LLOYD'S LAW REPORTS

Editor:
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CASES JUDICIALLY CONSIDERED

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STATUTES CONSIDERED

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HOUSE OF LORDS

Mar. 16, 17, 18 and 22, 1982

UNITED CITY MERCHANTS (INVESTMENTS) LTD. AND GLASS FIBRES AND EQUIPMENTS LTD.

v.

ROYAL BANK OF CANADA, VITROREFUERZOS S.A. AND BANCO CONTINENTAL S.A.

Before Lord DIPLOCK, Lord FRASER OF TULLYBELTON, Lord RUSSELL OF KILLOWEN, Lord SCARMAN and Lord BRIDGE OF HARWICH

Banking — Letter of credit — Illegality — Whether letter of credit in breach of Peruvian exchange control regulations — Whether letter of credit enforceable — Bretton Woods Agreements Order in Council, 1946.

Banking — Letter of credit — Bill of lading — Date on bill of lading altered — Whether allegations of fraud made out — Whether letter of credit amended — Whether defendants entitled to refuse payments against document presented.

In October, 1975, the second plaintiffs (Glass Fibres) entered into an agreement with the first third party (Vitro) for the supply of 11 items making up a glass fibre forming plant at a quotation of $331,043. Payment was to be by letter of credit and after further discussion, Glass Fibres agreed to double the price of the quotation since it would simplify matters for Vitro if only one letter of credit was opened, the balance being used to purchase further equipment.

The second third party (Banco) arranged the credit with the defendants and on Nov. 20, Vitro confirmed that the letter of credit had been opened and asked Glass Fibres to confirm that 50 per cent. would be remitted within 10 days of negotiation of the credit including a "draw down" of 20 per cent. which was to be paid to Nanke International Corporation of Panama's account with the Bankers Trust of Miami.

On Mar. 30, 1976, the defendants, as confirming bank issued the letter of credit and Glass Fibres confirmed their undertaking.

Shipment was to be from London to Callao on or before Oct. 15, 1976, while the credit was to be open until Oct. 30, 1976, for negotiation of the shipping documents.

On July 23, Glass Fibres assigned to the first plaintiffs (U.C.M.) their rights entitlements and benefits due under the letter of credit and notice of the assignment was given to the defendants.

On Dec. 8, Mr. Nancollis (of the freight forwarding agents) by telex to Mr. Baker of E. H. Mundy, the loading brokers for the American Prudential Lines, gave the necessary details for bills of lading including "indicating shipment from London to Callao latest shipment date 15th Dec."

The containers arrived at the United States Lines' quay at Felixstowe on Dec. 9, and were put on board the *American Accord* on Dec. 16. Bills of lading were issued by Mr. Baker, with the date altered to Dec. 15, and bearing a signed and dated notation that the goods were actually on board the *American Accord* on that date. They described the port of loading as London and Callao as the port of final destination.

The goods were shipped and the documents presented for payment but the defendants refused to pay out on the letter of credit. The only part of the letter of credit to be encashed was the "draw down" facility.

The plaintiffs brought an action against the defendants and the defendants contended that the goods were put on board at, and shipped from, Felixstowe and not London and were loaded on board the *American Accord* on Dec. 16 and not Dec. 15, that both plaintiffs knew before the second presentation that the goods had been loaded at Felixstowe and not London, and that Mr. Baker had acted fraudulently on the plaintiffs' behalf in making out the bills of lading as he did with the intention that the defendants would act on them.

The defendants further contended that the agreement between Glass Fibres and Vitro was illegal and/or unenforceable as contrary to public policy as having been entered into to secure the transfer of funds of Vitro out of Peru contrary to that country's exchange control regulations which provided inter alia:

> [Decree Law 18275 of May 15, 1970, art. 1:] . . . From the date hereafter it is prohibited for individuals or corporations in Peru . . . to maintain or establish deposits in a foreign currency in banks and other institutions in this Country and/or abroad.
>
> [Decree Law 18891 of June 17, 1971, art. 7:] The over valuing of imports and obligations payable in foreign currency as well as the undervaluing of exports, in violation of what is provided for in the foreign currency certificates regulations, constitutes the offence of fraud damaging to the State.

