

Privy Council Appeal No. 99 of 1926.

. Bengal Appeal No. 65 of 1925.

M. A. Sassoon and Sons, Limited - - - - - *Appellants*

v.

The International Banking Corporation - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH MAY, 1927.

Present at the Hearing :

VISCOUNT SUMNER.

LORD ATKINSON.

LORD CARSON.

[*Delivered by VISCOUNT SUMNER.*]

The appellants in this case were sued in the High Court at Calcutta, as drawers of four bills of exchange, by the respondents, who discounted them, the bills having been dishonoured at maturity by the acceptors, Messrs. George Knowles and Company, Limited, of London. The decision went against them both at the trial and on appeal, but the High Court granted their certificate for leave to appeal to His Majesty in Council.

The appellants are export merchants in Calcutta, and on the 9th August, 1923, they offered two drafts for discount to the respondents, who are bankers there. Two others for the same amounts were sent on the 6th September. The second transaction was a mere transaction of course, following on the first.

The documents were put before Mr. Thompson, the respondent's manager, and on his approval of them the drafts were discounted. In addition to the two drafts, there were a bill of lading for 25 bales of gunnies to be delivered at Dundee and an invoice and mills' specification relating to them. By arrange-

ment, an insurance policy was to be and was produced in England and it need not be further referred to. There was, further, a letter of advice, dated the 18th June, 1923, from the Eastern Bank, Calcutta, to Messrs. Sassoon and Company, and a memorandum from Messrs. Sassoon and Company, containing their request for discount, the amount to be passed to their credit.

This memorandum showed a conversion of the amounts of the two drafts, viz., £696 10s. into rupees at 1s. $4\frac{3}{8}d.$, as per Messrs. T. S. Apcar and Company's contract, dated the 11th May, 1923, being the amount for which credit was asked. The drafts were thus described: "For our 3 M/St. D/A drafts 2048 and 2048A on Messrs. George Knowles and Company, Limited, London," and they bore the words "value received for 25 bales gunnies shipped per s.s. 'Malancha' to Dundee drawn under L/Agreement No. 237, dated the 30th May, 1923, signed with the Eastern Bank, Limited, London, as per advice dated the 18th June, 1923;" but, except as showing the existence of some relevant agreement, with particulars to identify it and connect it with this particular transaction, these words do not carry the present case any further. The bill of lading for twenty-five bales of gunnies shipped by J. S. Ezra made the goods deliverable to order, and was dated the 2nd August, and the invoice, dated the 8th August, was an invoice of goods by Messrs. Sassoon and Company for account of Messrs. George Knowles and Company, Limited, for the net amount of £696 10s.

Although in the evidence nothing was specially disclosed as to the relations of Messrs. Sassoon and Company and Messrs. Knowles and Company, the transaction, so far, was of the most ordinary type. The contract with Messrs. Apcar had been made by that firm as exchange brokers between Messrs. Sassoon and Company and the International Banking Corporation. Messrs. Sassoon and Company, having sold the gunnies forward to Messrs. George Knowles and Company, wished to protect themselves against fluctuations in sterling exchange before the shipping date arrived. Accordingly, they at once made a contract, by which they became entitled to discount for their approved drafts later on at the rate current on the day of the contract itself. They were, in a word, content with their profit on the sale, and had no mind to speculate in exchange as well.

On examining the documents put before him, Mr. Thompson apprehended the nature of the transaction above stated quite as fully as was necessary, though Messrs. Knowles and Company and the terms of their purchase contract were unknown to him. Messrs. Apcar's exchange contract was for "approved bills of exchange, drawn at 3 M/St. D/A on London at the exchange of 1s. $4\frac{3}{8}d.$ per rupee," with certain options for shorter or longer terms at rates fractionally higher or lower as specified, and the letter of advice from the Eastern Bank, Calcutta, sufficed, even if Messrs. Sassoon and Company's name had not done so, to secure his approval of the drafts on behalf of the respondent bank.

