(1923) 07 CAL CK 0012

In the Calcutta High Court

Chandanmull Benganey APPELLANT

Vs

National Bank of India Ltd. RESPONDENT

Date of Decision : 10-07-1923

Acts Referred:

Citation : 79 Ind. Cas. 757

Hon'ble Judges : Rankin, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, J.—This is an appeal from the judgments of Mr. Justice Greaves in a suit for recovery of money on the basis of what is described as a letter of credit. The material facts relevant for the determination of the rights of the parties are really beyond controversy.

2. The plaintiffs carry on business in Calcutta as exporters of jute against orders placed with them by approved constituents. They allege that this export business was carried on by them in co-partnership with the firm of Udoy-Chand Pannalall who have been joined as defendants, upon their refusal to join as plaintiffs. On the 25th November 1920, the contesting defendant, the National Bank of India, Ltd., wrote to the defendant-firm the following letter:

We beg to inform you that we are in receipt of advice by wire from our London Office, that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on Messrs. Mildred Goyenche & Co., to the extent of ?16,875 (sixteen thousand eight hundred seventy-five only) on the following conditions:

Bills to be drawn payable three months'' after sight an 3 to be accompanied by invoices, full sets of Bills of Lading, made out to order and blank endorsed, and policies of Insurance war risk representing shipment of 2,000 (two thousand) bales jute marked (Jajodia)/M from Calcutta to Antwerp, during November, December 1920.

Such shipping documents are to be delivered on acceptance of the bills and should bear the following clause: Drawn under cable credit No... dated 22nd November 1920.

Please note that this advice does not release you from the liability attaching to the drawer of a Bill of Exchange.

The credit will expire on

When negotiating drafts, please produce this letter to have the amounts recorded on the back thereof. P.S. Under present conditions we can give no undertaking to negotiate bills drawn under this credit.

3. The plaintiffs state that, on the faith of this letter and in reliance thereupon, they, in co-partnership with the defendant-firm, shipped 2,000 bales of jute in December 1920, and that the defendant-firm thereupon drew in favour of themselves (for the joint benefit of themselves and the plaintiffs), against such shipment at three months'' sight in accordance with the terms of the letter of credit, on the firm of Mildred Goyenche & Co., for the value of the goods. The drafts were discounted in Calcutta by the Chartered Bank of India, Australia and China, the Mercantile Bank of India and the National Bank of India. The drafts were, on presentation, duly accepted by Mildred Goyenche & Co., in London, who received the shipping documents. The acceptors, however, suspended payment on the 14th March 1921, before the drafts matured. The result was that the plaintiffs and the defendant-firm were compelled to pay the amount of the drafts without prejudice to their rights under the letter of credit. The plaintiffs now sue to re-cover the sum paid together with interest thereon making an aggregate of Rs. 2,26,931-3-4. The defence of the Bank is a denial of liability. Mr. Justice Greaves has upheld this contention and has dismissed the suit. The determination of the relative rights of the parties must depend upon the true construction of the letter of credit.

4. There has been some discussion at the Bar as to the nature of letters of credit and the principles which should guide the Courts in their construction. The nature of a letter of credit was concisely explained by Story in a well-known passage of his commentaries on the Law of Bills of Exchange (Section 459, 4th Ed., p. 573) which is still quoted by modern text-writers as an accurate statement:

In respect to letters of credit, which are in common use in our commerce with foreign countries, it may be stated that a letter of credit (sometimes called a bill of credit) is an open letter of request, whereby one person, usually a merchant or a banker) requests some other person or persons to advance moneys, or give credit, to a third person, named therein, for a certain amount, and promises that he will re-pay the same to the person advancing the same, or accepts Bills drawn upon himself, for the like amount. It is called a general letter of credit, when it is addressed to all merchants or other persons in general, requesting such advance to a third person; and it is called a special letter of credit, when it is addressed to a particular person by name, requesting him be make such advance to a third person.

