

No 2. the L. 30 to Mr Foulis, should have got his letter; and that being omitted, he ought to be liable for the L. 13.

Duplied for the defender, His letter was not of the nature of a letter of credit, but only a private letter to his brother; whereas letters of credit are always in use to be writ to some factor for advancing money; *2do*, There lay no obligation upon the defender to intimate to Mr Elliot the payment of L. 30 Sterling to Mr Foulis, seeing he had not written to Mr Foulis to advance any money; and the letter to his brother imports plainly that he was first to seek the money from Mr Foulis; and, upon his refusal, to apply for it to Mr Elliot; so that he, Mr Elliot, should not have advanced a sixpence upon sight of the defender's letter, till once he had enquired at Foulis, if he had honoured it; and having advanced the L. 13, without making any such enquiry, the defender cannot be liable to reimburse him. Nor was it to be expected, that the defender should, when he paid, have got up the letter from Mr Foulis; since, by the conception on it, it was only to be shewed to Mr Foulis; *2do*, The letter being limited to L. 30 Sterling, and the express design of it to get money answered immediately, lest the credit from Edinburgh should have come too late; Mr Elliot had all the reason in the world to believe the defender's brother would not have wanted the money for half a year, which he was so earnest to have immediately; and therefore ought to have spoke with Mr Foulis before he satisfied the demand; especially considering, that he, Mr Foulis, by the tenor of the letter, was not to get it up upon advancing the money.

THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded.

Fol. Dic. v. 1. p. 546. Forbes, p. 38.

No 3.

1731. November 30. EARL OF DUNDONALD *against* WATSON.

A party who advances money upon a letter of credit, must duly, as in the case of bills, intimate to the writer of the letter, that he has not got payment of the money advanced upon the faith of the letter, otherwise he is not entitled to recourse. This was in the case of an inland letter of credit. See APPENDIX.

Fol. Dic. v. 1. p. 547.

1743. February 16. GOODLET of Abbotshall *against* LENNOX of Woodhead.

No 4.
It is not necessary to notify to a country

ANDREW LEES, merchant in Glasgow, intending to purchase some victual from the deceased James Goodlet of Abbotshall, applied to John Lennox of Woodhead, his brother-in-law, to become bound for him, as Lees was a stran-

ger to the said James Goodlet; whereupon he wrote a letter to Mr Goodlet, in these terms: "Sir,—My friend, Mr Lees, tells me he is wanting to buy about 100 bolls bear; and as he is a stranger to you, it is, what I assure you, that you may deal with him safely; and what he and you agrees on, I shall see you paid, if it were for 500 bolls."

In pursuance of this letter, Andrew Lees received the 100 bolls bear from Mr Goodlet, at the price of 10 merks, payable at Candlemas 1737, the bargain being in July or August 1736.

Mr Goodlet having died, the present Goodlet of Abbotshall, his executor, brought an action against Andrew Lees, and also against Woodhead his cautioner, for payment of the price of the 100 bolls of victual.

The defence offered for Woodhead was, That he could not be liable, because neither the pursuer, nor his author had timeously notified to him the furnishing any beer to Mr Lees; for though the letter is dated in July 1736, yet he got no notification of the bear's being furnished until November 1738, when the summons was executed against him, at which time Lees was bankrupt, his creditors before that having adjudged his whole estate.

Answered, If the defender had granted a bond to see the price of the bear paid, no intimation of the furnishing would have been necessary; and there is no difference betwixt that and the present case.

Obligations for factors, and for the due performance of an office, are common, and commonly given before any thing is due, and in none of these cases is notice necessary. If a man sends a letter, and desires another to deliver a bag of money to the bearer, must he who delivers, in consequence of the letter, send notice to the writer that he has given it? No; the letter was a sufficient warrant; and whatever becomes of the thing delivered, it is an exoneration to him who acted upon the faith of the letter. Indeed, among merchants who are bound to keep regular books, which remain an evidence of their transactions, and which often bear faith, notices are required; but to introduce them into the common transactions of life, would be attended with insuperable difficulties. The pursuer never heard, that one who lends money was bound to intimate to the cautioner that the money was lent, until he asked it by a charge of horning. And, indeed, a person who becomes cautioner for a bargain to be made, relies upon nothing to be done by the seller, but that he will trust the buyer; and the writer of the letter of credit, in that case, is not to be the first payer, as among merchants, but trusts to the buyer, both for notice that the cautionry obligation is accepted of, and that he will pay and perform his bargain. See Falconer against Grant, No 65. p. 526.

Replied for the defender, That the letter pursued on was plainly of the nature of a letter of credit, and in *re mercatoria*, relating to the sale of bear, a mercantile subject, and given in favour of Andrew Lees, a known merchant; it is acknowledged, that notice would have been necessary among merchants; nor can it make any difference that it was wrote by a country gentleman,

No 4.
gentleman,
that the fur-
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made to ano-
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to his letter
of credit.

No 4.

seeing such are not exempted from due negociation of bills. The necessity of timeous intimation depends upon a principle that is common to all men; that it is proper that the granter of the letter of credit be acquainted how far his credit is used, to the intent that he may take care to be reimbursed in due time by the user of the credit; for, if the user of the credit shall fail before the granter know of the credit's being used, he who furnished the credit is to blame; seeing, if the furnishing had been notified, the writer of the letter might have provided for his own relief in due time. See Forbes's Treatise upon Bills of Exchange, p. 13. 7th January 1681, Ewing, No 1. p. 8219.

THE LORDS found no necessity of an intimation.

Fol. Dic. v. 3. 385. C. Home, No 228. p. 372.

. Kilkerran reports this case.

LENNOX of Woodhead, by his letter to James Goodlet-Campbell of Abbotshall, of date July — 1736, writes thus, "I understand my friend Andrew Lees wants to buy 100 bolls of bear; and as he is a stranger to you, it is what I assure you, that you may deal with him safely, and what you and he agree on, I shall see it paid, if it were 500 bolls." A process being brought in 1738 against Woodhead, for 1000 merks, as the price of 100 bolls bear, furnished upon this letter to Lees; his defence was, That he was not liable, in respect no notice had been given him of the furnishing of the bear till commencement of the process, upwards of two years after writing the letter; which the LORDS, upon the 5th January 1743, "sustained."

But afterwards, upon advising bill and answers, "They found it was not incumbent upon Abbotshall to have given notice to Woodhead, that the bear had been furnished to Lees; and repelled the defence founded on the neglect of such notification." And of this date, "adhered."

It was admitted, that without such notification, merchants are not liable on their letters of credit; but letters among country gentlemen were said to be in a different case. A merchant keeps books; his book of letters proves notice given; but as country gentlemen keep no such books, if they were put to prove giving notice, it would in most cases be impracticable. But this distinction was not satisfying to a great part of the Court.

Kilkerran, (LETTER OF CREDIT.) No 1. p. 336.

No 5.

Sums advanced on a letter of credit found due, though no intimation made of the advances.

1749. June 9.

MANSFIELD against WEIR.

GEORGE JOHNSTON, who was married to the sister of George Weir of Kerse, having failed in his circumstances, Weir gave him a letter of credit to Bailie Mansfield in the following terms: June 18. 1744. "According to our com-