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

No. 170.

In a question, if submissions fall under the stamp-act, it was urged, That a decreet-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

his livelihood. And the reason why such letters are probative *in re mercatoria*, is founded not only upon the favour of commerce, but likewise because it would be detrimental to society, if, in the common dealings of life, too many solemnities were required. No. 171.

Replied: The consent of parties contracting must be declared in such a manner as that it can be proved according to the rules of law; and a cautionary obligation for no less than 1000 merks, such as this is pretended to be, is certainly a matter of considerable importance, and therefore ought to be so executed as to be probative in law for any sum exceeding £100 Scots, that being always deemed a matter of importance. As to the argument, That if Woodhead had verbally desired Abbotshaugh to furnish the bear, he would have been liable, it was observed, that the same could only be proveable by Woodhead's oath; and the question here is, Whether this letter, not being holograph, is probative against him as to the contents thereof? And it being so easy to impose on persons, by getting their names to a letter, without reading it, the law has justly required certain solemnities to writs inferring obligations of importance, without which they are not regarded; thus a contract of sale would not be regarded, though signed by the parties, unless the solemnity required by law were observed; and though one may bind himself by a missive, which requires no solemnities, yet it must at least be holograph, otherwise it is not regarded. See December 22, 1710, Gordon, (Sect. 11. *h. t.*) And it is a mistake to say, that this letter should be considered as *in re mercatoria*, because it relates to the sale of a parcel of bear; for the only reason why sometimes letters amongst merchants are regarded, though not holograph, is, because of the custom among merchants, who, as they are very exact in their correspondence, so they keep regular books, in which are entered all their transactions, and copies of all their letters; whereby, if any question should arise as to the contents of their letters, their books are of great authority in supporting them; and it is only upon that account that the greater faith is shown to such letters among merchants; but it would be of dangerous consequence to sustain in general such letters as probative, when they are not holograph.

The Lords found the letter obligatory.

C. Home, No. 137. *p.* 235.

1742. *December* 12.

GRIZZEL WILLIAMSON *against* WALTER WILLIAMSON.

No. 172.
Objection to a holograph bond, consisting of three pages, that it was only signed on the last page, repelled.

The pursuer brought a process against her brother for payment of an heritable bond granted to her by her father. Objected, The bond is null, being written on three pages, and only the last signed; whereas every page, by the 15th act, 6th Sess. K. William, ought to have been signed. Answered: This case does not fall under the act; 1*mo*, Because it is holograph of the granter; so that here the reason of the law ceases, as there could be no danger in foisting in additional