

THE BRITISH LINEN COMPANY, . . . APPELLANTS.
 THE CALEDONIAN INSURANCE COM- } RESPONDENTS.
 PANY, }

Letter of Credit—Forgery.—On payment of a sum of money by the Respondents into the Appellants' bank, a letter of credit for the amount was given by the Bank in favour of one Andrew King. It was presented to the bank agent at Irvine with the name Andrew King, a forgery, endorsed on it. Held, by the House (affirming the judgment of the Court of Session), that payment upon this forgery did not discharge the Bank.

1861.
 March 18th.

Per the Lord Chancellor : Here the Bank has paid upon the forged signature of Andrew King. That is no payment at all ; therefore, things are in the same situation as if the money were still in the till of the Bank ; p. 112.

Per Lord Wensleydale : This is the case of money paid to the bankers for the purpose of being paid out upon Andrew King's draft. But the true draft of Andrew King was never given ; consequently the money remains in the hands of the Bank for the use of the Respondents the moment they choose to demand it ; p. 115.

THE Appellants are the well-known bankers in Edinburgh. The Respondents are a Fire and Life Insurance Company incorporated by Royal Charter and Act of Parliament, and also carrying on their business in Edinburgh.

On the 22nd of June 1853, one Harvey, a solicitor at Dalry in Ayrshire, acting as local agent for the Insurance Company, sent to their manager in Edinburgh a proposal for an insurance of 800*l.* on the life of an individual named Andrew King, described as a "farmer, Brackenhill, Beith." The proposal was accompanied by a report from the medical officer employed by the Company in the district. There was

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also transmitted with the proposal a "private friend's report," signed "John Allan," and an extract from the Beith parish register, showing the dates of the birth and the baptism of King.

Transmitting these documents, Harvey, on the 22nd June 1853, addressed to the manager of the Insurance Company a letter in the following terms:—

SIR,

I BEG to send herewith an order for an assurance on the life of Mr. Andrew King, and for which, if approved, you will please forward a policy as soon as possible.

The applicant proposing this assurance is a most correct and steady person, and his health is good, and I consider his life a safe one for the Company. I have known him personally for at least twenty years, and I never knew him confined to the house for an hour with sickness during that period.

The applicant proposes borrowing 450*l.* stg. upon the policy when issued. And he offers as his sureties James Cochran, Esq., of Barcosh, Dalry; Hugh Barr, Esq. of Dykehead, Dalry; and Robert Kerr, Esq. of Wattiston, Dalry, for the payment of the premiums, interest, and principal sum, the said principal sum to be repaid as follows, viz., by an instalment of 150*l.* sterling at the end of two years from the date of advance, 150*l.* sterling at the end of two years thereafter, and the other 150*l.* sterling at the end of two years thereafter.

I may mention that the security offered is first class, any one of the parties being sufficient of himself for the amount, being all possessed of considerable property both in land and otherwise.

The loan is such an one that I can with confidence recommend it to the Company, and as most undoubted.

I am, Sir, your most obedient servant,
WM. HARVIE, Agent.

A policy of insurance for 800*l.* was in due time granted by the Insurance Company on the life of "Andrew King," and a bond for 450*l.*, assigning the policy in security, was prepared and sent to Harvey for the signature of King and the proposed sureties. Harvey returned the bond to all appearance duly executed by the proper parties.

Having received the bond, the Insurance Company, on the 7th July 1853, paid to the British Linen

Company, at their head banking office in Edinburgh, 436*l.* 7*s.* 5*d.*, to be paid by them at Irvine to "Andrew King."

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In return for this payment the Insurance Company received from the British Linen Company a "letter of credit" in the following terms:—

To the Agent for the British Linen Company at Irvine.

No. 270. British Linen Company's Bank, Edinburgh,
SIR, 7th July 1853.

PLEASE to honour the drafts of Mr. Andrew King on account of this Company, four hundred and thirty-six pounds 7*s.* 5*d.*, on advice.

I am, Sir, your most obedient servant,

£436 : 7 : 5.

ARCHID. NIMMO, Manager.

