

O B L I G A T I O N.

S E C T. I.

Promise.—Effect upon Heirs ?

1623. January 6. KINTORE against SINCLAIR.

THE relict of one Kintore libelled, that by a verbal submission betwixt one Sinclair in Orkney, and her umquhile husband, decret-arbitral was pronounced and written, decerning Sinclair to pay to her husband L. 100; and that Sinclair, son to the said Sinclair, against whom that decret was given, had diverse times promised to her that sum; and albeit Sinclair, defender, *alleged*, That she neither being executrix to her husband, nor he heir nor executor to his father, neither she could crave the sum, nor he heir nor executrix to his father; yet the LORDS sustained the pursuit. I contradicted, because the promise was *nudum pactum*, having no preceding cause, and that promises of that kind are not obligatory; because, if a man had not only promised verbally to pay, but to give his obligation for payment, and had directed the bond to be written, might repent, much more this party might resile, since there was no necessary cause of the promise, neither the pursuer having right to the sum decerned, in case the decret had had a warrant, nor the defender being a party that could be subject to the decret; nevertheless the LORDS persisted in their opinion, the pursuer finding caution to relieve the defender at the hands of the heir and executors of the defunct.

Fol. Dic. v. 2. p. 15. Haddington, MS. No 2716.

1740. June 16. GORDON of Ellon against Dr CUNNINGHAM.

WILLIAM LIVINGSTON, intending to retire from business, wrote a letter to Gordon of Ellon his brother-in-law, informing him that he had L. 200 Sterling

No 1.

A promise found to be obligatory, though but *nudum pactum*, without a preceding cause.

No 2.

A person sunk a sum with a friend,