

they should answer such bills as he should draw upon them therefor. Henry Hope being broken, James Gray, as assignee, pursues the other two for the whole, who *alleged*, they were only liable for their own parts. It was *answered*, That they were obliged to answer such bills as the person intrusted by them should draw; and they produce a bill drawn by him upon them, or either of them. It was *answered*, That such bills can only relate to the quantity, and not to the quality, and manner of obliging; seeing, if they had so intended, they would have obliged them, and either of them, or it would have borne, what he should draw upon them, or either of them, should be answered.

No 36.

THE LORDS found every one of them liable *in solidum*; for they thought, that the clause being dubious, was to be interpreted against the writers, and the sellers of the cows were *bona fide* to rest upon the interpretation of the persons intrusted.

*Fol. Dic. v. 1. p. 147. Stair, v. 1. p. 329.*

1673. July 22.

LORD ROSS *against* MAXWELL.

THE Laird of Newark having made his application to the Commissioners of the thesaury, for changing of the barony of Newark from ward to tax-ward, wherein the Lord Ross at his desire concurred; at which time Newark, by bond, obliged himself to receive the Lord Ross in the five-pound land of Stainlie, which he hath in property, for a proportional part of the expences, together with what further it should please the Lord Ross to determine and appoint for his entry, to whose determination he referred and submitted himself. The Lord Ross having charged Newark to enter him on this bond, Newark suspends, on this reason, that he ought to have a year's rent of the land for the Lord Ross's entry; for albeit, he did submit the entry to the Lord Ross himself, yet the Lord Ross is only thereby arbiter, and ought to determine according to law and equity; by which it is clear a year's rent is due for the entry of a singular successor. It was *answered*, That this clause was not conferred as in *arbitrium boni viri*, but simply to his arbitrimt, bearing, *what he pleases to determine*; and it cannot be thought that this reference was to no effect, for a year's duty was the most could be demanded by the strictest law, without any reference.

THE LORDS found, that the clause did import an absolute arbitrimt at the charger's pleasure, but that he behoved to determine somewhat for the entry, and appointed one of their number to speak with him as to the quota.

*Stair, v. 2. p. 217.*

No 37.

A clause, submitting to a party, what should be given for an entry to lands, and bearing, 'what he pleases to determine,' was found to entitle the arbiter, to decide entirely at pleasure, without regard to any rule or practice.