The Manager of the British Linen Company, on the same 7th of July 1853, despatched a letter to their agent at Irvine, announcing the letter of credit payable to "Andrew King" on demand for 436*l.* 7*s.* 5*d.*

The Insurance Company forwarded the letter of credit to Harvie, to be delivered by Harvie to King. On the 8th July 1853, Harvie presented the letter of credit with the forged signature "Andrew King" endorsed thereon, to the bankers' agent at Irvine. Upon being asked who Andrew King was, Harvie represented him to be a client of his, a frail old man, who could not come personally to get the money. Upon this representation the amount was paid to Harvie, who endorsed his name upon the letter of credit.

At Whitsunday 1854 the interest on the loan of 450*l.* was 'duly paid by Harvie, but the premium on the policy not having been paid when due, the Insurance Company, on the 20th July 1854, applied by letter to "Andrew King" for satisfaction. They also on the 24th July 1854, addressed the sureties. King and the sureties denied the signatures to the bond, and King for himself denied the receipt of the 436*l.* 7*s.* 5*d.*

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In July 1854, Harvie absconded, leaving his affairs in a state of insolvency.

The signatures to the bond proved to be forgeries. The person represented as Andrew King, a farmer, turned out to be the fireman of a steam-engine, who, perfectly innocent of Harvey's fraud, was made unconsciously to personate the individual represented as desiring an insurance.

The Insurance Company brought their action to compel the British Linen Company to make good to them the 436*l.* 7*s.* 5*d.* paid to them to answer the drafts of "Andrew King," whose drafts they had not answered.

The Second Division of the Court of Session, on the 8th July 1859, pronounced judgment against the British Linen Company, decerning against them for 436*l.* 7*s.* 5*d.*, with interest and costs.

Against this judgment the present Appeal was tendered to the House.

The *Attorney-General* (a) and Mr. *Anderson* appeared for the Appellants. They contended that the fraud was by the Respondents' own agent, whom they had enabled to commit it.

[Lord CHELMSFORD: Was he their agent in getting the money?]

The Appellants were guilty of no negligence. In *Orr v. The Union Bank of Scotland* (b), Lord *Cranworth* countenanced the doctrine that where the customer's neglect of due caution has caused his bankers to make a payment on a forged order, he shall not set up the invalidity of the document. *Young v. Grote* (c) was to the same effect. There the customer of a bank signed a check in blank to be filled up by his wife, with whom he left it; and she inserted the words

(a) Sir Richard Bethell.

(b) 1 Macq. 522.

(c) 4 Bing. 253.

“ fifty pounds ” in such a manner that another person was able to write “ *three hundred and* ” before the word fifty. Thus the bankers were deceived, and the deception having been effected through the customer’s default, they were absolved from liability.

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Mr. *Pattison* for the Respondents.

At the close of the Appellants’ argument, their Lordships, without hearing the Respondents’ Counsel, pronounced the following opinions.

The LORD CHANCELLOR (*a*) :

*Lord Chancellor’s
opinion.*

My Lords, I must say that this appears to me to be a very clear case lying within a very short compass. I do not understand this to be an action, as has been suggested by the *Attorney-General*, whereby the Pursuers seek to be indemnified for a wrong done by the Defenders. It is an action brought to recover a sum of money which the Pursuers deposited with the Defenders for a certain purpose. Now it is quite clear to me that if the fraud upon the Pursuers which Harvie concocted had been discovered at any time before the payment was made by the Defenders, the Pursuers would have been entitled to recover the money which they had deposited. Then the question is, whether this payment by the Defenders upon the forged signature of Andrew King discharges them? I think it certainly does not discharge them. This is the ordinary case of bankers paying money upon a forged cheque. It is a hard case, very much to be regretted, in respect of which there is an enactment (*b*)

(*a*) Lord Campbell.

(*b*) 16 & 17 Vict. c. 59. s. 19., passed on the 4th August 1853, after the date of the transaction out of which the present case arose. The words of the 19th section are as follows :—

“ Provided always, that any draft or order drawn upon a banker for a sum of money, payable to order on demand, which shall, when presented for payment, purport to be endorsed by the

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which has been referred to in this argument, discharging them from liability upon a draft payable to order on demand, but there has been no enactment to save their liability in such a case as this. Here the Bank has paid upon the forged signature of Andrew King, and that is no payment at all. Therefore things are in the same situation as if the money were still in the till of the bankers.

An attempt was ingeniously made by Mr. *Anderson* to show that Harvie, in presenting the letter of credit and receiving the money, was the agent of the borrower, and that the payment of the money to the agent of the person in whose favour the letter of credit was given must be regarded as payment to himself. But that is utterly untenable, because, according to the course of the transaction, there would have been no payment of the borrower until the letter of credit had actually been endorsed by him, or a draft drawn by him for the amount.

Then this seems to me to come under the case of money deposited for a particular purpose, which purpose has not been answered; and as the money must be considered as being still in the hands of those with whom it was deposited, they must pay it to the parties to whom it belongs. The very lucid reasoning of Lord Chancellor *Cranworth*, in the case of *Orr and Barber v. The Union Bank of Scotland* (a), lays down

person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof, and it shall not be incumbent on such banker to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any endorser thereof."

(a) See *suprà*, vol. 1, p. 513. Of this case (*Orr v. Union Bank of Scotland*), the editors of *Chitty on Bills of Exchange* (Messrs. Russell and Maclachlan, p. 350), say that it "is perhaps the only case in the books on letters of credit; it is a Scotch case,

principles which seem to me to apply entirely to the present case.

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but it seems that on that subject the law of Scotland is identical with the law of England. It is not an unlikely result of the more liberal legislation with regard to cheques, and of the greater protection afforded to bankers in paying them, that this instrument will soon fall into disuse." So say the learned editors of Chitty; but it appears that though cases are scanty in England on letters of credit, they are not scanty in America. In the "Draft of a Civil Code for New York, 1862," there is a chapter entitled "Letter of Credit," p. 338, which chapter (short and pregnant) we insert. "A letter of credit is a written request addressed by one person to another, requesting the latter to give credit to the person in whose favour it is drawn. It may be addressed to several persons in succession and must express a consideration. Upon the debtor's default, the writer of the letter of credit is liable to those who gave credit in compliance with its terms. Letters of credit are either general or special. When the request is addressed to specified persons by name or description, the letter is special. All other letters of credit are general. That the mere fact of the letter being addressed to a particular person does not make it a special letter, see *Benedict v. Sherrill*, Hill & D. Sapp. 219.; *Union Bank v. Coster*, 3 N. Y. 203; affirming S. C., 1 Sandf. 563. A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name. Several persons may successively give credit upon a general letter; *Union Bank v. Coster*, 3 N. Y. 203; affirming S. C., 1 Sandf. 563. If the letter of credit in its terms contemplates a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor; but is to be deemed a continuing guaranty; *Gates v. McKee*, 13 N. Y. 232; and compare *Fellows v. Prentiss*, 3 Denis, 512. Unless the terms of the letter express or imply the necessity of giving notice of acceptance to the writer, he is liable for credit given upon it without notice to him; *Whitney v. Groot*, 24 Wend. 82.; *Union Bank v. Coster*, 3 N. Y. 203; affirming S. C. 1 Sandf. 563; *Douglass v. Howland*, 24 Wend. 35; *Smith v. Dann*, 6 Hill, 543. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which conform strictly to the mode and terms prescribed, and are within the limit fixed; *Brickhead v. Brown*, 5 Hill, 634; affirmed, 2 Denis, 375. No other person than the one to whom a special letter of credit is addressed, can, by acting

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I must therefore advise your Lordships to affirm the Interlocutor of the Court below, and to dismiss the Appeal with costs.

Lord Cranworth's
opinion.