5. Letters of credit, which are thus instruments long and well-known in commercial and mercantile usage, perform a clearly recognised function in effecting exchange. While no set form of words may be necessary, yet a letter of credit as known to the law must contain a request (general or special) to pay the bearer, or person named, money or sell him some commodity on credit or give him something of value and look to the drawer of the letter for recompense, and it partakes of the nature of a negotiable instrument. The rules governing bills of exchange and negotiable promissory-notes are always the same, fixed and determinate; while letters of credit are to be construed with reference to particular and often varying terms in which they may be expressed, the circumstances and intentions of the parties to them, and the usages of the particular trade or business contemplated. Letters of credit are accordingly not construed with technical nicety, but are considered as being usally framed with more or less informality and looseness of expression, and hence Courts have sometimes indulged in considerable freedom of interpretation in the effort to arrive at what is designated as the true intention of the parties. The governing principle of construction was lucidly stated by Mr. Justice Story in delivering the unanimous opinion of the Supreme Court of the United States in Lawrence v. Mc Calmont (1844) 2 Howard 426 at p. 449 : 11 Law. Ed. 326:

Some remarks have been made on the argument here upon the point in what manner letters of guarantee are to be construed whether they are to receive a strict or a liberal interpretation. We have no difficulty whatsoever in saying that instruments of this sort ought to receive a liberal interpretation. By a liberal interpretation we do not mean that the words should be forced out of their natural meaning, but simply that the words should receive a fair and reasonable interpretation, so as to attain the objects for which the instrument is designed and the purposes to which it is applied. We should never forget that letters of gurantee are commercial instruments generally drawn upon by merchants, in brief language sometimes inartificial, and often loose in their structure and form, and to construe the words of such instruments with a nice and technical care would not only defeat the intentions of the parties, but render them too unsafe a basis to rely on for extensive credits so often sought in the present active business of commerce throughout the world. The remarks made by this Court in the case of Bell v. Bruen (1843) 1 Howard 169 at p. 186 : 11 Law. Ed. 89, meet our entire approbation. The same doctrine was asserted in Mason v. Pritchard (1810) 12 Fast 227 : 2 Camp. 436 : 11 R.R. 369 : 104 E.R. 89, where a guarantee was given for any goods he hath or may supply W.P. with, to the amount of ?100; and it was held by the Court to be a continuing guarantee for goods supplied at any time to W.P. until the credit was re-called, although goods to more than ?100 had been first supplied and paid for; and the Court on that occasion distinctly stated that the words were to be taken as strongly against the guarantor as the sense of them would admit of. The same doctrine was fully recognised in Haigh v. Brooks (1839) 10 A. & E 309 : 2 P. & O. 477 : 50 R.R. 399 : 113 E.R. 119, and in Mayer v. Isaac (1840) 6 M. & W. 605 : 9 L.J. (N.S.)

Ex. 225 : 4 Jur. 437 : 55 R.R. 734 : 151 E.R. 554, and especially expounded in the opinion of Baron Alderson. It was the very ground, in connection with the accompanying circumstances, upon which this Court acted in Lee v. Dick (1836) 10 Peters 482 : 9 Law. Ed. 503, and in Manran v. Bullus (1842) 16 Peters 528 : 10 Law. Ed. 1056. Indeed, if the language used be ambiguous and admits of two fair interpretations, and the guarantee has advanced his money upon the faith of the interpretation most favourable to his rights, that interpretation will prevail in his favour: for it does not lie in the mouth of the guarantor to say that he may, without peril, scatter ambiguous words, by which the other party is misled to his injury.

