

1664. June 24.

MOFFAT against BLACK.

THERE being a bargain betwixt the said Moffat and Black, for some packs of plaids, by which it was agreed, that the buyer, for satisfaction of the price, should give assignation to certain bonds expressed; but there was no mention what warrandice; at the discussing of the cause, the seller craved absolute warrandice, and *alleged*, That seeing it was not communed that it should be a restricted warrandice, it behoved to be an absolute, being for a cause onerous, and for the price of the goods; *2dly*, Seeing the agreement required an assignation in writ to bonds, the buyer might *re integra* resile, seeing neither the plaids nor bonds were delivered.

THE LORDS found, That the buyer, who insisted, behoved either to give absolute warrandice, that the bond was not only due, but should be effectual, and the creditor *solvendo*; otherwise they suffered the seller to resile, especially seeing the bargain was not made first by words, absolute for such a price, and afterwards that it had been agreed to give such bonds for that price; in which case the bargain, though verbal, would have stood.

*Fol. Dic. v. 1. p. 564. Stair, v. 1. p. 205.*

\* \* \* Gilmour reports this case :

1664. June 28.

THERE was a bargain betwixt Andrew Black and William Moffat, whereby the said William sold to the said Andrew certain pieces of cloath at a certain price; and for payment thereof *pro tanto*, Andrew was to assign to William a bond of 300 merks, owing by James Inglis; whereupon William pursued the said Andrew for fulfilling the bargain, and obtained decret before the Bailies of Edinburgh; which decret being questioned before the Lords, the debate was, whether the said Andrew should assign the foresaid bond, with absolute warrandice, that the assignation might effectually work payment.—It was *alleged*, That he should only assign with warrandice from his own fact and deed; because, it being in the bargain that he should only assign the specific debt, not mentioning any warrandice at all, it imports no more, but that he should not be obliged to pay money, but to give him such a debtor, against whom, if exception had been made, he would not have made the bargain.—It was *answered*, That Andrew having agreed to grant an assignation, it ought to be an effectual one, and not of a debtor who possibly would prove irresponsal; and that therefore the said Andrew should be obliged for his sufficiency.

THE LORDS found, That William should be free of the bargain, unless he got an assignation with absolute warrandice; but would not tie the said Andrew to it, if he would rather quit the bargain.

*Gilmour, No 109. p. 81.*

No 61.

A person in satisfaction of goods bought, was to give assignation to certain bonds. No warrandice was mentioned; but found to be obliged to give absolute warrandice, otherwise the other party to be free.