

**Edmondston Vs. Drake and Mitchel**

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**Court :** US Supreme Court

**Decided On :** 1831

**Appeal No. :** 30 U.S. 624

**Appellant :** Edmondston

**Respondent :** Drake and Mitchel

**Judgement :**

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**Edmondston v. Drake & Mitchel**

**30 U.S. (5 Pet.) 624**

*ERROR TO THE CIRCUIT COURT FOR*

*THE DISTRICT OF SOUTH CAROLINA*

## **SYLLABUS**

A letter of credit was written by Edmondston of Charleston, South Carolina, to a commercial house at Havana in favor of J. and T. Robson for \$50,000, "which sum

they may invest through you in the produce of your island." On the arrival of Thomas Robson in Havana, the house to whom the letter of Mr. Edmondston was addressed was unable to undertake the business, and introduced Thomas Robson to Drake & Mitchel, merchants at that place, exhibiting to them the letter of credit from Mr. Edmondston. Drake & Mitchel, on the faith of the letter of credit and at the request of Thomas Robson, made large shipments of coffee to Charleston, for which they were, by agreement with Thomas Robson, to draw upon Goodhue & Co. of New York, at sixty days, where insurance was to be made. Of this agreement Edmondston was informed, and he confirmed it in writing. For a part of the cost of the coffee so shipped, Drake & Mitchel drew bills on New York, which were paid, and afterwards, in consequence of a change in the rate of exchange, they drew for the balance of the shipments on London. This was approved of by J. and T. Robson, but was not communicated to Edmondston. To provide for the payment of the bills drawn on London by Drake & Mitchel, the agents of J. and T. Robson remitted bills on London, which were protested for nonpayment, and Drake & Mitchel claimed from Edmondston, under the letter of credit, payment of their bills on London. *Held* that Mr. Edmondston was not liable for the same.

It would be an extraordinary departure from that exactness and precision which is an important principle in the law and usage of merchants if a merchant should act on a letter of credit such as that in this case and hold the writer responsible without giving notice to him that he had acted on it.

The leading facts in this case, from the record, were: Messrs. John and Thomas Robson, of Columbia, in the State of South Carolina, being desirous of making a speculation in coffee, and Thomas Robson, one of the firm, being about to proceed immediately to Havana in execution of this purpose, procured from Charles Edmondston, of Charleston, the plaintiff in error, a letter of credit dated 16 April, 1825, to Castillo & Black of Havana, in the Island of Cuba, in these words:

"Charleston, 16 April, 1825"

"Messrs. Castillo & Black -- Gentlemen -- The present is intended as a letter of credit in favor of my regarded friends,

Messrs. J. and T. Robson, to the amount of \$40,000 or \$50,000, which sum they may wish to invest through you in the purchase of your produce. Whatever engagements these gentlemen may enter into will be punctually attended to. With my best wishes for the success of this undertaking, I am, &c.;, C. Edmondston."

With this letter, Thomas Robson sailed for Havana the day after its date; upon his arrival, he presented his letter of credit to Castillo & Black who were then engaged in the execution of a similar contract, and could not act on this. Mr. Black, one of the partners, introduced Mr. Robson to Messrs. Drake & Mitchel, the defendants in error, merchants residing in Havana, at the same time showing, but not delivering to them Edmondston's letter of credit. After this interview, an agreement was entered into between Drake & Mitchel and the Robsons, the particulars of which are exhibited in a letter dated 28 April from Thomas Robson to Drake & Mitchel.

"Havana, 28 April, 1825"

"Messrs. Drake & Mitchel -- Gentlemen -- I intend sailing tomorrow morning, in the schooner *Felix*, bound for Charleston, South Carolina, wind and weather permitting. I will thank you to execute the following order at your earliest convenience, provided you feel yourselves warranted in so doing from the letter of credit I produced, *viz.*, two to 3,000 bags of prime green Havana coffee, provided the same can be had at prices from eleven to \$13, and for extra prime, large lots, thirteen and a half. Bills on New York at sixty days at two and a half to five percent premium, and to be governed in said purchase by the rise or fall in foreign markets, exercising your better judgment thereon. Said coffee to be forwarded by first good opportunity to Charleston, South Carolina, on board of a good, sound and substantial vessel, addressed to the care of Boyce and Henry, Kunhart's Wharf, Charleston. Bills of lading to be immediately forwarded to New York, and insurance ordered thereon to the full amount. Invoice of coffee, with duplicate bills of lading, to be made out in the name of J. and T. Robson, and forwarded with advice of drafts to the care of Boyce and Henry, Charleston.

