

BLAND, C., 24th January, 1827.—Ordered, that this case be and the same is hereby referred to the award and arbitrament of David B. Ogden and Francis S. Key; and if they differ, to choose a third person, and the award of any two, when filed, to be entered as a decree of this Court, according to the terms of the foregoing agreement.

After which the arbitrators made and filed the following award:

“This cause having been, by the agreement of the parties, and the order of the Chancellor, referred to us, we have examined the record and considered the statements of both parties; and do thereupon make the following award:

“The controversy submitted to our decision by the parties in this case depends upon the construction to be given to the contract of the 8th of January, 1811, between Heyland and Thompson. The preceding contract of 20th November, 1810, and the letter of John Bell to Heyland, which produced it, the letters of Hugh Thompson, and the other evidences of his acts and declarations subsequent to the contract, have been considered by us.

“We are of opinion, that the construction of the contract, which the complainants adopt as the ground of their claim, cannot be sustained. We think it was intended to “assign” to Thompson, to secure him for his liability for the Bells, whatever Heyland owed, or should owe to the Bells, for the acceptances they had paid, or should pay for Heyland; that it was meant by the parties, that the full amount of the acceptances made by the Bells for Heyland, should be paid, under that contract, by Heyland to Thompson; and that Thompson should apply what was thus paid, as far as those acceptances should be met by the Bells, to secure himself to that amount, and as far as they were not paid by the Bells, to pay them. Thus would Heyland’s indemnity under the contract be complete. What the Bells should pay he would be clear of, by the payment, which \*they directed to Thompson; what the Bells should not pay, Thompson, out of the funds received from him, was to pay. **176**

“What Thompson received under this contract from Heyland was £8,889 5s. 4d., and his engagement was to indemnify Heyland from claims by the Bells, or the bill holders, ‘to an amount equal to the sum which might be paid over to the said Thompson by virtue of said arrangement.’ We therefore consider, that if it appears, that the Bells paid on account of those acceptances, an amount equal to the sum received by Thompson from Heyland; and if it further appears, that Thompson is liable for, or has paid, on account of his engagements for the Bells, an amount equal to what he has received from Heyland, he has complied with the contract.