

on him. At the June term of 1825, of the Court of Appeals, the defendant *Thompson* applied to that court for an order prohibiting the Chancellor from proceeding pending the appeal, upon which an order was passed and certified to the Court of Chancery accordingly. As to which, see 6 *H. & J.* 321, 334.

The case having abated by the death of *Thompson*, the parties filed an agreement in the Court of Chancery, under which *Robert Oliver*, as executor of *Thompson*, appeared as a party in his stead; and upon which the following order was passed.

24th January, 1827.—BLAND, Chancellor.—Ordered, that this case be and the same is hereby referred to the award and arbitration 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.

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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 made 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 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