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REPORT of M. GUTTERIDGE

on THE LAW OF BANKERS' COMMERCIAL CREDITS

The issue of bankers' commercial letters of credit is confined, in England, to the financing of transactions between merchants domiciled in different countries. (1) It is due to this delimitation of the functions of a commercial credit that the contract which is embodied in an instrument of this description is one which is ancillary to another contract, i.e., a contract for the sale of goods. The sale contract is, in almost every case, on c.i.f. terms, and the result has been that the law which governs commercial letters of credit overlaps the law of sale of goods to such an extent that it sometimes becomes impossible to draw any distinction between them.

Commercial letters of credit have been in use for many years, but their importance in international commerce dates from the difficult trade conditions which were engendered by the war, and it is due to this fact that the rules of English law governing these instruments are in the main of very recent origin and consist almost entirely of case law (jurisprudence). It is also desirable to emphasise the fact that these rules are often somewhat indefinite, and do not cover all the situations which may be consequent on the issue of a commercial letter of credit. The English judges have, as far as possible, pursued a policy of

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(1) In theory there is no reason why this method of finance should not be applicable also to home trade transaction, but it is not used for this purpose. Cf. the practice on the Continent of Europe as described in Légal: Le Crédit Confirmé en pays étranger; Jacobsohn, Der Kauf.

non-interference with the development of this method of finance by the merchants and bankers themselves, and have declined to formulate any legal principles in cases in which it appears to be uncertain whether there is a clear and precise usage amongst men of business.(2) It is also important to remember that there is not at present a standard form of letter of commercial credit, and the terms of the contract which is embodied in instruments of this description are therefore lacking in uniformity.

English legal decisions must always be read strictly in the light of the wording of the particular form of instrument which formed the subject matter of the dispute calling for adjudication, and a considerable degree of caution is therefore required in extending the application of the existing judgemade law to other cases by way of analogy.

The Legal Nature and Characteristics of Bankers' Commercial Credits

In the case of the Common Law of England we meet with the same difficulty as that which has been experienced by other systems(3), of defining the precise nature of the legal relationships which are brought into being by the issue of a bankers' commercial letter of credit. Moreover, English law is confronted with a problem which does not exist in other systems, namely, the question of the "consideration" for the promise made by the banker

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(2) In Nordskog v. National Bank (1922) 10 Ll.L.Rep. 552 the Court refused, on the ground of the vague character of the evidence before it, to determine the legal nature and implications of the so-called "revolving letter of credit".

(3) Cf. Marais: Du rôle, de la nature et des effets du crédit confirmé en banque. (Annales de Droit Commercial, 1925, p. 138).

to the beneficiary under the credit to pay when the documents specified by the credit are presented to him. Further, the transaction, of which the credit forms part, is in England often complicated by the use of a further instrument known as the "letter of trust", the legal characteristics of which are still somewhat indefinite and undeveloped. More will be said hereafter as to the nature and legal effects of these "letters of trust" when we come to deal with the question of the security possessed by the banker for the advances which he makes in pursuance of the credit.

The business object of the bankers' commercial credit is to carry a contract for the sale of goods into effect by means of two other contracts which are auxiliary to the contract of sale itself. These additional contracts are (1) a contract between the buyer of the goods and a banker, by which the latter agrees to pay for the goods in place of the buyer, receiving a commission by way of remuneration for his services, and also a pledge of the documents of title to the goods by way of security; (2) a contract between the banker and the seller by which the banker agrees to pay the price of the goods in place of the buyer, provided that documents of title to the goods are placed in his hands. It is the second of these contracts which has created difficulties of a juridical nature. First of all, it is not clear when the contract between the banker and the seller of the goods comes into existence. The intention of the parties is that the credit shall be effective "ab initio", i.e. as soon as the banker has informed the seller that the credit is established. A difficulty arises, however, from the fact that the letter of credit is from an Anglo-American legal point of view merely an offer which the seller has

to accept, either by tendering the documents or otherwise, before a contract between him and the banker can come into existence. This situation has given rise to a number of theories, e.g. the "offer and acceptance" theory, the "guarantee" theory, the "estoppel" theory, and the "trustee" theory, all of which purport to afford the necessary solution (4). Lack of space prevents any detailed discussion of these theories. The question is largely academic, but not entirely so, because if the "offer and acceptance" theory is to prevail there must in practice be some interval of time during which the banker can withdraw his offer. Acceptance invariably takes the form of a tender of the documents by the seller, and until this is done there would seem to be a "locus poenitentiae" for the banker wich might have unfortunate results from the business point of view. There is no conclusive authority on this question, and all that can be said is that although the law has not yet been worked out in a clear and precise manner, there is no doubt in English law, that if the seller acts upon the undertaking contained in the letter of credit a contract is ipso facto constituted between him and the banker(5).

The second problem which calls for solution is that which arises from the highly technical doctrine of "consideration". Here again the law is in an unsettled condition owing to the controversy which exists as to whether ~~as~~ between the banker and the seller of the goods the consideration for the promise must

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(4) These various theories are examined at lengh by Dr. Finkelstein. "Legal Aspects of Letters of Credit".

(5) Urquhart Lindsay v. Eastern Bank (1922) 1 K.B. 318; Dexters Ltd. v. Schenkers and Co. (1923) 14 Ll.L.Rep. 586.

always be given by the person to whom the promise is made (in this case the seller of the goods) or whether it may be furnished by a stranger to the contract (in this case the buyer). The question is still an open one, because the English Courts have never been called on to decide it in terms(6). So far as bankers' commercial credits are concerned, it appears to have been assumed in all the cases that there is ample consideration for the banker's promise to honour the letter of credit(7).

Different Varieties of Commercial Letters of Credit

In English banking practice these instruments assume several forms(8), but in order to avoid undue complication I propose to confine myself to a discussion of the law relating to those types of credit which are most commonly in use, namely the confirmed or irrevocable credit and the unconfirmed or revocable credit. There are other forms of commercial letters of credit which present many features of interest, but the exigencies of space compel me to refrain from discussing them, and to content myself with a reference to the technical works in which they are fully discussed(9).

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(6) The difficulties which arise are fully considered in Pollock, Contract, Chapter IV, where it is held that consideration moving from a stranger to the contract is sufficient. Contra see Anson on Contract, Chapter.

(7) See the judgment of Cairns L.J. in Re Agra and Masterman's Bank (1867) L.R. 2 Ch. Apps. at p. 396; Scott v. Barclay (1923) 2 K.B.1 Dexters v. Schenkers and Co. (1923) 14 Ll.L. Rep. 586; Urquhart Lindsay v. Eastern Bank (1922) 1 K.B. 318.

(8) For instance there exist apart from confirmed and unconfirmed credits, such commercial credits as the "omnibus" credit, the "revolving" credit, and the "London Acceptance" credit.

(9) See in particular Spalding, Bankers' Credits; and Herries, Overseas Commercial Credits, in Journal of the Institute of Bankers, Vol. 46.

The Confirmed Bankers' Credit

The feature which distinguishes this form of commercial credit is that the banker issuing it undertakes without qualification to honour the letter of credit, so long as its terms are complied with by the beneficiary. The obligation of the bank is absolute in this sense, namely, that if the documents are in order the banker must pay irrespective of any dispute which there may be as between the seller and the buyer of the goods. Or, to put the matter in a slightly different way, the banker's obligation is independent of performance of the contract of sale and consists in an absolute undertaking to pay the price and to take up the documents provided that the latter, when tendered, prove to be in accordance with the requirements laid down in the letter of credit. This feature of a confirmed credit has been emphasised repeatedly by the English Judges (10) and must be regarded as of the essence of such instruments. To hold otherwise would in fact destroy their value because it is imperative that innocent parties who purchase drafts on the faith of a confirmed credit should not be exposed to any possibility that on presentation of the drafts for payement the banker may refuse to honour them on the ground that there is some dispute between the seller and the buyer which was unknown to the holder of the draft at the time when it was negotiated to him. Moreover it is in fact the intention of all the parties when a confirmed credit is established, that the seller shall be paid without question if the documents are in order, and that any claim which the buyer may have against him under the

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(10) See for instance Urquhart Lindsay v. Eastern Bank, supra; Stein v. Hambro's Bank (1921) 9 Ll.L.Rep. 507; National Bank of South Africa v. Banca Italiana (1921) 10 Ll.L.Rep. 531.

contract of sale shall be settled in some other way than by the withholding of the price[11]. The importance of this feature of a confirmed credit is enhanced, as we shall see hereafter, by its effect on the question of the measure of the damages to which a banker will become liable for a breach of the contract contained in the letter of credit.

Unconfirmed or Revocable Letters of Credit

A credit of this nature is not often met with in English practice owing to the fact that it is questionable whether in law it imposes any kind of liability on the issuing banker. It has been decided that in the case of a credit of this nature the issuing banker may cancel it at any time, and that he can do so whether he has given previous notice of his intention to the beneficiary or not[12]. An exporter shipping goods in reliance on a credit of this nature may, therefore, find himself in a dilemma owing to the fact that the credit has been cancelled without his knowledge.

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(11) A confirmed letter of credit may sometimes provide that payment is to be made not by the issuing bank, but by some other bank. A suggestion has been made that in such cases the question may arise whether the terms of the contract of sale are not incorporated by implication in the letter of credit on the ground that otherwise the paying banker might possibly be placed in difficulty as the indemnity which he receives from the issuing banker may not be sufficient for his protection. It is apprehended that there are no grounds for making any such implication, but see the views expressed by Mr. Mc Curdy in Harv. L. Rev. Vol. 85 at p. 730.

(12) Cape Asbestos Co. v. Lloyds Bank (1921) W.N. 274. It is the practice of English bankers to give notice when possible, but they regard this as an act of business courtesy and not as a duty imposed on them by law.

The question has been raised whether a letter of credit is revocable if it contains no statement as to the banker's right of revocation i.e. where it is entirely silent with regard to the matter. The point has not been determined, but it would seem that the correct wiew of the matter is that a letter of credit is not revocable without notice unless it isstated on the face of the letter that the banker reserves the right of cancellation. In the absence of such a statement the credit is probably revocable, but only after reasonable notice, for otherwise prejudice might be caused to persons who have discounted bills on the faith of the letter of credit. But the point is purely academic as the view prevails in business circles that if the banker desires to retain the right to cancel the credit at any time, he must make this clear on the face of the letter of credit(13).

The Tender of Documents by the beneficiary under a commercial letter of credit

It is possible to approach this question from two different angles of view. The beneficiary, on the one hand, cannot establish any right against the accrediting banker, unless the documents which he tenders are those specified in the letter of credit. On the other hand, the banker cannot claim to be reimbursed by this customer, by whose order the credit was established unless he can show that the customer's instructions have been strictly carried out, and that the documents which have been taken

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(13) Herries, Overseas Commercial Credits, Journal of the Institute of Bankers, Vol. 46.

up were those which the banker was authorised to accept(14).

If the instructions given to the banker by his customer are unambiguous and exhaustive the matter is simple. The banker is only concerned to see that the documents tendered to him correspond to those specified in his mandate, and detailed by him in the letter of credit which he has issued. If he discharges this duty accurately he will not incur any responsibility.

But it happens sometimes that the mandate is equivocal or couched in general terms, and this may also be true of the letter of credit issued by the banker in pursuance of the mandate. If the mandate is ambiguous it will, as a general rule, be sufficient if the banker, acting in good faith, puts a reasonable interpretation on its phraseology(15), but this is a principle on which it will rarely be safe for the banker to rely, as it is his duty to protect the interests of his customer, and a very high degree of care and skill will be expected from him. It may be necessary, nevertheless, in the exigencies of commerce to act promptly and this probably explains the fact that letters of credit sometimes only enumerate the documents in a general way, e.g. bills of lading, policies, etc., without further description. In that event the banker is entitled to demand such documents as are customary in the particular trade to which the transaction relates, and which are such as a reasonable purchaser could be

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(14) It is perhaps possible that a banker may be entitled to claim an indemnity even though the documents are not strictly in order, e.g. where the customer has accepted the goods notwithstanding the flaw in the documents. See the view expressed by Scrutton L.J. in Guaranty Trust of New York v. Van den Berghs (1925) 22 Ll.L.Rep. at p. 455.

(15) Ireland v. Livingstone (1871) L.R. 5 H.L. 395.

required to accept in performance of a contract of sale of the kind which forms the basis of the credit(16). If the documents are either as described, or in default of description, are such as are usual in the trade, it is no part of the banker's duty to consider their legal effect.

Nor is a banker liable if he pays in good faith and without negligence against forged bills of lading or other documents(17). It will thus be seen that it has not been found possible to standardise the rights and duties of bankers in regard to this matter. Each case must therefore be decided on its own merits in the light of the phraseology of the letter of credit, and the circumstances in which the credit has been established. As already stated the question whether bills of lading or policies of insurance conform to the terms of a customer's mandate or to those of a letter of credit is so intimately connected with the law of sale of goods on C.I.F. terms that it really belongs to that branch of commercial law and problems of this nature can be more appropriately discussed thereunder than in an epitome of the law of bankers' commercial credit such as is contained in this report(18).

It may perhaps be observed that unless otherwise stated or sanctioned by commercial usage, a bill of lading in the "shipped"

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(16) In the case of Borthwick v. Bank of New Zealand (1900) 6 Com. Cas. 1., for instance, the letter of credit called for the "usual documents". It was decided that this meant documents which by the custom of the trade must be tendered by a buyer to a seller under a contract on C.I.F. terms.

(17) Woods v. Thiedemann (1862) (Irish Reports) H. and C. 478; Ulster Bank v. Synnott (1871) 5 Eq. 595.

(18) See Kennedy, C.I.F. Contract; Goitein, C.I.F. Contracts.

form must be tendered[19], and that one out of the set will be sufficient[20]. The document must, however, be a bill of lading, and a delivery order cannot be substituted for it except by arrangement [21]. The goods and the quantities covered by the bill of lading must be those stipulated for[22] and must have been shipped by the specified date if such be fixed by the letter of credit[23]. So also, the policy of insurance, unless otherwise agreed or sanctioned by commercial usage, must be a policy and not merely a certificate of insurance[24]. But these and similar questions are in effect regulated by the law relating to C.I.F. contracts.

The Security for the Banker's Advances

In English law the banker who honours a commercial letter of credit is entitled to hold the documents tendered to him until he has been re-imbursed by his customer. The documents are pledged to him, and failing re-imbursement he is entitled to sell and to recoup himself out of the proceeds of the sale of the goods to which the documents relate. This right of pledge will,

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(19) Diamond Alkali Corporation v. Bourgeois (1921) 3 K.B. 442; Cf. Weis and Co. v. Produce Brokers Co. (1921) 7 Ll.L.Rep.211

(20) Sanders v. Maclean (1883) 11 Q.B.D. 327. The question whether "clean" bills of lading must be tendered is still an open one. National Bank of Egypt v. Hannevig's Bank (1919) 1 Ll.L.Rep. 69, and cf. Westminster Bank v. Banca Nazionale (1928) Ll.L.Rep. 306.

(21) Forbes v. Pelling (1921) 9 Ll.L.Rep. 202; cf. National Bank of South Africa v. Banca Italiana (1921) 10 Ll.L.Rep.521

(22) London and Foreign Trading Corporation v. British and North European Bank (1921) 9 Ll.L.Rep. 116.

(23) Stein v. Hambro's Bank(1921) 16 Ll.L.Rep. 529.

(24) Donald Scott v. Barclay (1923) 1 K.B. 1

however, be destroyed if the banker parts with possession of the documents, a rule which has led to inconvenience in connection with advances made by bankers on the security of goods. Sometimes the customer at whose instance the credit has been established is the person best qualified to sell the goods represented by the documents, and it may be desirable to hand them to him for this purpose. Sometimes, although it would be quite easy for the banker to sell the goods it is undesirable that he should do so owing to the consequent loss of commercial prestige which the customer may suffer. In either case the problem has been to find some method which will enable the customer to handle the documents and sell the goods without depriving the banker of his rights as pledgee. This has been achieved by means of the device known as the "Letter of Trust" or "Letter of Hypothecation". The documents are delivered to the customer on his signing an agreement by which he undertakes to hold the documents, the goods themselves, and also the proceeds of sale, in trust for the banker. It has been decided in several cases before the Courts that this expedient is effective, and will keep the banker's right of pledge alive, as the documents are not received by the customer unconditionally, but as agent for the banker, and possession therefore still remains in the banker. (25) Letters of Trust are not standardised, but they invariably contain an undertaking by the customer to remit the proceeds of sale forthwith to the banker, and also clauses affirming the right of the banker to intervene and retake possession at any time.

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(25) North Western Bank v. Poynter (1895) A.C. 56; Re David Allister Ltd. (1922) 2 Ch. 211.