Lord CRANWORTH:

My Lords, I will only add a word to what has been said by my noble and learned friend. I should be very sorry that what fell from me in the case of *Orr and Barber v. The Union Bank of Scotland*, which has been referred to by Mr. *Anderson*, should be misunderstood. When I said that there might be circumstances of fraud or negligence that would vary the case, what I meant was, that there might be negligence in the circumstances that were the immediate cause of the payment by the bank, as in the case decided in the Court of Common Pleas (a), where a cheque had been drawn payable to bearer "fifty pounds," and it had been so badly written, or there had been so large a blank left on the left hand side of the "fifty," that the person who got hold of it was enabled to put in "three hundred and," and the Court of Common Pleas held that as negligence on the part of the drawer had afforded the opportunity for that fraud, which the Bank could not have discovered by ordinary diligence, they might be absolved from the ordinary liability attaching to the payment of a forged cheque. But in this case I must say, that to suppose that this fraud,

upon it, create any obligation against the writer. *Brickhead v. Brown*, 5 Hill, 634; affirmed, 2 Denis, 375; *Robbins v. Bingham*, 4 Johns. 476; *Walsh v. Baillie*, 10 id., 180. If a special letter is addressed to several jointly, the credit must be given by all, or the writer is not liable. *Penoyer v. Watson*, 16 Johns. 100. The person to whom a special letter is addressed cannot render the writer liable upon it by procuring strangers to give credit to the holder of it; *Robbins v. Bingham*, 4 Johns. 476; *Walsh v. Baillie*, 10 id. 180. Guaranty for six months' credit does not cover a four months' credit; *Leeds v. Dunn*, 10 N. Y. 475."

(a) *Young v. Grote*, 4 Bing. 253.

which had been in some measure concocted and in some measure perfected against the Insurance Company, had anything to do with this payment of the forged cheque, would, I think, be preposterous. I entirely agree with the observation of Lord *Benholme*, that it had nothing to do with it. The Caledonian Insurance Company took such precautions that, unless there was forgery, they were safe. The truth is, that although King's name was forged, the Bank paid the cheque upon the authority of Mr. Harvie. The agent says he knew Mr. Harvie very well, and therefore he of course trusted to him that it was a genuine signature.

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opinion.*

Lord WENSLEYDALE :

My Lords, I am entirely of the same opinion. I think the case is a very plain and clear one. I never had the least doubt about it. It is the case of money paid into the hands of the Defenders for the purpose of being paid out upon Andrew King's draft. But the true draft of Andrew King's was never given ; consequently the money remained in the hands of the Defenders for the use of the Pursuers the moment they chose to demand it. It is the simple case of money had and received. The machinery of the letter of credit is merely for the purpose of having the money paid at Irvine instead of being paid at Edinburgh. Still it admits the liability to pay the sum of money to the order of Andrew King. It is only machinery for the purpose of ordering the agent of the Bank at Irvine to pay a sum of money to their customer which has been paid into the Bank at Edinburgh, and also of communicating to Andrew King that he has authority to receive it. It does not vary the position of the parties in the least. The money was paid by the Pursuers to the Bank for a special purpose, and that

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purpose was not answered; therefore they have a right to demand it back again.

*Lord Chelmsford's
opinion.*

Lord CHELMSFORD :

My Lords, I agree with my noble and learned friends, and I can add nothing to the reasons which they have given for their opinion.

Lord CRANWORTH : May I make one remark? It is quite lamentable to see the amount which has been expended in litigation in such a case as this. It is true that the sum in dispute here is rather considerable—430*l.*; but I see that the taxed costs on one side below were 277*l.*, and probably on the other side they were quite as much, and therefore the costs of the two parties taken together go far beyond the sum in dispute, and then the Appeal to this House will nearly double it; so that we cannot shut our eyes to this, that the costs that have been incurred in the litigation in this case (which I do think is as plain as any case could be) are probably more than four times the amount of the sum in dispute.

The LORD CHANCELLOR : I may add that we have been told that in bankruptcies in Scotland the costs upon the average are not above 10 per cent. of the assets, whereas in England they are 35 per cent.; but in this case it appears that the costs in the Court of Session are three times as much as they would be in the Court of Queen's Bench or in the Court of Chancery in England.

Interlocutor appealed against affirmed, and Appeal dismissed, with Costs.

GORDON & WILKINS—CONNELL & HOPE.