The defendants further contended that the agreement was unenforceable by reason of the Bretton Woods Agreements Order in Council 1946, art. VIII, 2 (b) of which provided, inter alia:

> Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

———*Held*, by Q.B. (Com. Ct.) (MOCATTA, J.), that (A) As to the bill of lading: (1) having carefully considered the evidence of Mr. Baker, the way he gave it, its many inconsistencies and the strangeness of his theory justifying when goods packed in a container could truthfully have been said to be shipped or on board a ship, the conclusion was that in issuing bills of lading dated Dec. 15, with a signed on board notation of the date he was making a false representation as to the date of shipment without belief in its truth or recklessly careless whether it be true or false and he did this knowing that the correct date was a matter of importance in relation to a letter of credit;

(2) it was clear that the defendants knew about shipment at Felixstowe before Dec. 22, and on Dec. 21 the United States Lines had informed Vitro that the vessel had left Felixstowe on Dec. 17 and Banco were also aware of this;

(3) although Mr. Baker had acted fraudulently, neither he nor his company were acting on behalf of either of the plaintiffs but were acting as loading brokers on behalf of the American Prudential Lines from whom they received their remuneration in the form of a commission on freight;

(4) despite the absence of oral evidence called on behalf of either of the plaintiffs the evidence fell short of that which was required to establish fraud against them on the occasions when the plaintiffs (U.C.M.) presented documents to the defendants;

(5) there was no fraud by the plaintiffs nor was there any finding that they knew the date on the bills of lading to be false when they presented the documents; there was no plea either by way of an implied term or by way of a warranty imposed by the law that the presenter of documents under a letter of credit warranted their accuracy and the plaintiffs were entitled to succeed.

(B) As to the illegality of the letter of credit: (1) having considered the evidence as a whole, such money as did reach Nanke from the "draw down" was held beneficially for Vitro and that constituted a breach of art. 1; since Vitro had initiated from Peru, the letter of credit by Banco which was confirmed by the defendants, under arrangements made by them (Vitro) for siphoning off about half the amount of credit in dollars to an account in Miami held to their benefit they had committed a breach of art. 1 in Peru;

(2) the overvaluation of imports payable in foreign currency would be an offence under art. 7 in that such action would be contrary to the principle that the regime of foreign exchange control was seeking to preserve;

(3) if the sale contract could be described as a monetary transaction in disguise contrary to the exchange control regulations of Peru, it was by the very strong language of the Bretton Woods Agreements Order in Council unenforceable in the territories of any member and once any payment was made by the defendants under the confirmed letter of credit, effect was to some extent being given to an exchange contract contrary to the exchange control regulations in Peru, as happened in the case of one half of the "draw down" which found its way into Nanke's account in Miami; and the Court should not, by enforcing the confirmed credit enable the Bretton Woods Agreement to be avoided;

(4) the submission by Glass Fibres that it might be possible to sever Glass Fibres' claims here so that they would recover one half of their claim under the letter of credit would be rejected since it was not possible for this Court to sever the letter of credit which was either enforceable in full according to its terms or not at all; and there would be judgment for the defendants.

The plaintiffs appealed the issues for decision being: (1) whether the learned Judge was right in holding that the contract should not by enforcing the confirmed letter of credit enable the Bretton Woods Agreements Order in Council to be avoided? (2) Whether, whatever the nature of the sale contract it had any relevance to the contract sued upon? and (3) Whether the holder of an irrevocable letter of credit was entitled to payment by the bank if the supporting documents, although appearing on their face to conform to the requirements of the letter of credit had in fact been fraudulently prepared to present false information?

———*Held*, by C.A. (STEPHENSON, ACKNER and GRIFFITHS, L.JJ.), that (1) the Court was not required or entitled by the nature of the letter of credit to look at it in all cases and circumstances, including the circumstances of this case, in isolation from those circumstances and so lend its

aid to the enforcement of a contract declared unenforceable by art. VIII, 2 (b) of the Bretton Woods Agreements Order in Council;

(2) this Court could best carry out the double duty of preventing breaches of the Bretton Woods Agreements and promoting both international comity and international trade by enforcing the part of the sales agreement which did not offend against the law of Peru and refusing to enforce the part of it which was a disguised monetary transaction by which currencies were to be exchanged in breach of that law; and there was no reason why the Court ought not to have given judgment upon the letter of credit for that sum which was in payment for the machinery and freight in that there was nothing in the Order in Council which rendered them unenforceable and these sums were readily identifiable;

(3) whether or not a forged document was a nullity it was not a genuine or valid document entitling the presenter of it to be paid and if the banker to which it was presented under a letter of credit knew it to be forged then he must not pay;

(4) the letter of credit in this case was expressly made subject to the Uniform Customs for Documentary Credits issued by the International Chamber of Commerce and although in the ordinary case visual inspection of the actual documents presented was called for, banks had to examine all documents with reasonable care to ascertain that they appeared on their face to be in accordance with the terms and conditions of the letter of credit; this was no ordinary case in that there was a finding of fraud in relation to the bill of lading; and if a document false in the sense that it was forged by a person other than a beneficiary could entitle the bank to refuse payment there was no reason why a document in any way false to the knowledge of a person other than the beneficiary should not have the same effect;

(5) in a situation in which a fraud, if known to the issuing or confirming bank would entitle the bank to refuse payment, the bank owed no duty to the beneficiary to pay and owed a duty to the customer not to pay; here the defendants, when they knew that they had been intentionally deceived as to a date material to their liability to pay, were right to refuse to honour the plaintiffs' credit even though there was no finding that B. was the plaintiffs' agent in making the bill for presentation to the defendants; the bill of lading was therefore a dishonest document, it was not a genuine document and the defendants were entitled to reject it.

Appeal dismissed.

On appeal by the plaintiffs:

———*Held*, by H.L. (Lord DIPLOCK, Lord FRASER OF TULLYBELTON, Lord RUSSELL OF KILLOWEN, Lord SCARMAN and Lord BRIDGE OF HARWICH), that (A.) As to the letter of credit: (1) the whole commercial purpose for which the system of confirmed irrevocable documentary credits had been developed in international trade was to give the seller an assured right to be paid before he parted with control of the goods that did not permit of any dispute with the buyer as to the performance of the contract of sale being used as a ground for non-payment or reduction or deferment of payment (*see* p. 6, col. 2);

(2) the submission by the defendants, that a confirming bank was not under any obligation, legally enforceable against it by the seller/beneficiary of a documentary credit, to pay to him the sum stipulated in the credit against presentation of documents, if the documents presented, although conforming on their face with the terms of the credit, nevertheless contained some statement of material fact that was not accurate, would be rejected in that to accept it would undermine the whole system of financing international trade by means of documentary credits (*see* p. 7, col. 1);

(3) since the defendants' submission had been rejected there was no reason for drawing any distinction between apparently conforming documents, that unknown to the seller, in fact contained a statement of fact that was inaccurate where the inaccuracy was due to inadvertence by the maker of the document, and the like documents where the same inaccuracy had been inserted by the maker of the document with intent to deceive, among others, the seller/beneficiary himself (*see* p. 9, col. 1);

(4) here the bill of lading with the wrong date of loading placed on it by the carriers' agent was far from being a nullity; it was a valid transferable receipt for the goods giving the holder a right to claim them at their destination and was evidence of the terms of the contract under which they were being carried (*see* p. 9, col. 2);

(5) in the circumstances the learned Judge was right in deciding this issue in favour of the plaintiffs (*see* p. 9, col. 2);

(B.) As to the Bretton Woods issue (1) there was no difficulty in identifying the monetary transactions that was sought to be concealed by the actual words used in the documentary credit and in the underlying contract of sale; it was to exchange Peruvian currency provided by the buyers (Vitro) in Peru for U.S. $331,043 to be made available to them in Florida and since this was contrary to the exchange control regulations of Peru that part of the documentary credit was therefore unenforceable; the payment of the other half of the invoice price and of the freight was not unenforceable since the plaintiffs would have received that part of the payment under the documentary credit on their own behalf and would have retained it as the genuine purchase price of goods sold by them to Vitro and the Court of Appeal were right in holding that there was nothing in the Bretton Woods Agreements Order in Council 1946 that prevented the payment under the documentary credit to that extent (*see* p. 10, col. 2; p. 11, col. 1);

(2) the plaintiffs were therefore entitled to judgment for that part of the second instalment

which was not a monetary transaction in disguise (*see* p. 11, col. 1).

The following cases were referred to in the judgment of Lord Diplock:

Batra v. Ebrahim, (Note) [1982] 2 Lloyd's Rep. 11;

Gian Singh & Co. Ltd. v. Banque de l'Indochine, (P.C.) [1974] 2 Lloyd's Rep. 1; [1974] 1 W.L.R. 1234;

Owen (Edward) Engineering Ltd. v. Barclays Bank International Ltd., (C.A.) [1978] 1 Lloyd's Rep. 166; [1978] Q.B. 159;

Sztejn v. J. Henry Schroeder Banking Corp., (1941) 31 N.Y.S. 2d 631;

Wilson, Smithett & Cope Ltd. v. Terruzzi, (C.A.) [1976] 1 Lloyd's Rep. 509; [1976] Q.B. 683.

This was an appeal by the plaintiffs, United City Merchants (Investments) Ltd., and Glass Fibres and Equipments Ltd. from the decision of the Court of Appeal, ([1981] 1 Lloyd's Rep. 604) dismissing the appeal from the decisions of Mr. Justice Mocatta ([1979] 1 Lloyd's Rep. 267 and [1979] 2 Lloyd's Rep. 498) in which he held inter alia that the defendants, Royal Bank of Canada and Vitrorefuerzo S.A. and Banco Continental S.A. were not entitled to reject the bill of lading as not conforming with the letter of credit but that the letter of credit issued by the defendants was unenforceable by the Bretton Woods Agreements Order in Council 1946.

Mr. A. Irvine, Q.C. and Mr. Andrew Longmore (instructed by Messrs. Nicholson, Graham & Jones) for the plaintiffs; Mr. David Johnson, Q.C. and Mr. Richard Wood (instructed by Messrs. Thomas Cooper & Stibbard) for the defendants.

The further facts are stated in the judgment of Lord Diplock.

Judgment was reserved.

Thursday, May 20, 1982

JUDGMENT

Lord DIPLOCK: My Lords, this appeal, which is the culmination of protracted litigation, raises two distinct questions of law which it is convenient to deal with separately. The first, which I will call the documentary credit point, relates to the mutual rights and obligations of the confirming bank and the beneficiary under a documentary credit. It is of general importance to all those engaged in the conduct and financing of international trade for it challenges the basic principle of documentary credit operations that banks that are parties to them deal in documents only, not in the goods to which those documents purport to relate. The second question, which I will call the Bretton Woods point, is of less general importance. It turns upon the construction of the Bretton Woods Agreements Order in Council, 1946 and its application to the particular facts of the instant case.

All parties to the transaction of sale of goods and its financing which have given rise to the appeal were represented at the original hearings before Mr. Justice Mocatta. The sellers and their own merchant bankers to whom they had transferred the credit as security for advances were the plaintiffs, the confirming bank was the defendant, the buyers and the issuing bank were joined as first and second third-parties respectively. The issuing bank admitted its liability to indemnify the confirming bank for any sums for which the latter as defendant should be held liable to the plaintiffs, and in the later stages of the proceedings, although the confirming bank has remained nominally the respondent, the conduct of the appeals both in the Court of Appeal and in your Lordships' House has been undertaken by Counsel for the issuing bank. Your Lordships, are however, only indirectly concerned with the contractual relationship between the buyers and the issuing bank or between the issuing bank and the confirming bank. The documentary credit point depends on the contractual relationship between the sellers (or their transferee) and the confirming bank. The Bretton Woods point is about the effect on that relationship of certain special provisions in an agreement between the sellers and the buyers that was collateral to their contract of sale.

Mr. Justice Mocatta delivered his judgment in two parts with an interval between them. The facts that are relevant to the documentary credit point are set out in detail in the first part (reported in [1979] 1 Lloyd's Rep. 267): the additional facts that are relevant to the Bretton Woods point are set out in the second part (reported in [1979] 2 Lloyd's Rep. 498). For the purpose of identifying the questions of law that are dispositive of this appeal it is sufficient to state those facts in summarized form, starting with those that raise the documentary credit point.

A Peruvian company, Vitrorefuerzos S.A. ("the buyers") agreed to buy from the second appellants ("the sellers") plant for the manufacture of glass fibres ("the goods") at a price of $662,086 f.o.b. London for shipment to Callao. Payment was to be in London by confirmed

irrevocable transferable letter of credit for the invoice price plus freight, payable as to 20 per cent. of the invoice price upon the opening of the credit, as to 70 per cent. of the invoice price and 100 per cent. of the freight on presentation of shipping documents and as to the balance of 10 per cent. of the invoice price on completion of erection of the plant in Peru.

The buyers arranged with their Peruvian bank, Banco Continental S.A. ("the issuing bank") to issue the necessary credit and the issuing bank appointed the respondents, Royal Bank of Canada ("the confirming bank") to advise and confirm upon its own behalf the credit to the sellers. The confirming bank duly notified the sellers on Mar. 30, 1976, of the opening of the confirmed irrevocable transferable letter of credit. So far as concerned the 70 per cent. of the invoice price and 100 per cent. freight there was nothing that was unusual in its terms. It was expressed to be subject to the Uniform Customs and Practice for Documentary Credits (1974 Revision) of the International Chamber of Commerce ("the Uniform Customs") and to be available by sight drafts on the issuing bank against delivery inter alia of a full set "on board" bills of lading evidencing receipt for shipment of the goods from London to Callao on or before a date in October, 1976, which was subsequently extended to Dec. 15, 1976.

The initial payment of 20 per cent. of the invoice price was duly made by the confirming bank to the sellers. Thereafter, in July, 1976, the sellers transferred to their own merchant bankers, the first appellants, their interest under the credit as security for advances; but nothing turns on this so far as either the documentary credit point or the Bretton Woods point is concerned. In dealing with the relevant law on each of these points I shall accordingly treat the sellers as having continued throughout to be the beneficiaries of the confirmed credit.

The goods, which had to be manufactured by the sellers, were ready for shipment by the beginning of December, 1976. It was intended by the loading brokers acting on behalf of Prudential Lines Inc. ("the carriers") that they should be shipped on a vessel belonging to the carriers ("*American Legend*") due to arrive at Felixstowe on Dec. 10, 1976. (The substitution of Felixstowe for London as the loading port is immaterial. It was acquiesced in by all parties to the transaction.) The arrival of *American Legend* at Felixstowe was cancelled and another vessel, *American Accord*, was substituted by the loading brokers: but its date of arrival was scheduled for Dec. 16, 1976, one day after the latest date of shipment required by the documentary credit. The goods were in fact loaded on *American Accord* on Dec. 16, 1976; but the loading brokers, who also acted as agents for the carriers in issuing bills of lading, issued in the first instance a set of "received for shipment" bills of lading dated Dec. 15, 1976, and handed them over to the sellers in return for payment of the freight. On presentation of the shipping documents to the confirming bank on Dec. 17 that bank raised various objections to their form, of which the only one that is relevant to the documentary credit point was that the bills of lading did not bear any dated "on board" notation. The bills of lading were returned to the carriers' freight brokers who issued a fresh set bearing the notation, which was untrue:

> These goods are actually on board 15th December 1976. E. H. Mundy and Co. (Freight Agents) Ltd. as Agents.

The amended bills of lading together with the other documents were represented to the confirming bank on Dec. 22, 1976, but the confirming bank again refused to pay on the ground that they—

> . . . had information in their possession which suggested that shipment was not effected as it appears in the bill of lading.

The learned Judge after a careful hearing, lasting for no less than 30 days, held that Mr. Baker, the employee of the loading brokers to the carriers who was in charge of the transaction on their behalf, had acted fraudulently in issuing the bills of lading bearing what was to his knowledge a false statement as to the date on which the plant was actually on board *American Accord*. The Judge held, however, that neither the sellers (nor their transferee) were parties or privies to any fraud by Mr. Baker; at the time of both presentations of the shipping documents to the confirming bank on Dec. 17 and 22, 1976, they bona fide believed that the plant had in fact been loaded on *American Accord* on or before Dec. 15, 1976, and that the annotation on the reissued bill of lading, stating the goods to be actually on board at that date, was true.

The additional facts that give rise to the Bretton Woods point may be stated even more concisely. The sellers' original quotation for the sale price of the glass fibre making plant was half the figure that ultimately became the invoice price for the purposes of the documentary credit. The buyers who were desirous of converting Peruvian currency into U.S. dollars available to them in the United States, a transaction which was contrary to Peruvian exchange control regulations, persuaded the sellers to invoice the plant to them at double the real sale price in U.S. dollars and to agree that they would within 10 days after drawing upon the documentary credit for each of the three instalments of the invoice price remit one half of

the amount so drawn to the dollar account in Miami, Florida, of an American corporation controlled by the buyers. This the sellers agreed to do; and of the first instalment of 20 per cent. of the now doubled invoice price of $662,086, which was the only drawing that they succeeded in making under the credit, they transmitted one half, viz. $66,208 to the American corporation in Florida. They would have done the same with one half of the next drawing of 70 per cent. of the invoice price payable against shipping documents, if the confirming bank had paid this instalment.

