

1726. *January 1.* CRAWFORD *against* WISHART.

No. 170.

In a question, if submissions fall under the stamp-act, it was urged, That a decret-arbitral needs not be stamped, being *quasi* a judicial act; but a submission is a contract, and ought to be stamped as much as any other contract. The Lords found, That submissions are comprehended under the act. See APPENDIX.

*Fol. Dic. v. 2. p. 543.*

1739. *December 12.*

JAMES GOODLET of Abbotshaugh, *against* JOHN LENNOX of Woodhead.

No. 171.

A letter not holograph, whether binding or not?

Andrew Lees of Deanfield having occasion to buy a quantity of bear, applied to his brother-in-law, John Lennox of Woodhead, for a letter of credit to James Goodlet of Abbotshaugh, who accordingly wrote one, addressed to Abbotshaugh, in the following terms:

“My friend Mr. Lees tells me he is wanting to buy about 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 agrees on, I shall see you paid, if it were for 500 bolls.”

In consequence of this letter, Abbotshaugh delivered to Deanfield 100 bolls bear. And Abbotshaugh having died some time after the bargain was entered into, his executor brought a process against Deanfield and Woodhead for payment of 100 bolls bear. The defence offered for Woodhead was, That the letter of credit founded on was not probative, nor binding on him, because it was not holograph. Answered, That in writs of great importance, such as bonds, testaments, &c. the law hath required subscriptions of witnesses, and other solemnities, where they are not holograph, because a door might otherwise be opened to manifest frauds; whereas, in matters of common life, which are most favourable, these solemnities are not necessary, but it is sufficient if the consent of the parties contracting is any how declared. There can be no doubt, that if Woodhead had been present, and desired Abbotshaugh to sell 100 bolls bear to Deanfield, upon his engaging to see him paid, he must have been liable to pay the price; and, in the present case, his consent is as plainly declared as if he had been present. Besides, it is evident from the words of the letter, that Woodhead knew very well, that unless he had engaged his credit, Abbotshaugh never would have trusted Deanfield. See the Decisions, February 28, 1671, Earl of Northesk, Sect. 8. *h. t.* February 23, 1738, Ewing. See APPENDIX. See No. 11. p. 1352.

In the next place, The present case falls under the definition of a *res mercatoria*, for it is not the name of merchant, but the nature of the contract, that points it out to be so. A gentleman disposing of his farm-bear, is, in the eye of law, as much accounted a merchant in that particular, as another who trades daily for