Accordingly, Mr. Thompson passed on the shipping documents to be examined by his shipping department and, being found in order, they were sent with the discounted drafts to London to be dealt with there. The form in which the International Banking Corporation instructed their London correspondents was, of course, a domestic matter and gave the appellants no further rights. The obligations arising out of the discounting of the drafts under the circumstances of this case were obligations which, as between these parties, arose in Calcutta. As the letter of advice required, the amount and date of this discount transaction were endorsed on it, and stamped with the respondent bank's name. Messrs. Sassoon and Company got credit for their Rs. 10,326.7.9. On the other hand, the respondents' correspondents in London, duly following out their instructions, presented the drafts for acceptance to Messrs. Knowles and Company on the 28th August, and acceptance being duly given, handed over the documents to them. Unfortunately, the acceptances were all dishonoured at maturity, in the case of the first two at the beginning of December. The events relating to the other two drafts sued on were in all respects similar, and do not require to be further mentioned.

On the face of the bill transaction, the respondents were entitled to recourse against Messrs. Sassoon and Company. By their pleadings, the latter contended that pursuant to Messrs. Apcar's exchange contract, the International Banking Corporation purchased the drafts and no longer had the right of recourse against the drawers, that would, *prima facie*, have belonged to the holder for value; that in view of the existence of a confirmed credit, of which the International Banking Corporation had notice, they ought to have delivered the bills of lading to the Eastern Bank, Limited, in London, and not to Messrs. George Knowles and Company; that the appellants being precluded by this misdelivery from recovering the price of the gunnies from the Eastern Bank, were accordingly discharged from their liability on the bills to the respondents, and, in the alternative, that, if the respondents' liability for this misdelivery sounded in damages only, the amount of such damage was the same as the amounts of the bills, and could be set off so as to extinguish any liability on the bills. No custom of merchants or bankers as to confirmed credits in connection with documentary bills or otherwise was pleaded, proved, or relied on. At their Lordships' bar the appellants' counsel did not insist on the contention that the mere negotiation of the drafts pursuant to the exchange brokers' contract was in itself an out-and-out purchase of them by the Banking Corporation without recourse to the drawers in any event, and the question whether the remedy was by way of set off or only of counter claim for damages was not debated before them.

The conclusion of the Trial Judge that the transaction disclosed nothing to relieve the drawers from their liability was affirmed by the High Court, the learned Judges holding that the question really turned on the documents, and that whatever

assumptions might be made in favour of Messrs. Sassoon and Company as regards their transaction with Messrs. Knowles and Company, the description which they gave of the drafts, unaccompanied by any explanation limiting the effect of D/A as a description, entitled the International Banking Corporation to surrender the bills of lading to the acceptors on getting their acceptance, as they did.

The facts are as follows. Messrs. Knowles and Company became known to Messrs. Sassoon and Company as early as September, 1922, and, after some correspondence, a contract was concluded between them on the 11th May, 1923, for twenty-five bales of gunnies per month, to be shipped from July to September. So far as the evidence shows, Messrs. Knowles and Company were then in reasonably good credit, nor does it appear that their insolvency was suspected until the time when they dishonoured their first acceptances. They were throughout personally unknown to the International Banking Corporation.

The terms on which Messrs. Knowles and Company from the first proposed to deal and ultimately did deal with Messrs. Sassoon and Company included the following:—the price was c.i.f. U.K., and reimbursement was to be by drafts at ninety days' sight against confirmed credit, to be opened in the sellers' favour upon the conclusion of each contract. After the first purchase and sale had been concluded, the Eastern Bank in London wrote to its branch in Calcutta on the 31st May, 1923, enclosing copies of letters of agreement with that bank signed by Messrs. George Knowles and Company on the previous day and described as being "in favour of Messrs. Sassoon and Company available to be presented at three months' sight against full shipping documents." While this letter was in the post Messrs. Sassoon and Company cabled to Messrs. Knowles and Company on the 5th June, "Referring to your letters of credit, they must be confirmed irrevocably." Thereupon, on the 19th June, the Eastern Bank in London cabled to its Calcutta branch that the letters of agreement signed by Messrs. Knowles and Company, of which copies had been forwarded, were "now confirmed credit." The communication itself, which had obviously been made by Messrs. Knowles and Company to the Eastern Bank in London between the 5th and 19th June, is not in evidence, but Messrs. Knowles and Company's letter of agreement addressed to the Eastern Bank in London and dated the 30th May, is endorsed by some one in pencil, "Made confirmed credit, 15th June, 1923." It is sufficient to quote from it the following:—

"We hereby authorise and request you and your agents in Calcutta to give banking facilities and accommodation . . . against and/or negotiate on or before 15th October, 1923, any . . . bills . . . not exceeding three months after sight and drawn on us by or endorsed by Messrs. A. Sassoon and Sons, Limited, and . . . we hereby agree duly to accept any such bill or bills for any *sum* or sums not exceeding in the aggregate £2,080, and to pay the amounts of such bill or bills at maturity.

