a bill; and it would be a dangerous precedent in mercantile transactions, if letters of credit were to be so interpreted. A bill affords a more easy and expeditious method of obtaining payment; and, therefore, it is a deviation to the prejudice of the mandant, if it is neglected to be got when stipulated. No 7.

Answered for the charger, The rule of law, that action against the mandant is denied to the mandatary who deviates from the terms of his commission, is not to be understood as applicable to a deviation which is merely so in words, while the substantial purpose of the mandate is truly fulfilled. It is laid down in the law-books, that this penal consequence does not follow where the deviation is immaterial, or where the mandatary did what is equivalent, and no loss whatever can be instructed; *Voet. T. Mandati vel contra*, § 11. *Bankt. l.* 1. *tit.* 18. § 13.

In the present case, the terms of the missive prove, that the taking of a bill from Nisbets was not considered as a material circumstance in the conduct of the transaction. The cause of granting the missive is mentioned, in itself, to be the manner in which the parties had conducted themselves under the former credit, where no bill was taken, though it was, in like terms, required in the missive. The bill, likewise, was only to be made payable at such date as Nisbets and the charger could agree upon. So that the charger was not restricted as to the length of time for which he was to give credit to the Nisbets. From these circumstances, it appears, that the only object the suspender had in view, was to get a sufficient voucher of the payment. This purpose, an attested account, or a decree for payment, against the Nisbets, would answer as well as a bill. The bill was a stipulation in favour of the charger, as affording him a better security than an open account; and a mandatary may, in every case, depart from stipulations in his own favour.

In this case, the suspender insisted, that he had, *de facto*, suffered a loss by the want of this bill, and might have recovered the money from James Nisbet, if the bill had been taken. But this averment was not proved; and the Court determined the cause on the general ground, that, where a bill is stipulated to be taken by the mandatary, and he does not get a bill, but allows the furnishing to lie over on an open account, the mandate is not executed with that strictness which the law requires. The judgment was,

"Suspend the letters *simpliciter*."

Lord Ordinary, *Stonefield.* Act. *Bruce.* Alt. *Corbet.* Clerk, *Menzies.*

Fol. Dic. v. 3. *p.* 385. *Fac. Col. No* 51. *p.* 91.

1797. *June* 30. CRICHTON, STRACHAN, BELL & Co. *against* WILLIAM JACK. No 8.

A. sent B. an order for goods, to which C. subjoined a let

HEW BROWN sent Crichton, Strachan, Bell & Co. an order for a quantity of sugar, to which William Jack, who had formerly been in the practice of dealing with them, subjoined the following note:

No 8.

ter, bearing, that "he might safely send A. the above order." A. having afterwards become insolvent, C. was found liable for the price of the goods.

February 15. 1796.

"Messrs Crichton, Strachan, Bell & Co.

"Gentlemen,

"My friend, Mr Brown, is a young man newly begun business. You may "safely send him the above order. In doing so, you will very much oblige,

"Gentlemen,

"Your humble servant,

(Signed) "WILLIAM JACK."

Crichton, Strachan, Bell & Co. accordingly, on the 16th of February, sent Brown a part of the sugar commissioned; and, in consequence of a new order, they sent him, on the 29th March, a small additional quantity.

About the middle of June thereafter, Brown became bankrupt, and left the country, on which Crichton, Strachan, Bell & Co. brought an action for the price of the sugar, amounting to L. 15, against him, and also against William Jack, who, they contended, had become his cautioner, by the letter of credit which he added to the first order.

In *defence*, Jack stated, that his uniform practice of dealing with the pursuers had been on two months credit; and that Brown was solvent, not only on the 15th February 1796, the date of the defender's letter, but for upwards of three months thereafter. He further

Pleaded, The letter founded on is merely a declaration that Brown was solvent at its date; and it is an established principle of the mercantile law, both of this country and of England, that no action will lie on such a letter, if the writer really believed the person recommended to be solvent, although in this he should be mistaken. But Brown was solvent, both on the 15th February, and for a period after it, which exceeded the length of credit usually given by the pursuers. So that even if the letter were actionable, the *mora* on their part, considering the unfavourable nature of a cautionary obligation, would have been a relevant defence against the action.

THE LORD ORDINARY repelled the defences, and found expenses due.

A reclaiming petition for Jack was refused without answers.

Lord Ordinary, *Methven*. For the Petitioner, *Thomson*. Clerk, *Menzies*.

R. D. *Fac. Col. No* 41. *p.* 97.

See MANDATE.

See APPENDIX.