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 specificially; *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 eqivalent to

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: