

IIème MEMORANDUM of Mr. H. G. GUTTERIDGE on "LETTERS OF TRUST"  
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The so-called Letters of Trust (1) are commercial instruments which are widely used in Great Britain and the United States in connection with the sale of goods.

They are also employed in other countries, though possibly only to a limited extent. They are to be found in the South American trade, and their validity in law has been expressly recognised by the Brazilian Courts. They are, I believe, to be met with in Germany and Italy, but I have not been able to secure any definite information as to this. They are not unknown in France, where they are employed at the Le Havre, chiefly in connection with the importation of Cotton and Coffee. It seems to be beyond doubt that they serve a very useful purpose in international trade, in spite of the fact that their legal status is extremely ambiguous in certain countries. They would, in fact, be employed much more extensively were it not for the doubts which exist as to their legal validity, and it is with a view to the possible definition of their international status that I have ventured to bring this question before the Committee.

It may frequently happen in the export and import trade that an unpaid seller who has a lien, or a banker who has a pledge over imported goods, may desire to hand over either the goods themselves or the relevant documents of title to the importer for the purpose of facilitating that rapid disposal of the goods which is naturally desired as being in the interests of all concerned.

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(1) Also termed Letters of Lien, or Letters of Hypothecation. The above is the description usually applied to these documents.

Without some such expedient as the Letter of Trust this cannot be done without grave risk, as once the importer has obtained possession the lien or the pledge, as the case may be, is destroyed and the importer is free to act in any way he may please both as regard the goods themselves and the proceeds of their sale.

This is the situation which led to the introduction of the Letter of Trust, the primary object of which is to enable the unpaid seller or the financing banker, as the case may be, to deliver the goods or documents of title to the importer, and at the same time to retain control over the disposal of the goods and the collection of the price.

The manner in which a Letter of Trust operates is best described by an example, and for this purpose, its employment in connection with a Banker's Confirmed Credit affords the most apposite illustration. Let us suppose that goods have been sold to an importer on the terms that the price is to be paid by means of a Confirmed Credit, and that the accrediting banker has paid the price against delivery to him of the documents of title, which he holds in pledge as security for the advance which he has made. In such a case the following states of fact may have to be dealt with.

In the first place the goods may have been sold by the importer before arrival, and delivery may have to be made to the buyer. Secondly the goods may arrive before they have been sold. In the former case the banker may, of course, surrender the documents to the ultimate buyer against payment of the price; but it is generally found to be desirable for the purpose of protecting the importer's commercial prestige that the goods should be delivered to the ultimate buyer by him and not by the banker. In such a case the banker frequently hands over the documents to the importer, and in order that he may not lose

his rights under the pledge, the banker takes a Letter of Trust from the importer. This is a document by which the importer (1) acknowledges that he has received the documents in a fiduciary capacity (2) agrees to hold them on behalf of the banker (3) agrees to pay over the price when received to the banker, and (4) agrees to return the documents if the buyer should for any reason not complete his contract. The banker as a rule also obtains the right under the Letter of Trust to collect the price direct if he so chooses from the ultimate buyer.

If the goods are still unsold on arrival they may be warehoused in the bankers name, but this again is often undesirable in the interests of the importer and the banker will in many cases prefer to allow the importer to warehouse the goods provided that he gives a Letter of Trust. By doing so the banker avoids both trouble and expense.

The validity of the Letter of Trust is unquestionable in English Law. It would seem to be out of place, at the present stage, to elaborate the matter by referring to the various decisions of the English Courts which make this clear (1). The position may however be summarised as follows:

a) The delivery of the documents to the importer on the terms of the Letter of Trust is a contract by which the importer agrees to hold the documents "in trust" for the banker. This is merely another way of stating the fact that the importer received the documents, not as owner, but as an agent or bailee for the banker. The result of this is that the validity of the pledge of the documents to the banker remains unimpaired, because the possession of the importer is in law the possession of the banker.

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(1) See for instance Re David Allester Ltd (1922) 2 Ch. 211. The matter is discussed in Smith's Mercantile Law 13th Edition at pp. 305 and 306.

b) The importer is under a duty to deal with the documents, the goods represented by the documents and the proceeds of their sale as directed by the banker. Any breach of this duty exposes the importer to civil proceedings and possibly to criminal prosecution.

c) The banker has the right to reclaim the goods at any time, or if they have been sold, to collect the proceeds of the sale from the ultimate buyer.

d) Persons who acquire either the goods or the documents from the importer, with the knowledge that the importer is delivering in breach of the conditions of the Letter of Trust, obtain no title and can be forced to redeliver the goods or documents to the banker or to account to him for their value.

The following observations may be added:

- The English Courts have upheld the validity of Letters of Trust in cases where the importer giving the Letter has been declared bankrupt.
- The Law in the United States relating to Letters of Trust is very similar to the English Law, but there are variations from State to State and it must not be assumed that the rules are the same.
- Complications arise where the Letter of Trust relates to such goods as for instance cotton which is imported in order to be converted into yarn, because the goods covered by the Letter may lose their identity in the process of manufacture. In such cases the Letter of Trust has to be adapted to meet the circumstances and is known in practice as a "follow through" Letter.
- If the importer deals with the goods contrary to the Letter of Trust and they find their way into the hands of a purchaser for value in good faith who has no notice of the breach of the conditions

of the Letter, the banker has no protection. In this event he must be content with any remedy which he may have against the importer. He cannot demand delivery up of goods, nor can he demand the price if it has already been paid over by the buyer in good faith to the importer.

A variety of forms of Letter of Trust are in use, but they differ in detail rather than in substance. It would not appear to be useful to go into the question of these forms at this stage but the following is a specimen of a simple form which is in use on the continent of Europe.

" Reçu de la Banque X

En Trust

..... Facture	..... par S/s	.....
..... Certificat d'origine	..... " "	.....
..... Police d'assurance	..... " "	.....
..... Connaissance	..... " "	.....

Que nous nous engageons vu son droit de gage sur les marchandises à faire entrer en magasin public à son nom."