

or being able to guess of the advances, which he could not do in this case, by seeing Johnston in a shop, as it appears by their dates posterior to his furnishing it, that he had done it some how upon his own credit.

No 5.

THE LORDS, 9th June, repelled the defence for Mr Weir, and found him liable to Mr Mansfield in as much of the L. 150 Sterling as was advanced by the pursuer in consequence of the defender's letter libelled on, with interest from the different periods of advance; and this day refused a bill and adhered.

Reporter, *Kilkerran*. Act. *Ferguson*. Alt. *Lockhart & A. Pringle*. Clerk, *Justice*.

D. Falconer, v. 2. No 72. p. 78.

* * * THE LORDS have since found that notification is not necessary, 17th February 1779, Stewart against Drew.—See APPENDIX.

1766. June 13.

MALCOLM HAMILTON *against* JOHN CARLISLE & JAMES DUNLOP.

No 6.

Intimation of advances not necessary to give recourse on the granter of a letter of credit.

IN 1762, James Douglas, merchant in Glasgow, wrote to Malcolm Hamilton of London, that he wanted to raise L. 500, by drawing bills on London at long dates, and remitting bills at short dates to replace them, and asked leave to draw on him for that purpose, promising to get the security of John Carlisle and James Dunlop, with whom he was engaged in a copartnery trade.

The proposal was agreed to, and a letter subscribed by Carlisle and Co. referring to Douglas's letter; and engaging their security for such sums as Douglas should draw for.

In January 1763, Malcolm Hamilton, who had hitherto traded by himself, assumed a partner into his house, but continued to answer the bills drawn by Douglas, as he had done before, till August 1763, when he was in advance of about L. 608.

Carlisle and Co. stopped payment in November 1763; and Douglas accepted bills for the balance due; but he having also failed, Malcolm Hamilton brought an action against John Carlisle and James Dunlop, the guarantees.

Pleaded in defence, The defenders are not liable for the bills drawn by Douglas, in respect they were not intimated to them. And, admitting that that it was not necessary to intimate every individual draught, yet intimation ought to have been made when any material circumstance occurred, such as might have led them to withdraw their security, or warned them to look to their relief. Two periods were condescended on, the one when Malcolm Hamilton assumed a partner in January; the other, when his dealings with Douglas came to an end, in August 1763.

Answered, The pursuer could be bound no farther than to comply with the conditions of the mandate. But the letter contains no clause requiring intima-

No 6. mation of the advances, of which the defenders, the partners of Douglas, could not be ignorant. And there was no reason for a particular intimation, upon the pursuer's assuming a partner, which made no alteration upon the credit.

"THE LORDS found, That the letter of credit libelled on granted by the defenders, extends only to the sum of L. 500 Sterling, and that the company is liable to that extent."

Act. Lockhart, Geo. Wallace.

Alt. Montgomery, Wight.

Fac. Col. No 33. p. 255.

1779. January 13. JAMES PAISLEY against THOMAS RATTRAY.

No 7.
The terms of a letter of credit must be strictly complied with, otherwise it ceases to be binding on the granter, who is not obliged to admit equipollent performance.

THOMAS RATTRAY interposed his credit with James Paisley, merchant, for Charles and James Nisbets, by a missive to Paisley, desiring him to furnish them with a parcel of sugars, to the amount of L. 10, and to take their joint bill for the amount; which, if not retired by them, he would see paid. The sugars were accordingly furnished. No bill was taken by Paisley; but Nisbet paid up the amount to him within two months, and Rattray's letter of credit was retired.

Nisbets afterwards applied to Rattray for a similar credit, who wrote in the following terms to Paisley: "As Charles and James Nisbets have been punctual in retiring my former, and hope they will continue to do so, as they are careful and honest; if it is convenient for you to furnish them another parcel of sugars, to the amount of L. 10, or thereby, on their joint bill, at such date as you can agree on; if not retired by them when due, I shall pay it." The sugars were furnished by Paisley; but no bill was taken by him from the Nisbets for the amount. James Nisbet soon after went to settle in London, and Charles Nisbet became bankrupt; upon which Paisley brought an action before the Magistrates of Edinburgh, against Rattray and Nisbets, for payment of a balance still due of the price of the sugars furnished to the latter, on Rattray's credit, and the magistrates decerned against the whole defenders. This judgment was brought under the review of the Court, by a suspension, at the instance of Rattray.

Pleaded for the suspender, The charger deviated from the terms of his mandate, by not taking a bill from Nisbets for the amount of the goods furnished. This is sufficient to bar the action of recourse. The suspender is not obliged to show that he suffered a loss by this deviation from the mandate. In order to found the mandatory in any action against the mandant, he must implement the terms of the mandate specifically; *l. 5. et l. 41. D. Mandati vel contra. Ersk. l. 3. tit. 3. § 35.* The charger, therefore, was not at liberty to substitute an open account in place of the bill, even though it had been equally beneficial to the mandant. But an account is not to be held as equivalent to