"The drawers and/or endorsers and/or the holders of such bill or bills will hand over, but merely by way of collateral security, to you bills of lading for merchandise . . . and we agree that, in case you consider it necessary, you shall be at liberty to sell . . . any of the said merchandise . . . and apply the net proceeds . . . towards payment of the said bill or bills. . . ."

"It is further agreed that the granting of the said facilities and accommodation and/or the negotiation of any bill or bills above referred to shall be optional, and that this agreement cannot be either revoked or altered in any way except in writing with the express consent of your bank. . . ."

Of this document, which appears to have been headed "Agreement from London No. 2 (with recourse)," no copy was sent to Messrs. Sassoon and Company, though a copy was sent to the Eastern Bank's Calcutta Branch. On the 18th June, however, the Calcutta Branch sent to Messrs. Sassoon and Company a letter of advice, of which the following parts are specially material:—

"We beg to inform you that an advice has reached us from our London office of letter of agreement, No. 237, signed by G. Knowles and Company, Limited, authorising us to negotiate a bill or bills drawn by you on George Knowles and Company. . . ."

"We are informed that bills of lading for merchandise, together with the relative invoices and policies . . . will be handed to us. Such bills of lading should be presented to us in complete sets, made out 'to order,' blank endorsed and marked by the shipping company 'freight paid.' . . ."

"We have pleasure in informing you, that we are prepared at our option as usual to make advances against and/or negotiate any bill or bills drawn in compliance with the terms of this letter."

This letter of advice was on a printed form, and after the above words "of this letter," the form proceeded as follows:—

"it being understood that this is not a confirmed bank credit, and you are in no way released from the ordinary liability of drawers."

These last words from "it being" to "of drawers," were deleted, and after the signature of the Eastern Bank of Calcutta there followed two additions, viz.:—

"Please note that this authority is a confirmed credit.

"When offering drafts for negotiation under this authority, it is imperative that this letter be produced to enable the negotiating bank to note payments on the back hereof."

On these documents the following observations arise. (1) It was apparently part of the appellants' argument that the deletion of the words in the form "you are in no way released from the ordinary liability of drawers" in combination with the added words, "this authority is a confirmed credit," imports that "you are in some way released from that liability." Their Lordships cannot accept this. There is a good deal of authority, now old, about the effect of deleting words in a printed form of mercantile contract, which it is not now necessary to cite, but they take it to be settled, in such a case as this, that the effect is the same as if the deleted words had never formed part of the print at all. The words expressly added, of course, remain to be construed.

(2) The letter of agreement, signed by Messrs. Knowles and Company, contains only the authority given and the promise made by that firm to the Eastern Bank, Limited. So far as the record goes it is not shown how Messrs. Knowles and Company and the bank arranged that the bills of lading should reach the the latter in case the drafts were discounted elsewhere, nor is any actual agreement disclosed by which Messrs. Knowles and Company undertook to accept drafts presented by other parties, though no bills of lading were tendered. The general effect of the bank's undertaking and liability may be easily surmised, but their precise terms must have been a matter of express arrangement between these two parties, and the actual undertaking of the Eastern Bank in London, which almost certainly was in writing, was not disclosed.

(3) What the Calcutta Branch of the Eastern Bank conveyed to Messrs. Sassoon and Company in their letter of advice, which was all the information that the latter had about the terms of the agreement between Messrs. Knowles and Company and the Eastern Bank in London, was confined, except for the second addition above set out, to transactions, in which Messrs. Sassoon and Company would send drafts, with documents attached, to the Eastern Bank in Calcutta for discount, and would then hand over to the bank drafts and shipping documents against payment or credit of the relative sum in rupees. Thenceforward the discounting bank would hold both drafts and bills of lading and, in accordance with Messrs. Knowles and Company's letter of agreement, could look after itself.

(4) It is contended that in spite of the words "when offering drafts for negotiation under this authority," which authorise negotiations to the Eastern Bank alone, the succeeding words "to enable the negotiating bank," convey that the authority advised in the letter of advice extends to transactions with other negotiating banks, and should not be construed as merely meaning "to enable us when we negotiate the drafts" Even if this be so (and it is a very summary way of converting the terms of a discount offer by one bank into an undertaking applicable to actual discounts by any other bank), it does not follow that, if a third party bank negotiates, all the undertakings and all the dealings referred to in this letter of advice will be or can be made applicable forthwith to such a substituted transaction.

If the drafts had been offered for discount to the Eastern Bank in Calcutta, or if, by arrangement between Messrs. Knowles and Company and the Eastern Bank, the drafts of Messrs. Sassoon and Company had been drawn on the latter (*Chartered Bank of India v. Macfayden*, 64 L.J.Q.B. 367; *Scott v. Barclays*, 1923, 2 K.B.1), the transaction would have been one of a normal type, which has often been explained and illustrated in the decided cases, and it would have completely met all the mercantile necessities which such a transaction has been devised to meet (*Guaranty Trust v. Hannay*, 1918 2 K.B. at p. 660), except

the possibility that the rate of exchange might have moved against Messrs. Sassoon and Company between the 11th May and the 9th August. The negotiation of the drafts with the International Banking Corporation under the circumstances above detailed is, as far as reported cases go, a novelty. It is here that the difficulty of this case begins. In the case of *Chandanmall Benganey v. National Bank of India, Limited* (I.L.R. 51 Cal. 43), some of the drafts mentioned were dealt with in the same way and under similar circumstances, but nothing in the decision throws any light on the legal consequences, which this peculiarity may involve.

According to the evidence on both sides, however, there was nothing extraordinary, still less irregular, in offering drafts, fortified with the letter of advice of the Eastern Bank's confirmed credit, to be discounted by another bank such as the International Banking Corporation. Mr. Young, an official of the Eastern Bank in London, said that the postscript to the letter of advice meant that the negotiating bank might be the Eastern Bank or any other bank, and in this he was not apparently speaking merely of his own view of the wording of the postscript but of banking practice generally, for the plaintiffs' manager, Mr. Thompson, said frankly that, although the letter of advice "asked for the documents to go to the Eastern Bank, Limited, Calcutta," it was "quite customary for other banks to negotiate drafts under credits belonging to other banks," and, in fact, "likelier than otherwise." He said, further, that there was no particular difficulty about his sending the drafts and documents to the Eastern Bank for presentation to Messrs. George Knowles and Company, and that with different shippers he would have done so, but in this case he thought that the credit arrangement had been superseded by Messrs. Sassoon and Company, that for some reason they were deviating from the credit by sending in the bills for discount D/A, that they wanted to allow (*sic*) these as documents against acceptance, and that he was willing on the strength of their names to discount the drafts on those terms, viz., D/A. Under the terms of the letter of advice, he would have handed the documents to the Eastern Bank and not to Messrs. Knowles and Company, but he thought this credit arrangement had been superseded.

Of this evidence the appellants' counsel have made much, as they were fully entitled to do, and their Lordships think it right to consider the main question in the case on the footing of these answers, as both the Courts in Calcutta appear to have done. They accordingly put aside certain contentions advanced by the respondents as follows. Neither the letter of agreement nor the letter of advice nor any document, which relates to them, makes them in terms "irrevocable," the term "confirmed" alone being used, yet both words were stipulated for by Messrs. Sassoon and Company on the 5th June, 1923. According to Mr. Thompson, the appearance of both words on the credit document is an indispensable formality. It is not easy to see in what respect either word or both of them together would carry the matter further

than the word "contract," used in its strict sense, would have done, for apparently a confirmed credit is something, formerly provisional, and now turned into something definite by way of promise, and the word "irrevocable" simply closes the door on any option or *locus pœnitentiæ*, and makes the agreement definite and binding--in other words, creates a true contract, which will either be performed or be broken. The trial, however, proceeded on the footing that the credit given in favour of Messrs. Sassoon and Company and referred to in the letter of advice, was in all essentials what Messrs. Sassoon and Company had bargained for, and at their Lordships' bar it was too late to argue the contrary. So, too, without actually holding that the words added to the letter of advice, which refer to "the negotiating bank," mean that the credit and the advice are in law available to the full to any bank other than the Eastern Bank of Calcutta, which may discount the drafts mentioned therein, their Lordships will discuss the present case on the footing of the view taken by Mr. Thompson himself, that such was their meaning to the minds of business men.

As the present case is one of first impression, two general observations may be useful. So long as trade is proceeding in its ordinary course without violent fluctuations in prices, and so long as all parties concerned are in good credit, banks, whose business it is to facilitate trade, can and no doubt do by voluntary arrangements among themselves smooth out small difficulties and ignore informalities, when no serious consequences are likely to result. When, however, a court of law is for the first time called upon to fix legal liability, by declaring what the intentions of the parties must be taken to have been, it becomes necessary to consider how an unruffled and unquestioned business would work out, if difficulties were to arise such as would at each step bring out the risks to be run and the responsibilities to be borne by one or other of the respective parties. Suppose a fall in the price of gunnies, which made it important for the buyers to avail themselves of any legal ground open to them for refusing to take up the goods or to meet the bills; suppose a financial crisis, which for the time being seriously involved the reputation of the bank which had granted the confirmed credit; in either case suppose a discounting house, ignorant, as here, alike of the exact terms of the purchase contract and of the agreement for the confirmed credit; how is the discounting house to know whether it can safely give up the bills of lading to the London bank on the one hand or whether, on the other, it can reckon on acceptance of the drafts only when it has the bills of lading available to be handed to the drawee against acceptance? It is to be remembered that, common as it is for the grant of the credit to be made on the terms that the grantors are to be secured by possession of the bills of lading, other forms of security are sometimes used, the choice of the form depending on the relations between the two parties concerned and the solvency of the importing firm (see, for example, the terms of

the credit in *The Kronprinsessan Margareta* (1921, A.c. 486), and in *Prehn v. Royal Bank of Liverpool* (L.R. 5 Ex. 92)). The legal rule must be one which will fit and make sense of the transaction equally under fair-weather conditions and under foul.

Take again the practical side of the matter. There are many business situations where an offer is made, in which it is hardly possible to ask questions or to go behind the documentary materials put forward by the proposer. Underwriting a slip is one; discounting a trade draft is another. Mr. Thompson, from the documents before him, had to judge whether he would approve or disapprove, whether he would risk taking the documents or risk letting the business go past him. To ask questions, even if there had been any one at hand to answer, might have betrayed either ignorance of his own business or a desire to know too much about his customers'. The exchange memorandum told him quite plainly that the drafts were D/A, which meant "documents against acceptance." Here was an instruction as to the use he was to make of Messrs. Sassoon and Company's documents of title. True, it did not say who was to present the documents to the acceptor, but it was evident that, if the letter of advice was right in saying that the Eastern Bank was to have and keep the bills of lading, the documents could not be handed by the respondents to Messrs. Knowles and Company against acceptance at all. As discounters, their first duty, both to Messrs. Sassoon and Company and to themselves, was so to present the drafts for acceptance, as either to get them accepted or to get them dishonoured for lack of acceptance. In their Lordships' view, the respondent bank was entitled and bound to follow this instruction. In face of it, there could be no question of such a misdealing with the drawers' rights by way of security as would afford any answer to their action.

Two answers have been attempted in argument. The first is that the drafts were tendered as D/A drafts only to comply with the terms of Messrs. Apar's exchange contract, which fixed a standard rate for D/A drafts and options for drafts on other terms, varying from the standard by fixed fractions. It is said that all Messrs. Sassoon and Company wanted was to get the rupee exchanged at 1s. 4 $\frac{1}{8}$ d. There is, however, some confusion in this. Messrs. Sassoon and Company wished to get this rate of exchange, and had to claim it under their contract by presenting drafts of such a description as that rate attached to, but the drafts were still described as D/A drafts, and, whatever the object which was immediately in view, D/A drafts they actually were. That these letters meant "documents against acceptance" was common ground, and accordingly some clear reason has to be shown for saying that, in the circumstances of this case, they nevertheless meant documents against the Eastern Bank's acceptance, which, in fact, they had not undertaken to give, or documents to the Eastern Bank against Messrs. Knowles and Company's acceptance of the draft, if they should be willing to give it without receiving the documents. Mr. Moise Sassoon actually answered the question,

