

counts betwixt them, wherein Mr Andrew got abatement, and so was *lis transacta*, though not *litis transactio*, for *dubius est eventus litis, et transigens pacem suam redimit*, for the arresting him here was not *lis pendens*, but antecedent and preparatory to it. Yea, the LORDS are in use to consider bonds granted by parties, under caption, valid, as transactions, if a part of the debt be remitted, as was found betwixt

and which is more strange, though there were captions proceeded upon decreets, *nam ubi lis est finita per sententiam* there can be no transaction, because no plea depends, *L. I. D. De transactionibus*, as was decided betwixt Pitfoddells and John Donaldson's Creditors. * THE LORDS also found Mr Andrew's letters to Ewing not obligatory, because, *ex natura negotii*, this being a cautionary for bills of exchange, (for which he was to have recourse on his brother,) Ewing was obliged to have given Mr Andrew notice when they were drawn, which he did not for two or three years. Likeas, Mr Andrew's letters desired Ewing to acquaint him, though the first ground moved the LORDS most *ex natura negotii*.

Fountainhall, v. I. p. 80. & 106. & MS.

1705. July 26. ELLIOT against GEORGE HOME of Kaims.

GEORGE HOME of Kaims having written a letter to his brother, John Home, at London, in these terms, That he was content to advance him L. 30 Sterling to supply his necessity, and had written to Edinburgh to send him credit for it; but if he thought it would be too long ere it came to his hand that way, he might shew his letter to Mr Foulis, and give him a bill upon him for the L. 30, which should be honoured; and so to get the money from him or Mr Elliot, and it should be punctually paid. John Home having taken up the L. 30 Sterling from Mr Foulis, drew a bill upon his brother Kaims for it, which was paid, and some months after drew another bill upon him for L. 13 Sterling, payable to Mr Elliot, who pursued Kaims for payment.

Alleged for the defender, He could not be liable for the L. 13 Sterling, because his letter was fulfilled by paying to Mr Foulis the L. 30 Sterling therein contained several months before his brother received the L. 13 from Mr Elliot; and he could never be liable by his lester for twice payment of the sum, or any part of it.

Replied for the pursuer, The defender's letter to his brother being a letter of credit, for taking up L. 30 Sterling from Mr Foulis or Mr Elliot; albeit he got the sum from Mr Foulis, yet having kept the letter, and shewed it afterward to Mr Elliot, he was *in bona fide* to advance money upon it; not knowing that Foulis had already made payment. For the defender, after he paid

No 1.

No 2.

A person gave his brother a letter of credit for L. 30 Sterling, which he desired him to draw by bill from one or other of two persons, and it should be punctually honoured. Having received the L. 30 from the one, and L. 13 from the other, the writer of the letter was found liable to satisfy both.

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-