Privy Council Appeal No. 27 of 1930.

T. H. Hancock - - - - - - - *Appellant*

v.

The Imperial Bank of Canada - - - - - - *Respondents*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JUNE, 1930.

Present at the Hearing.

VISCOUNT DUNEDIN.
LORD BLANESBURGH.
LORD DARLING.
LORD RUSSELL OF KILLOWEN.
CHIEF JUSTICE ANGLIN.

[*Delivered by* VICOUNT DUNEDIN.]

The appellant in this case is a gentleman who signed a letter of guarantee for advances to be made to the business of a Mr. Garlock.

The action is one by the Bank, in whose favour he signed the letter of guarantee, for advances made. There is no question that the advances were made, and it cannot be disputed that upon the terms of the letter of guarantee itself those terms covered the advances.

Now the defence of the appellant, who was the surety, is the old defence that he is relieved because there has been, behind his back, an alteration made in the form of the contract. He really puts his argument on four different grounds. He appeals to a certain letter which came into existence in this way: The debtor and the surety seemingly put their heads together, and the surety was not quite satisfied that he was in a position of complete safety as regards his relations with the debtor and, accordingly, he asked that a solicitor, who was the debtor's solicitor, should draft a sort of proper letter that he should get. That letter was drafted; it

was sent by the solicitors, and it was eventually signed by the principal debtor. That letter includes a paragraph in which it is said: "Further, the guarantee which we have signed with the Imperial Bank is given for the purpose of discount only." Their Lordships think it is abundantly clear that that arrangement between the principal debtor and the surety cannot in any way bind the Bank, and the only reason why it is said to bind the Bank is because the solicitors who drafted the letter happened to be the solicitors for the Bank also; but they were not acting on the Bank's instruction, and it is not to be supposed that they would have had authority to alter the contracts of the Bank; but it is sufficient to say that they were not acting on the Bank's instructions at all. It is impossible to suppose that an arrangement between the principal debtor and the surety, behind the back of the Bank, without the Bank knowing anything about it, could possibly affect the Bank's right.

The next thing that is said is that up to the time of the last guarantee on which the action is raised, the advances made by the Bank were *de facto* discount advances against paper, and that, after that, there were advances made on pure accommodation. The answer to that is that the Bank had a perfect right to make advances, if it liked, in that way, and that, if the surety wanted to protect himself against that, he ought not to have signed a letter of guarantee in terms wide enough to cover not only discount advances, but also advances upon accommodation.

The third point was this. It was said, and their Lordships think said truly, that a branch agent of the Bank had no business to give advances upon mere accommodation without a special authorisation by the head office. That is true: but that is only an arrangement as between the Bank and its own officials, and has nothing to do with the Bank's right, if it likes to make accommodation advances and hold the surety responsible therefor, provided always that the terms of his guarantee are sufficiently wide to cover them.

Fourthly, and finally: Counsel for the appellant stressed the failure to call, as a witness at the trial, the local manager of the defendant bank with whom the plaintiff dealt in connection with the guarantee, and to whom it is alleged he disclosed the limitation upon the liability of the guarantor here set up. The only evidence in support of this allegation was a vague, indefinite and entirely unsatisfactory statement made, in the course of his evidence, by the appellant. So little weight was attached to this statement at the trial that there was no cross-examination on it; and it was obviously discredited by the trial judge, who found, as a fact, that the bank had no notice whatever of the suggested limitation. The Divisional Court, in unanimously dismissing the appeal without giving reasons therefor, of course confirmed the rejection of this evidence. Apart altogether from the statement made by counsel at the Bar that the reason why the local bank

manager was not called was that he had died before the trial, it would require much more cogent grounds than any urged before their Lordships to induce them to reverse a concurrent finding such as that now being considered.

Their Lordships are not surprised that the learned Judges in the Court of Appeal did not think it necessary to pronounce any judgment, but simply to affirm what had been given before. These observations are only made out of compliment to the learned Counsel who have most gallantly struggled up a very steep hill, the top of which they could not possibly reach.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

T. H. HANCOCK

v.

THE IMPERIAL BANK OF CANADA.

DELIVERED BY VISCOUNT DUNEDIN.

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