The protection afforded by a Letter of Trust against the fraudulent machinations of a dishonest customer is somewhat slight, owing to the fact that it will not avail to displace the title of a subsequent purchaser for value in good faith without notice, but the customer will in such a case bring himself within the reach of the criminal courts, and this in practice appears to be a sufficient safeguard. The Letter of Trust has also been attacked as being in violation of the Law of Bankruptcy and the Law relating to the Liquidation of Companies, but it has successfully withstood these onslaughts(26), and also such attempts as have been made to invalidate it as being void for want of registration under the Bills of Sale Acts 1878-1882 which require registration of certain documents relating to transactions which are in the nature of pactum reservati dominii.

The precise nature and characteristics of a Letter of Trust from a legal point of view have not yet been worked out by the English Courts, but it would seem that it creates a lien on the documents and the goods in favour of the banker, which is independent of possession and is closely akin to a maritime lien, except that it does not attach to the goods or to the proceeds of sale in the hands of a person receiving the same in good faith and without notice of the letter of trust.

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(26) Re David Allister Ltd, supra; Re Hamilton Young and Co. (1905) 2 K.B. 772.

The legal position of persons discounting bills of exchange drawn under the Credit

A letter of credit may be so worded as to amount to an invitation to the world at large to negotiate bills drawn under the credit, and such an invitation will (probably) also be implied unless the letter is so worded as to exclude the implication. The next question to be considered, therefore, is what are the rights of persons to whom bills of exchange drawn under the credit are negotiated, together with the documents called for by the credit. In such a case the person discounting the bill on the faith of the invitation contained in the letter of credit is entitled to compel the bank issuing the credit to accept and pay the bill on presentation of the documents(27). Moreover he is also entitled to sue without reference to the state of the account between the original beneficiary under the letter of credit and the issuing bank(28). But if he is aware that the terms of the letter of credit have not been complied with by the beneficiary under the letter of credit he will have no remedy, because the obligation of the issuing bank to honour the credit is necessarily conditional on due performance of such terms of the letter of credit as are not necessarily subsequent to the discounting of the bill(29).

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(27) Re Agra and Mastermn's Bank (1867) L.R. 2 Ch. Apps. 391; Union Bank of Canada v. Cole (1877) 47 L.J.C.P. 100; Sassoon and Sons v. International Banking Corporation (1927) A.C. at p. 730.

(28) Re Agra v. Masterman's Bank, supra.

(29) Union Bank of Canada v. Cole, supra.

English law does not, however, recognise any preferential right on the part of the holder of a bill drawn under the credit to the goods (or the proceeds of their sale) which form the subject matter of the transaction financed by means of the credit. The continental doctrine of "provision" is, in other words, not found in English law. If the bank issuing the letter of credit should become insolvent the holder of the bill cannot claim to have the goods or the proceeds of their sale appropriated in discharge of the liability incurred by the bank as acceptor of the bill(30). There is one rare exception, which does not admit of a simple explanation, i.e. where a bill drawn under a letter of credit is negotiated, and both the drawer of the bill and the accepting bank are insolvent. In such a case the holder of the bill would seem to be entitled to a lien on the documents in the banker's hand as long as they have not been realised(31). In any event this exception cannot be regarded as of very great practical importance. It has also met with much criticism, and must be regarded as being of an exceptional character and not resting on any well-defined principle(32).

The liability of the accrediting banker in the event of a breach of his undertaking

If the banker accepts a bill of exchange drawn on him under the letter of credit and dishonours it at maturity, he can, of course, be sued on the bill. But if, when the specified documents are presented to him, he declines to pay or to accept the

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(30) Banner v. Johnston L.R. 5 H.L. 157; Brown Shipley and Co. v. Kough (1885) 29 Ch.D. 848.

(31) Ex p. Waring (1815) 19 Ves. 345; Ex p. Dever N°. 2 (1885) 14 Q.B.D. 611.

(32) Chalmers, Bills of Exchange (the Ed. p. 358). The rule does not apply in Scotland.

bill which accompanies them, questions of some difficulty have arisen in English Law in the case of confirmed credits as to the principle on which damages for this breach of his undertaking are to be assessed against him. The banker may, moreover, also be guilty of an anticipatory breach of his undertaking in a confirmed credit, that is to say he may declare, before the time has arrived for presentation of the documents, that he does not propose to fulfil his obligations; and the nature of the remedy against him in these circumstances, is a question which has been much discussed.

