

APPENDIX.

PART I.

LETTER OF CREDIT.

1808. June 2.

ROBERT EWING, acting partner of the Lanark Twist Company, *against* ADAM WRIGHT.

ADAM WRIGHT, in order to enable Joseph Simpson and Company to procure yarns to the extent of about £50 within a year, as was alleged, delivered to Joseph Simpson the following letter, signed by himself: "As Messrs. Joseph Simpson and Company may have occasion to purchase yarns from you from time to time, I hereby guarantee the regular payments, at the ordinary periods of credit, of whatever purchases they make from you within twelve months from this date." This letter was neither dated nor addressed; but Simpson filled up the date with "Glasgow, 10th June 1806," addressed it "to the Lanark Twist Company," lodged it with that Company, and upon it took yarns from them on credit between the 3d July and 3d of December 1807, to the amount of £591. 10s. 9d. Though the parties all lived in Glasgow, no notice of this was given to Wright, either by Simpson and Company, or the Lanark Twist Company, till the 31st of January, when Simpson and Company had become bankrupt. The Lanark Twist Company then demanded payment of the above sum from Wright; and on his refusal brought an action against him for payment of it. In this action, the Lord Ordinary pronounced this interlocutor: "Repels the defences pleaded for the defender Adam Wright, and decerns in the principal cause, in terms of the conclusions of the libel against him."

The defender reclaimed.

Argument for defender.—The defender cannot be bound for the price of these goods furnished to Simpson and Company, because he never received

No. 1:

A person who gives credit on an unlimited letter of credit, without notification to the granter of the letter, does not lose his right of recourse on the granter from the want of notification.

No. 1. any notification that these furnishings were to be made. This notification the pursuers were bound to give, because the letter of credit was unlimited as to the extent of credit to be given; and in such cases, the person given credit is bound to notify to the granter of the letter. This was decided, Burnet, 7th January 1681, No. 1. p. 8219. The opinion of the Court to the same effect, is to be found in the report of the case of Lennox, 6th December 1743, No. 4. p. 8222. and the same thing appears, as to the letters of credit in general, in the case Mansfield against Weir, 1749, No. 5. p. 8224;

The very nature of a letter of credit, not bearing any express limitation, must warn the person giving credit that some limitation must be understood; and to avoid exceeding that, he is bound to give notification to the granter. It cannot be supposed that he may go all lengths—that he may give credit for £1000,000 for instance; and if not, it is plain he cannot safely go any considerable length without notification. In this case, by not giving notification, the pursuer enabled Simpson to go far beyond the intention and true meaning of the letter of credit, and this is what he ought to have foreseen might naturally happen from dealing in so negligent a manner, so that he cannot complain if he must himself take the consequence.

The Court refused the petition (9th February 1808,) without answers.

The defender presented a second reclaiming petition, which was also refused without answers.

Some of the Judges thought that notification never was necessary in any case where credit was given upon a letter of credit. That to require it was contrary to the nature and use of such letters, and that the imprudence of men, in granting them without limitation, must be left to be cured by its natural consequences. Others observed, that it was unnecessary to lay down any such general rule; that cases might be figured where it would not apply; but that here the commission was limited in point of time, and the furnishings not exorbitant, in which circumstances notification was not necessary.

Lord Ordinary, *Newton.*

Act. *J. Wolfe Murray.*

Act. *John Greenshields.*

Tho. Baillie, Agent.

S. Clerk.

M.

Fac. Coll. No. 46. p. 172.