6. The observations of Baron Alderson in Mayor v. Isaac (1840) 6 M. & W. 605 : 9 L.J. (N.S.) Ex. 225 : 4 Jur. 437 : 55 R.R. 734 : 151 E.R. 554, referred to by Mr. Justice Story, may by usefully re-called: "There is a considerable difficulty in reconciling all the oases on this subject, arising principally from their not being at one as to the principle of decision: some laying it down that a liberal construction ought to be put upon the instrument in favour of the person giving the guarantee, as in Nicholson v. Paget(1832) 1 C. & M. 48 : 149 E.R. 309 : 3 Tyr. 164 : 5 Car. and P. 395 : 2 L.J. Ex. 18, others that it ought to be strictly construed, as in Mason v. Pritchards (1810) 12 Fast 227 : 2 Camp. 436 : 11 R.R. 369 : 104 E.R. 89. Undoubtedly, the generally received law is, that the party who makes any instrument should take care so to express the amount of his own liability, as that he may not be bound beyond what it was his intention that he should be; and, on the other hand, that the party who receives the instrument, and parts with his goods on the faith of it, should rather have a construction put upon it in his favour, because the words of the instrument are not his, but those of the other party. And, therefore, if I were obliged to choose between the two conflicting principles which have been laid down on this subject. I should rather be disposed to agree with that given in Mason v. Pritchards (1810) 12 Fast 227 : 2 Camp. 436 : 11 R.R. 369 : 104 E.R. 89 than with the opinion of Bayley, B., in Nicholson v. Paget (1832) 1 C. & M. 48 : 149 E.R. 309 : 3 Tyr. 164 : 5 Car. and P. 395 : 2 L.J. Ex. 18. It was not, however, at all necessary for the decision in the case of Nicholson v. Paget (1832) 1 C. & M. 48 : 149 E.R. 309 : 3 Tyr. 164 : 5 Car. and P. 395 : 2 L.J. Ex. 18, that it should depend upon the principle so stated." The substance of the matter is that, though letters" of credit should receive liberal, fair and reasonable interpetation so as to attain the object for which the instrument is designed, and the purpose to which it is applied, there is room for this principle, only when the provisions of the agreement are ambiguous, loose, or susceptible of more than one fair interpretation; if it admits of two fair interpretations and the guarantee has advanced money on the faith of that most favourable to his rights, that interpretation will prevail. The claim put forward by the plaintiffs must be tested from this standpoint. It is consequently superfluous to examine the decisions in British Linen & Co., v. Caledonian Insurance Company (1861) 4 Macq. 107 : 7 Jur. (N.S.) 587 : 9 W.R. 581 : 4 L.T. (N.S.) 162 :123 R.R. 929. In re Agra and Masterman''s Bank (1867) 2 Ch. App.

391 : 36 L.J. Ch. 222 : 16 L.T. 162 : 15 W.R. 414, and Morgan v. Larivieri (1875) 7 H.L. 423 : 44 L.J. Ch. 457 : 32 L.T. 41 : 23 W.R. 537, which turned upon the construction of agreements not expressed in the same terms as the one in the case before us; nor is it necessary to examine the applicability of the elementary rule that a person who in reliance upon and in accordance with the terms of a letter of credit has given credit to the holder is entitled to resort to the banker who has signed the letter and is not affected by the state of the accounts between him and his customer.

7. The letter of the 25th November 1920, must be taken and interpreted as a whole. We cannot ignore the two important qualifications embodied in the following passages:

(a) Please note that this advice does not release you from the liability attaching to the drawer of a Bill of Exchange;

(b) Under present conditions, we can give no undertaking to negotiate bills drawn under this credit.

8. But an attempt has been made to elucidate the meaning of the document by reference to the correspondence between Mildred Goyenche & Co., and the London Office of the defendant Bank as also to the telegrams received by the defendant Bank from London on several occasions. The letter of the 19th November 1920, was as follows:

The National Bank of India, Ltd.,

London, E.C. 3.

9. Gentlemen,

10. We hereby establish a confirmed irrevocable credit in favour of Messrs. Udoychand Pannalal or order, Calcutta, for:

11. ?16,875: (say sixteen thousand eight hundred and seventy-five pounds) to be availed of in drafts on us at three months'' sight, against shipping documents of 2,000 bales of jute (Jajodia over M) to be shipped from Calcutta between 1st November and 31st December 1920, to Antwerp, and we guarantee acceptance of drafts negotiated under this credit delivery of the corresponding shipping documents, Insurance both against Marine War Risk to be effected in India.

12. Please telegraph to Calcutta at our expense advising the opening of this credit and request your office there to kindly notify the beneficiary.

Yours faithfully,

P.P. Mildred Goyenche & Co.,

Stanley & Smith.

13. The telegrams were as follows:

14. 7th February 1920--Irrevocable credit opened ?22,000, Udoychand Pannalall on Mildred Goyenche & Co.

15. Dfts. at 3 months against full rot of shipping documents 2,500 bales jute to London or Dundee. Advice drawers.

16. 17th February 1920--Our wire 3rd further credit opened Udoychand on Goyenche but for ?5,000 against 500 bales jute to Great Britain, otherwise same.

17. 24th November 1920--Renew credit 235 but for ?16,875 against 2,000 bales jute marked Jajodia over M during November and December, otherwise same.