“ Can you explain why D/A was put in the memo. ? ” by saying, “ Because the documents were deliverable to, and for acceptance of, the Eastern Bank.” This was an impossible construction. Equally so is the contention that D/A is a direction merely as to the time when the shipping documents are to be surrendered and not as to the person who is to receive them. Evidence as to the meaning of D/A as a term of art might possibly have gone as far as this, but, as the case stands, D/A on this view would be an incomplete and ambiguous direction and the party directed cannot be blamed if it was reasonably interpreted and acted on (*Ireland v. Livingston*, L.R. 5 H.L. 395). In any case, it assumes that the discounting bank is to interfere radically with what is *primâ facie* the right of the accepting consignee on what may be a mere surmise. The drafts were for acceptance of Messrs. Knowles and Company, and if the documents, that is, the shipping documents, were deliverable to the Eastern Bank, then, as far as the International Banking Corporation was concerned, these acceptors would not get any documents in exchange for their acceptance. It hardly appears that on either side there had been much consideration of the rights and obligations arising out of this use of the letter of advice as applicable to a negotiation with the International Banking Corporation.

Accordingly, a second and much more ingenious answer was given to their Lordships. On the faith of the confirmed credit, for which they had stipulated, Messrs. Sassoon and Company proceeded to put the shipment in train to come into the hands of those who might be interested in it in London. This was done by placing the documents in the hands of the International Banking Corporation in Calcutta, with notice that the transaction was backed by a confirmed credit. After this the credit could not be revoked by the Eastern Bank. Merely to hand to a banker a draft styled D/A and a corresponding letter of credit must be deemed in law to tell him that the bills of lading are to be handed to the issuer of the letter of credit and not to the acceptor of the draft, and his remedy is to decline to discount, however approved the bill may be as a bill, if he does not like these terms. It is true that Messrs. Sassoon and Company did not bring the terms of the credit to the Corporation's notice, nor did they know them themselves, but this does not matter. They put the Corporation in the position of being able to sue the Eastern Bank in London on the credit in accordance with the principle of *In re Agra and Masterman's Bank* (L.R. 2 Ch. 391), and on inquiry it would be ascertained, as business experience would have led the Corporation to anticipate, that the condition precedent to the Eastern Bank's obligation to give effect to the credit was the delivery of the bills of lading to them. All was really plain sailing. If only the bills of lading were given up to the Eastern Bank, somehow or other the drafts would be met either by Messrs. Knowles and Company, if they accepted and paid without getting the consignment or the documents which represented it, or by the Eastern Bank, if they

did not. The delivery of the bills of lading to the Eastern Bank in London, it was said, became matter of contract between the appellants and the respondents, as the result of the discounting transaction, so that the latter's recourse against the former was suspended and became ineffectual unless and until the Eastern Bank made default. In effect, the respondent bank was provisionally substituted for Messrs. Sassoon & Company as sureties for the acceptors on the bills, though this substituted suretyship would itself be defeasible in case of any wrongful failure to pay on the part of the Eastern Bank.

This argument was properly and indeed indispensably reinforced by the principles, which apply when a surety has secured his secondary liability by placing in the principal creditors' hands security which belongs to himself in the first instance. Here Messrs. Sassoon and Company, having shipped the gunnies under such a form of bill of lading as reserved the *jus disponendi* to themselves until the documents were delivered with their authority to the buyers for the purpose of passing the property, placed these instruments, representing the goods while afloat, in the Banking Corporation's hands, as collateral security giving them a special property in the goods, but remaining available generally for the protection of the sureties to whom they belonged. They also placed within the reach and control of the principal creditors another and still more important security, the commercial pivot of the whole transaction, namely, the confirmed credit of the Eastern Bank, and to this precisely the same rules applied as to the bills of lading. If the Banking Corporation entered into the transaction with notice of the existence of a confirmed credit of an ordinary banking character without knowing its exact terms, that was their own affair. They took the risk of its being such that they could comply with them. If for any reason they failed so to deal with the bills of lading as to secure to the drawers recourse to the confirmed credit, then, *pro tanto*, the drawers would be discharged. Between *Agra and Masterman's Bank* on the one hand and *Polak v. Everett* (1 Q.B.D. 669) on the other, the discounting bank would be quite able to look after themselves.

