sufficiently proved by her oath; but allowed her yet to instruct he was *aliunde* paid, if she would burden herself therewith.

*Fountainhall, v. 2. p. 697.*

No 22.

1717. July 10.

PATERSON *against* INGLIS.

A DEBTOR'S relict having written in the postscript of a letter, not to the creditor, but to a third party, these words: 'Shew such a person that if I were come, &c. she shall be paid, &c. if it be His holy will to spare me;' the LORDS found that these words not only imported a resolution, but an obligation. See APPENDIX.

*Fol. Dic. v. 2. p. 16.*

No 23.

1723. January 2.

KENNEDY *against* KENNEDY.

HUGH KENNEDY disposed his estate upon death-bed in favour of his son, and failing him, to Sir John Kennedy. After the son's death, this deed being called in question by Hugh Kennedy of London, a remote heir, Sir John Kennedy *alleged*, That the son, apparent heir at the time, had homologated the deed, which made it unquarrellable by any remoter heir; and he produced a missive letter in these words: 'Depend on it, I shall adhere to that right my father made failing me in your favour; and that you may give the more credit to what I here aver, I have made no other title to my estate, but have used the same as my evident.' It was *pleaded*, That this did only import a resolution, but no direct ratification or homologation; which accordingly the LORDS found. See APPENDIX.

*Fol. Dic. v. 2. p. 16.*

No 24.

1737. January 28. PATRICK ROBERTSON *against* MACKENZIE of Fraserdale.

THE deceased Lord Prestonhall, *anno* 1710, granted a bond to Agnes Cockburn, his servant, bearing, That he was justly resting and owing her the sum of

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No 25.  
Found that  
a bond for an  
onerous cause,  
bearing, that,  
in case it was