18. Advise Udoychand.

19. Let it be assumed that reference is permissible to these materials; they do not, in my opinion, advance the contention of the plaintiffs. The intention of the contracting parties must be gathered from the unambiguous terms set out in the letter of the 25th November 1920. That letter, as the examination of the original shows, is on a printed form with the important additions. The expression "confirmed irrevvocable" has been inserted before the word "credit" and the postscript has been typed at the end. This must have been done deliberately and the amendments cannot be ignored when the document is interpreted. I cannot persuade myself to spell out of the document an intention on the part of the defendant Bank to pledge their credit for the ultimate payment of the drafts as guarantors. The purpose of the document, if I may so put it, was to facilitate negotiation and not to furnish an ultimate guarantee. There is no doubt that the document is not by its terms and was not intended to be an ordinary banker''s credit, and the two clauses set out above--one of them an addition to the printed form--lend support to this view. In my judgment, Mr. Justice Greaves has correctly held that the document was intended to show and does show that Mildred Goyenche & Co., have made arrangements with the London Office of the Bank whereby the Bank can negotiate the bills of the defendant firm drawn on Mildred Goyenche & Co., but this is coupled with the warning that there will still attach to the drawers the ordinary liability which attaches to the drawer of a bill of exchange, in other words, if the drafts are not accepted and paid, the Bank will look to the drawers for payment. The expression "confirmed irrevocable credit" does not amount to a guarantee by the Bank of the solvency of Mildred Goyenche & Co., or that the bills would be accepted by them and honoured at maturity. The arguments advanced by the plaintiffs could be allowed to prevail, only if material clauses of the document were deleted.

20. In this view I need not consider how far evidence of practice amongst bankers was admissible. The rule on that point Was concisely stated by Sir John Coleridge in Juggomohan v. Manikchand 7 M.I.A. 263 : 4 W.R.P.C. 8 : 1 Suth. P.C.J. 357 : 1 Sar. P.C.J. 681 : 19 E.R. 308, namely, that the usage must be so well-known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract: see also Maitland v. Chartered Mercantile Bank (1865) 38 L.J. Ch. 363 : 2 H. & M. 440 : 12 L.T.

372 : 71 E.R. 534. It is well-settled, however, that though evidence of known usage is receivable to supplement the provisions of the written agreement on the hypothesis that the contract is in truth partly expressed and in writing, partly implied or understood or unwritten, the evidence cannot be admitted to contradict the positive stipulations in the written contract: See The Reeside (1837) 2 Summer 567, Brown v. Bryne (1854) 3 El. And Bl. 703 : 2 Com. L.R. 1599 : 23 L.J.Q.B. 313 : 18 Jur. 700 : 97 R.R. 715 : W.R. 471 : 118 E.R. 1364.

21. I see no escape form the conclusion that the claim made by the plaintiffs against the Bank on the basis of the so-called letter of credit cannot be sustained and the suit has been rightly dismissed. In my opinion, the appeal fails and must be dismissed with costs.

Rankin, J.

22. The firm of Udoychand Pannalall carry on business in Calcutta in the course of which they are exporters, among other things, of jute. For the purposes of this judgment they may be taken as the plaintiffs. They sue the defandant Bank, the National Bank of India, Limited, upon a document dated the 25th November 1920; the meaning of which is the question at issue in this cause. The claim is that the defendant Bank, upon that document, have become liable to pay to the plaintiffs the amount due upon certain bills of exchange whereon the plaintiffs were the drawers and a firm of Messrs. Mildred Goyenche & Co. were the drawees. The drafts were in due course accepted, payable at the Bank of England by Mildred Goyenche & Co, but this firm, after acceptance suspended payment and the bills were not met. On the 19th November 1920, Mildred Goyenche & Co., addressed the head office in London of the defendant Bank, stating: "We hereby establish a confirmed irrevocable credit in favour of Messrs. Udoychand Pannalall or order, Calcutta for, ?16,875 to be availed of in drafts on us at 3 months'' sight against shipping documents of 2,000 bales of jute Jajodia/M to be shipped from Calcutta between 1st November and 31st December 1920 to Antwerp, and we guarantee acceptance of drafts negotiated under this credit against delivery of the corresponding shipping documents....

Please telegraph to Calcutta an our expense advising the opening of this credit and request your office there to kindly notify the beneficiary.

23. Upon this the defendant Bank who appear on previous occasions to have had exactly similar business in connection with shipments of jute by Udoychand Pannalall to Mildred Goyenche & Co., cabled to their Calcutta branch on 22nd-24th November: "Renew credit 235 but for ?16,875 against 2,000 bales of jute marked Jajodia/M during November and December, otherwise same, advise Udoychand.