Their Lordships are unable to give effect to these contentions. The principle of the decision cited is one applicable between the discounting bank and the bank which, having established the credit in favour of the acceptor, gives notice *urbi et orbi* of its willingness to abide by the operation of the credit through the machinery of drafts discounted before acceptance. If the respondents discounted the drafts on the faith of the invitation (if any) contained in the letter of advice, *In re Agra and Masterman's* case entitled them, if they chose to do so, to sue on the credit agreed by the Eastern Bank with Messrs. Knowles and Company as if they had been parties to it from the beginning. If they had not discounted on the faith of that invitation, the principle would not apply, and Mr. Thompson said clearly in effect, what Messrs. Sassoon and Company can neither complain of nor deny,

that for him the name of Sassoon and Company was good enough in this case, and the confirmed credit was accordingly superfluous. Apart from this, however, the principle would only confer a right of action on the International Banking Corporation against the Eastern Bank, if they chose to exercise it, but it would not impose on them a duty towards Messrs. Sassoon and Company, so as to modify the ordinary right of recourse at all events or in any event. It is a matter between the respondent corporation and the Eastern Bank, not between Messrs. Sassoon and Company and the respondent corporation.

On the other hand, they think that the letters D/A are a complete answer to the part of the argument, which rests on the obligation of the principal creditor not to waste the surety's security. If the creditor complies with the surety's instructions, there can be no further responsibility. The whole gist of the complaint, as far as the confirmed credit is concerned, is that by not handing the bills of lading to the Eastern Bank the respondents failed to satisfy the conditions precedent to their liability and so nullified the confirmed credit. The appellants' description of the drafts as D/A drafts destroys the validity of this complaint. Messrs. Sassoon and Company instructed the respondents to surrender the documents to the acceptors against their acceptance, and this was done. Again, if the obligation of the principal creditor not to deal unreasonably or imprudently with the securities is relied on, the result is the same. All the information given to the respondents by the drawers of the drafts, who, after all, had made their own bargain with the acceptors, pointed to the quite normal intention of giving the buyer of the gunnies control of the goods on the faith of his acceptance to the drafts. This was *prima facie* the intention, in fact, so far as the information given indicated. If the confirmed credit modified this, it was not for the discounting bank to make guesses or to run risks, but for the drawers to say what their wishes were. Their Lordships cannot say that the conduct of the International Banking Corporation was unreasonable under the circumstances.

No doubt, as soon as Messrs. Sassoon and Company had got a rupee credit for their sterling drafts at 1s. 4 $\frac{3}{8}$ d., they thought as a matter of business that they had done with the transaction, and it may be disappointing to merchant shippers to find that it nevertheless remained at their risk. It may be also true that, when the Calcutta Banks fell into a course of business, which may be called a good-natured convenience to merchants or a far-sighted development of legitimate business exactly as you please, it would have been better to have intimated to the trade, that the banks were not undertaking all the burdens of shippers' transactions, however they might turn out, but this is not the present issue. How proof of a custom of bankers and merchants, applicable to these particular facts, would have affected the decision is a matter on which it is not permissible to speculate. It may also be that the case was not as completely presented at the trial as merchants generally

might have desired, but with this their Lordships cannot deal. The appellants are not in a position to show that, when they discounted these drafts, they bargained that the transaction should be without recourse, and in order to qualify their direction, given by the letters D/A, and to limit the respondents' *prima facie* right of recourse against themselves, they must show some contract with them to that effect, or some breach of contract or of duty on their part, which would have that effect in law. No authority has been produced which enables them to do so, and their Lordships cannot say that any legal principle leads to that conclusion. They will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

M. A. SASSOON AND SONS, LIMITED

v.

THE INTERNATIONAL BANKING CORPORATION.

DELIVERED BY VISCOUNT SUMNER

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