The documentary credit point

My Lords, for the proposition upon the documentary credit point, both in the broad form for which Counsel for the confirming bank have strenuously argued at all stages of this appeal and in the narrower form or "half-way house" that commended itself to the Court of Appeal (see [1981] 1 Lloyd's Rep. 604), there is no direct authority to be found either in English or Privy Council cases or among the numerous decisions of Courts in the U.S.A. to which reference is made in the judgments of the Court of Appeal in the instant case. So the point falls to be decided by reference to first principles as to the legal nature of the contractual obligations assumed by the various parties to a transaction consisting of an international sale of goods to be financed by means of a confirmed irrevocable documentary credit. It is trite law that there are four autonomous though interconnected contractual relationships involved. (1) The underlying contract for the sale of goods, to which the only parties are the buyer and the seller; (2) the contract between the buyer and the issuing bank under which the latter agrees to issue the credit and either itself or through a confirming bank to notify the credit to the seller and to make payments to or to the order of the seller (or to pay, accept or negotiate bills of exchange drawn by the seller) against presentation of stipulated documents; and the buyer agrees to reimburse the issuing bank for payments made under the credit. For such reimbursement the stipulated documents, if they include a document of title such as a bill of lading, constitute a security available to the issuing bank; (3) if payment is to be made through a confirming bank the contract between the issuing bank and the confirming bank authorizing and requiring the latter to make such payments and to remit the stipulated documents to the issuing bank when they are received, the issuing bank in turn agreeing to reimburse the confirming bank for payments made under the credit; (4) the contract between the confirming bank and the seller under which the confirming bank undertakes to pay to the seller (or to accept or negotiate without recourse to drawer bills of exchange drawn by him) up to the amount of the credit against presentation of the stipulated documents.

Again, it is trite law that in contract (4), with which alone the instant appeal is directly concerned, the parties to it, the seller and the confirming bank, "deal in documents and not in goods", as art. 8 of the Uniform Customs puts it. If, on their face, the documents presented to the confirming bank by the seller conform with the requirements of the credit as notified to him by the confirming bank, that bank is under a contractual obligation to the seller to honour the credit, notwithstanding that the bank has knowledge that the seller at the time of presentation of the conforming documents is alleged by the buyer to have, and in fact has already, committed a breach of his contract with the buyer for the sale of the goods to which the documents appear on their face to relate, that would have entitled the buyer to treat the contract of sale as rescinded and to reject the goods and refuse to pay the seller the purchase price. The whole commercial purpose for which the system of confirmed irrevocable documentary credits has been developed in international trade is to give to the seller an assured right to be paid before he parts with control of the goods that does not permit of any dispute with the buyer as to the performance of the contract of sale being used as a ground for non-payment or reduction or deferment of payment.

To this general statement of principle as to the contractual obligations of the confirming bank to the seller, there is one established exception: that is, where the seller, for the purpose of drawing on the credit, fraudulently presents to the confirming bank documents that contain, expressly or by implication, material representations of fact that to his knowledge are untrue. Although there does not appear among the English authorities any case in which this exception has been applied, it is well established in the American cases of which the leading or "landmark" case is *Sztejn v. J. Henry Schroeder Banking Corp.*, (1941) 31 N.Y.S. 2d 631. This judgment of the New York Court of Appeals was referred to with approval by the English Court of Appeal in *Edward Owen Engineering Ltd. v. Barclays Bank International Ltd.*, [1978] 1 Lloyd's Rep. 166; [1978] Q.B. 159, though this was actually a case about a performance bond under which a bank assumes obligations to a buyer analogous to those assumed by a confirming bank to the seller under a documentary credit. The exception for fraud on the part of the beneficiary seeking to avail himself of the credit is a clear application of the maxim ex turpi causa non oritur actio or, if plain English is to be preferred, "fraud unravels all".