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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.*

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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-

morning Saturday last, with respect to George Johnston, you will be pleased to give him credit for L. 150, and I promise to see you paid." And accordingly Mansfield gave him letters to his correspondents in England, to let him have what goods he wanted to that extent; with which credit having gone immediately to England, he, upon his return, set up shop, which he kept till summer 1746, when he became bankrupt, and absconded.

In the process at Mansfield's instance against Weir for payment, Mansfield instructed the credit given, by the bills drawn by his correspondents in England, partly on himself, partly on Johnston, which he paid and retired, and by the invoices accompanying said draughts.

But Weir's defence was, not liable, because no notification was made to him of the pursuer's having given the credit, earlier than by this process, after Johnston was bankrupt.

*Answered* for the pursuer, That the letter wrote to him was not of the nature of a letter of credit, which requires notification of the advance, but was rather a cautionary obligation. *2do*, The defender was *personali objectione* barred from obtruding want of notification, as from the circumstances of the case he could not be ignorant of the credit's having been given, when he saw his bankrupt brother-in-law immediately set up shop, &c. &c.

And the LORDS, without distinguishing between these two answers, "found Weir liable; and repelled the defence, That no notification had been made of the advance of the money."

Some of the Lords, particularly the President, put it on the first answer, That the letter from Weir to Mansfield was truly a mandate to lend money, which required no notification; "Give credit, and I will see you paid," in other words, I will be "your cautioner for it;" and that it did not appear to be known to Weir, that the money was to be given by Mansfield by credit on his correspondents, or that it was to be any other way than by his giving the money for which Weir became bound as cautioner; but more generally it was put by others on the circumstances of the case and presumed knowledge of Weir, which superceded the need of notification.

For as to the reasoning of some of the Lords, who opposed, or rather remained doubtful in this case, that as they could not see any thing to distinguish this letter of credit from other letters of credit, so they were not satisfied that the circumstances were such as superceded the notification, which is necessary in every case to the writer of a letter of credit: That there were three reasons for giving notification; *1mo*, That the writer of the letter might know that credit was given; *2do*, That he might know how much was given; *3tio*, That he might know whether or not the *porteur* had repaid it: That, in this case, though it might be true, that from the circumstances the writer could not be ignorant that some advance was made, yet he could not know to what extent, and much less whether Johnston might not have repaid the pursuer; and that the circumstance of some of the bills being drawn payable

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at a long day, appeared to have been intended for that very purpose, that Johnston might, in the mean time, from the sale of the goods, make up the money. It was *answered*, That as from the circumstances the defender must have known that a great advance had been made, as his brother-in-law could not otherways have set up shop, so it was enough that he knew any advance to have been made to put him on his guard; and if he lay by, trusting to a point of law for a total defence, it was a project he ought not to profit by; and if once he is supposed to have known that advance was made, no further notification was necessary on the pursuer's part that Johnston had not repaid it.

*Fol. Dic. v. 3. p. 385. Kilkerran, (LETTER OF CREDIT.) No 2. p. 337.*

\* \* \* D. Falconer reports this case.

GEORGE JOHNSTON, merchant in Edinburgh, was engaged in a company trade with John Warden, which failed; and disputes arising between the partners about their interests, he was at Warden's instance imprisoned at Newcastle, where he took the benefit of a statute for the relief of insolvent debtors; and afterwards intending to trade for himself, obtained from George Weir of Kerse, his brother-in-law, a letter, 18th June 1744, desiring James Mansfield, merchant in Edinburgh, to give him credit to the extent of L. 150 Sterling, and promising to see it paid.

Johnston failed in May 1746, and immediately thereon, Mansfield pursued Weir for certain sums advanced by him from 26th June 1744, to 18th September thereafter.

*Pleaded* in defence, Mr Mansfield having made no intimation of his having advanced any money upon the credit, is not entitled to recur upon the granter of it.

*Pleaded* for the pursuer, This is not of the nature of a letter of credit among merchants, but is a cautionary obligation entered into by one brother-in-law for another, who had been unfortunate; and as Weir knew Johnston could no otherwise furnish his shop, he was sufficiently certiorate of the advances being made, by seeing him keep shop again. Weir's intention was, that Mansfield should have supplied him directly with money; and if this had been done, it cannot be pretended but he must have paid it; and it ought not to make any difference, that instead thereof he gave him credit on English merchants for goods, who took his bills on Mansfield at time, by which means the advances appeared to be posterior to his beginning to trade. And Weir has acknowledged, in the course of a submission concerning this affair, that he once agreed to pay the sum, providing he were advised he would have recourse against Johnston, against whom the pursuer has recovered decret.

*Replied*, The pursuit is on a letter of credit, the advance upon which ought to be intimated; the want whereof is not supplied by the granter's knowing

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.

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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-