might be needful for that purpose, and the bond recited the contract, the court took this as evidence of the contract, and accordingly granted relief on the foot of it beyond the bond, *Jeudwine* v. *Agate* (1829), 3 Sim. 129, 57 E.R. 948; and in a case which went to the House of Lords, a contract (contained in the condition of a bond) to give certain property by will or otherwise, was held not to be satisfied by the penalty, but was specifically performed: *Logan* v. *Wienholt* (1883), 7 Bli. N.S. 1, 5 E.R. 674. See also *Butler* v. *Powis* (1845), 2 Coll. 156, 63 E.R. 679; *National Provincial Bank of England* v. *Marshall* (1888), 40 Ch. D. 112.

So, again, a contract not to carry on a particular kind of business within certain limits expressed in the condition to a bond can be enforced by injunction: *Clarkson* v. *Edge* (1863), 33 Beav. 227, 55 E.R. 354; *Gravely* v. *Barnard* (1874), L.R. 18 Eq. 518; *cf. William Robinson & Co.* v. *Heuer*, [1898] 2 Ch. 451, at 458.

The difference between penalty and liquidated damages is, as regards the common law remedy, most material. For, according to common law, if the sum named is not a penalty, but the agreed amount of liquidated damages, the contract is satisfied either by its performance or the payment of the money: *Anon.*, (1737), Hard. 390, 95 E.R. 252; *Lowe* v. *Peers* (1768), 4 Burr. 2225, 98 E.R. 160; *Hurst* v. *Hurst*, 4 Ex. 571; *Legh* v. *Lillie*, 6 H. & N. 165; *Mercer* v. *Irving* (1858), El. Bl. & E. 563, 120 E.R. 619; *Atkyns* v. *Kinnier* (1850), 4 Ex. 776, 154 E.R. 1429. As to the distinction between penalty and liquidated damages, see also *Elphinstone* v. *Monkland*, 11 App. Cas. 332, 346-348; *Clydebank* v. *Castaneda*, [1905] A.C. 6, 15; *Public Works Commissioner* v. *Hills*, [1906] A.C. 368, 375; *Wallis* v. *Smith*, 21 Ch. D. 243, 249, 258; *Pye* v. *British Automobile Commercial Syndicate*, [1906] 1 K.B. 425; *Diestal* v. *Stevenson*, [1906] 2 K.B. 345, 350; and *General Billposting Co.* v. *Atkinson*, [1908] 1 Ch. 537, at 544. But as regards the equitable remedy the distinction is unimportant: for the fact that the sum named is the amount agreed to be paid as liquidated damages is, equally with a penalty strictly so called, ineffectual to prevent the court from enforcing the contract in specie: *City of London* v. *Pugh* (1727), 4 Bro. P.C. 395, 2 E.R. 268; *French* v. *Macale*, 2 Dr. & War 269; *Coles* v. *Sims* (1854), 5 De G. M. & G. 1, 43 E.R. 768; *Carden* v. *Butler* (1832), Hayes & J. 112; *Bird* v. *Lake* (1863), 1 H. & M. 111, 71 E.R. 49; *cf. Bray* v. *Fogarty* (1870), Ir. R. 4 Eq. 544.

The simplest illustration of this is the ordinary case of a stipulation on the sale of real estate that if the purchaser fail to comply with the condition he shall forfeit the deposit, and the vendor shall be at liberty to resell and recover as and for liquidated damages the deficiency on such resale and the expenses. "A purchaser," said Lord Eldon in *Crutchley* v. *Jerningham* (1817), 2 Mer. 502, at 506, 35 E.R. 1032, "has no right to say that he will put an end to the agreement, forfeiting his deposit." *Cf. Long* v. *Bowring* (1864), 33 Beav. 585, 55 E.R. 496. Such a condition has never been held to give the purchaser the option of refusing to perform his contract if he choose to pay the penalty, nor to stand in the way of specific performance of the contract.

In *French* v. *Macale*, 2 Dr. & War. 269, Lord St. Leonards fully discussed the law as to compelling the performance of contracts of the kind under discussion. In that case there was a covenant in a farming lease "not