24. On receipt of these instructions, the Calcutta branch of the defendant Bank sent to the plaintiffs the document whose meaning is now in dispute:

Dear Sirs,

We beg to inform you that we are in receipt of advice by wire from our London Office, that a confirmed irrevocable credit has been opend under which we are authorised to negotiate your bills, as offered, on Messrs. Mildred Goyenche & Co., to the extent of ?16,875, (sixteen thousand eight hundered seventy-five only) on the following conditions:

Bills to be drawn payable 3 months after sight and to be accompanied by invoices, full sets of Bills of Lading, made out to order and blank endorsed and policies of Insurance war risk representing shipment of 2,000 (two thousand) Bales of jute marked Jajodia/M from Calcutta to Antwerp, during November-December 1920. Such shipping documents are to be delivered on acceptance of the Bills and should bear the following clause: "Drawn under Cable Credit No., dated 22nd November 1920

The credit will expire on....

When negotiating drafts please produce this letter to have the amounts recorded on the back thereof.

I am, dear Sir,

Yours faithfully,

sd.

Manager.

P.S.--Under present conditions we can give no undertaking to negotiate bills drawn under this credit.

25. This document is a printed form but a postscript has been typed thereon and two important words, among other matters, have been inserted (in the original printed text) these words being the two adjectives, "confirmed irrevocable" in front of the word "credit" at the commencement of the document. It is to be noticed also that the form has been left blank so far as regards the date on which the credit will expire.

26. The plaintiffs'' case is that they understood this document to mean that the London Office of the defendant Bank would be responsible for the due payment of the bills at maturity; that, in addition to this, the Calcutta branch were authorised to negotiate the bills in the ordinary way, but in view of the difficult conditions of the foreign exchanges were not prepared to undertake to do so. According to the plaintiffs, the document is in the full sense of the word a "Banker''s letter of credit." The defendant Bank contend that the document is not a Banker''s letter of credit, but is a letter of "advice of credit" and that by the terms thereof all that it effects is this, that it intimates to the plaintiffs that if they like to do the business with Messrs. Mildred Goyenche & Co., and to draw bills on Messrs. Mildred Goyenche & Co., then the Calcutta branch of the defendant Bank is authorised to negotiate the drafts, and but for the exceptional conditions affecting the foreign exchanges would promise so to do. The

defendant Bank rely upon the notice stated plainly in the body of the document that "this advice does not release you from the liability attaching to the drawer of a bill of exchange."

27. In my opinion the question is one of construction. The question is whether by this letter of 25th November 1920 the defendant Bank in effect offered to guarantee due payment of the bills which the plaintiffs were clearly to draw not on the defendant Bank but on Mildred Goyenche & Co. If this question has to be answered contrary to the contention of the plaintiffs, the plaintiffs can make no better case by trying to take their stand upon a cause of action based on representation, the making good of representations, and so forth. If the representation alleged is in the document at all, then in my opinion, The document would be an offer which, when accepted, would become a contract.

28. The learned Counsel for the plaintiffs contended that the document of 25th November 1920 has to be construed according to its fair meaning by itself, and that it is not competent to construe it by taking evidence as to the different forms used by Banks in general or by the defendant Bank in particular, for effecting different purposes. I think this contention is correct, but in construing such a document one has to come to it with some capacity of appreciating its business meaning. An exporter of goods desires to secure two objects. First, he desires to make certain that he will be paid; secondly, he desires to ensure that he will in effect receive his money at once upon a shipment of the goods and without waiting until the goods, the documents, or the drafts, have reached foreign country. In order that the main purpose may be effected, it is every day business for the buyer to arrange with a Bank to consent that, the seller shall draw on the Bank for the purchase price. In this, the common form of a banker''s credit, the drawee is the Bank and when this procedure is adopted then in ordinary times the seller is not only sure of being paid ultimately, but he will have little difficulty in getting his drafts negotiated at once. Letters of credit are, however, by no means restricted to this form, and in particular there is another form or type of banking facilities, under which the purchaser arranges not that a Bank shall be ultimately responsible for payment of the drafts but merely that when the seller draws upon the buyer he will be able to negotiate his draft with a particular Bank. Such negotiation is in itself an important credit facility, and it may be important to an exporter who contemplates making different consignments of goods under a contract to know that this facility will be afforded to him for all his consignments, and is not likely to be withdrawn in the middle of the transaction. Apart from these considerations, it has to be noticed that a Bank will frequently be instructed as agent for another Bank, or firm, to advise an intending seller of the fact that for certain business between the seller and other people, facilities for negotiation of bills will be afforded or are likely to be afforded by the advising Bank.