The general rule of English law is that when there is a mere refusal or failure to pay a sum of money, the damages to be awarded against the defaulting matter are limited to the amount of the debt(33). This rule is, however, not applicable to the case of a breach by a banker of his undertaking in a confirmed credit because his failure to honour the credit is not regarded as a mere failure to pay a money debt but as a breach of contract which may be followed by consequences over and above the non-receipt of a specified sum of money on the due date(34). The banker has in effect put himself in the place of the buyer of the goods to which the credit relates, and it follows therefore that he may render himself liable in precisely the same way as a buyer on C.I.F. terms who has refused to accept and pay for the goods.

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(33) Interest is payable on a dishonoured bill of exchange. It can also be awarded in certain cases coming under the Civil Procedure Act 1833 which is somewhat restricted in scope.

(34) Prehn v. Bank of Liverpool (1870) L.R. 5 Ex. 92.

An examination of the decisions of the English courts on this question would seem to indicate that the law at the present moment stands as follows. If the breach of a confirmed credit takes the form of a failure by the banker to accept a bill tendered under the credit or to pay a bill which he has already accepted, but is unaccompanied by either an express or an implied refusal to honour any bills which may thereafter be drawn under the same credit, the proper measure of damages is the amount of the dishonoured bill together with interest and any expenses to which the beneficiary under the credit may have been put in securing alternative credit facilities elsewhere(35). On the other hand if the circumstances are such that the failure of the banker to implement his obligations amounts to a repudiation on his part of any liability to honour bills drawn in future under the same credit, the beneficiary under the credit is entitled to treat the breach as being one of an anticipatory nature and to sue the banker for damages on that basis. In such an event the beneficiary is regarded as being in the same position as that occupied by a seller of goods under a C.I.F. contract, when his buyer has repudiated the contract before the time has arrived for performance. He can, if he so chooses, sue at once without tendering any further documents to the banker and can claim such loss as he may have suffered owing to the fact that he has been prevented from completing his part of the contract. Thus in the leading case on the question(36) machinery was to be delivered in instalments, and the

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(35) Prehn v. Bank of Liverpool, supra. Stein v. Hambro's Bank (1921) 9 Ll.L.Rep. 507; 10 Ll.L.Rep. 529; Belgian Grain and Produce Co. v. Cox 1 Ll.L.Rep. p. 257.

(36) Urquhart Lindsay and Co. v. Eastern Bank (1922) 1 K.B. p. 328.

price of each instalment was to be paid for by means of a confirmed credit. A dispute arose between the beneficiary under the credit and the buyer of the machinery, and the latter after two instalments had been delivered ordered the banker to refuse to make any further payments under the credit. The banker complied with these instructions, and was sued at once by the beneficiary for damages for an anticipatory breach of the contract contained in the letter of credit. It was decided that the banker was under an obligation to pay the amount of invoices for the various instalments of the machinery without qualification as and when the documents were presented to him, the basis of a confirmed credit being that the buyer is taken, for the purpose of all questions between himself and his banker, or between the banker and the seller, to be content to accept the invoices as correct. If any adjustment of price becomes necessary it must in such a case be made by way of refund by the seller, and not by way of retention by the buyer. The banker had therefore been guilty of a breach of contract analogous to that of a buyer of goods and the damages were not for non-payment of money, but for breach of a contract to accept the documents representing the various instalments and to pay the invoice prices. The damages to which the sellers were entitled were decided to be the difference between the value of the materials left on their hands together with the cost of materials which they would further have had to provide in order to complete the contract, and the price which they would have received if the buyer had accepted all the remaining instalments. Finally, the question has arisen whether in

such a case the beneficiary under a confirmed letter of credit is under an obligation to minimise damages, by disposing of the goods elsewhere or in some other manner. There has so far been no definite decision dealing with this matter, but the tendency appears to be to deny the existence of any such obligation(37).

Note. It has been impossible in this report to deal with all the questions which have arisen or may arise in the future in connection with bankers' commercial credits. The report does not aim at being anything more than an epitome of the more important legal problems which have been before the English Judges for solution, and an attempt to illustrate the development of the rules of English law on this subject.

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(37) Stein v. Hambro's Bank, supra; Urquhart and Lindsay v. Eastern Bank, supra.