

- No 8. kirk on his foot, where he offered the pursuer his horse; and it is not libelled what wrong he did to the horse; *replied*, He rode him extraordinary, by galloping him, and rode further than condition to Dumblane, being only hired to Stirling: Found relevant.

Clerk, *Durie*.

*Fol. Dic. v. 2. p. 57. Nicolson, MS. No 327. p. 228.*

- No 9. 1626. November 28. ——— against MOWAT.

IN an action for the price of a horse, pursued at the instance of a stabler in Edinburgh, against James Mowat writer, the LORDS found that the defender was subject to pay the price of the horse hired by him, and not restored again; albeit he *alleged*, That he ought not to be found subject therein, in respect that he having hired his horse to a part agreed upon, he was not holden nor astricted to keep him, but the pursuer ought to have sent for his horse again, or to have sent any boy with him to have brought him back, which not being done, but the horse having strayed away, or being stolen by the defender's fault or knowledge, it cannot be imputed to him; which exception was repelled, for conductor equi, of the law; non tenetur ad estimationem, si equus per casum moriatur sine culpa sua, et quamvis de casu non teneatur, tamen de culpa tenetur etiam levissima, ut est in Bart. ad Leg. Si ut certo. §. Nunc videndum, et § Sed interdum D. Commodat. Et conductor rei mobilis retinendo ultra tempus, non videtur reconducere, imo tenetur fur.

*Fol. Dic. v. 2. p. 57. Durie, p. 238.*

1667. November 16. WHITEHEAD against JOHN STRAITON.

No 10.

The proprietor of inclosures having put up a placard, that he was not to undertake the hazard of the cattle in them, was found not liable.

WHITEHEAD of Park pursues John Straiton for restitution of a horse which he delivered to his servant, to be put in the park of Holyroodhouse to the grass, and which now cannot be found. The defender *alleged*, That he was liable for no loss or hazard, because at that time, and long before, there was a placard fixed upon the port of the park, that he would be answerable for no hazard or loss of any horse put in there, by stealing or otherwise, which was commonly known at, and long before that time. It was *answered*, That this action being founded upon the common ground of law, Nautæ, caupones, stabularii, ut quæ receperint restituant, the same cannot be taken away but by paction; and the putting up of a placard is noways sufficient, nor was it ever shown to the pursuer. The defender *answered*, That the pursuer having only delivered his horse to his servant to be put in the park, without any express communing or conditions, it behoved to be understood on such terms as were usual with others, which were the terms expressed in the placard.