29. In the present case it is not made certain by the evidence whether Mildred Goyenche & Co., in addition to being merchants did not carry on business as

bankers. Ordinarily, a purchaser of goods, desiring to have established in favour of his seller, a form of credit with a Bank, would not use the language employed in the letter of the 19th November 1920. He would not write to say: "I hereby establish a confirmed irrevocable credit" and so forth. The letter of the 19th November, in substance, is a request on the defendant Bank''s London Office to make arrangements in Calcutta that drafts on Mildred Goyenche and Co. would be negotiated there.

30. It is quite plain that the intention of the Calcutta branch in sending, on the 25th November 1920, to the plaintiff their printed form with amendments was not to pledge the credit of the defendant Bank for the ultimate payment of the drafts as guarantor, but only to give intimation that arrangements had been made under which the defendant Bank was satisfied to take such risk as there might be in negotiating the plaintiffs'' drafts upon their buyers. The question is not whether the form used could be made clearer but whether having regard to the phrasing of the document, and, in particular, to the postscript, the plaintiffs, if they interpreted it as a guarantee of the ultimate payment of the drafts, put upon it a construction that must be upheld as correct. The document does not say in terms that the London Office has itself granted in favour of the plaintiffs a confirmed irrevocable credit. When one looks at the way in which particulars of the bills to be drawn and of the shipping documents are introduced, it is impossible not to notice that in all this the business of the document has reference to the terms or conditions on which the defendant Bank is open to negotiate the bills. In point of fact, Mildred Goyenche and Co., had purported to open a confirmed irrevocable credit in favour of the plaintiffs as beneficiary. This is the historical explanation, no doubt, for the appearance of the words "confirmed irrevocable." The plaintiffs, however, could not know this and were entitled to construe the document upon its face. It may be said, therefore, that information that a credit has been opened seems of little use, unless it is intended to convey that it has been opened by some body in particular. Also that, if the credit is a mere matter between Mildred Goyenche and Co., and the defendant Bank, the plaintiffs would not be much concerned to know details about it. On the other hand, the seller might well be concerned to know that negotiation of their drafts was not likely to be stopped in the middle of the transaction. The first few lines of the letter of 25th November, standing by themselves, are singularly lacking in clearness, but the document as a whole is a very extraordinary document even at first sight, if it be intended as a variant of the ordinary banker''s credit. It is quite plain that it is mainly concerned with the question of negotiation; and while it may be possible to give a meaning to the warning that the drawers were not released from liability consistent with a guarantee of the bills by the defendant bank, such a warning in a printed form intended to convey such a guarantee is at least remarkable.

31. As regards the postscript, as this is plainly an addition to the original scheme of the printed form, I do not think that it will bear the stress laid upon it by the plaintiffs. In ordinary times a banker satisfied with a draft, is able to negotiate it.

In 1920, as every intelligent man knew, the ability of a banker to negotiate bills was hampered by the fact that, unless he could sell at the same time as he was purchasing exchange, he might often be unable to cover his remittances before the rate of exchange had altered against him. In spite of this, letters of-advice of credit or statements that a Calcutta Bank would be disposed to negotiate particular bills, drawn on third parties, have, according to the evidence, continued in use as indeed every body knows. The postscript, therefore, does not make the document a meaningless document, pr compel a reasonable construction to be found by treating it as a meaning that the defendant bank would guarantee the drafts.

32. There is no reason to doubt that the plaintiffs'' construction, if correct, could be brought within the definition of "letter of credit" to be found in the text books, though plaintiffs'' Counsel have not referred us to any reported case of a letter of credit guaranteeing the seller''s bills upon the buyer in any form at all comparable to this.

33. In my opinion, the learned Judge has correctly held against the plaintiffs. I would add, however, that in my opinion no difficulty should in this case arise over the question of giving leave to the plaintiffs to amend their plaint, so as to raise the real issue in the case. An application was made to us that Hazarimul Boid and Jahurimul Boid should be joined as plaintiffs and that the firm of Udoychand Pannalall, whereof they are partners, should be removed from the record as a party defendant. We reserved consideration of this until the disposal of the appeal, and had the plaintiffs'' case been well founded otherwise, I should certainly have been in favour of granting leave to amend.

34. In the result, I think the appeal should be dismissed with costs.