Wishing you success in said purchase, and claiming your particular attention thereto; I am, gentlemen, your obedient servant, Thomas Robson."

"Please inform me the name of the house to whom the bills of lading, &c.;, will be addressed."

Notice of this arrangement was communicated by Drake & Mitchel to Charles Edmondston, in the following letter.

"Havana, 29 April, 1825"

"Charles Edmondston, Esq. -- Dear Sir -- In virtue of your letter of credit to Messrs. Castillo & Black in favor of Messrs. J. and T. Robson, and at their request, we have consented to purchase 2,000 bags of coffee, to be consigned to Messrs. Boyce and Henry of your city, the insurance to be effected by Messrs. Goodhue & Co. of New York, upon whom we are to draw for the amount, by reason of the facility of negotiations, Mr. Robson or his friends remitting the money to these gentlemen to meet our drafts. Mr. Robson, who carries this, will no doubt explain to you in person this negotiation, and we trust that there will be no demur in forwarding the necessary funds, with the cost of insurance. We are, &c.;, Drake & Mitchel."

On the 25th of May, Charles Edmondston acknowledged the receipt of this letter in these words:

"Charleston, 25 May 1825"

"Messrs. Drake & Mitchel -- Gentlemen -- In acknowledging the receipt of yours of 29 April, I cannot help expressing my grateful feelings at the manner you treated my letter of credit in Robson's favor. I am, &c.;, Charles Edmondston."

The shipment of coffee for the Robsons was completed by 17 May, and in conformity with the agreement with the Robsons, Drake & Mitchel, on 21 May, drew bills on New York for nearly \$25,000, which were all regularly paid.

On that same day on which they drew their last bill on New York, they determined to alter the mode of reimbursement, as agreed on by the Robsons and themselves, and instead

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of drawing on New York, to draw on London for four thousand pounds sterling. Their determination to do this, and their probable motive for doing it, appear by the following letter from them to Boyce and Henry, of Charleston.

"21 May, 1825"

"Gentlemen -- We crave reference to our last respects per brig *Catharine*, which vessel we hope is safely arrived at this date. We have this day received accounts from your city and from New York announcing to us the decline in the price of coffee; it is therefore well that we had not gone to the full extent of the instructions of Mr. Robson. We also note the decline of your exchange on London, and as ours is still maintained at fourteen percent, it has occurred to us to alter our plan of reimbursement, for the benefit of the interested in these coffee purchases, by drawing on London for the balance of our shipments -- for some houses here are drawing on the United States at par to one percent, a rate which we cannot submit to -- we are accordingly about to value on our friends Messrs. Campbell Bowden, and Co., to be covered by you or Messrs. Goodhue & Co., as you may direct, to the amount of four thousand pounds sterling, which at four hundred and forty-four, and fourteen percent, amounts to \$20,246.40. And we have already drawn upon Messrs. Goodhue & Co. \$12,699.12, with premium three and two and a half percent, \$337.43, and to complete this account we have again drawn on the same \$2,071.34 at two and a half percent, \$2,123.12, making together \$35,406.07, from which deducting our commission for drawing and negotiating, two and a half percent, the remainder \$34,522 will then be equal to the amount of our three invoices per Eagle, Hannah, and Catharine, as per enclosed statement. We trust that these dispositions will meet your approbation, and we pray you to make the necessary remittances to Messrs. Campbell Bowden and Co., including their commission and any other incidental charges. Coffee is still maintained here at

\$13 and upwards, but second

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qualities are plenty and cheaper in proportion; both this article and sugar are likely to decline a little, &c.;"

They executed this purpose on the day of the date of this letter, the Robsons being credited on that day with the amount of their bills on Campbell Bowden, and Co., for 4,000. They drew on the same day, according to their agreement, on New York at two and a half percent, which bill was duly honored.

The Robsons, on 4 June, 1825, assented to this alteration in the mode of reimbursement, with relation to the draft for 4,000, and their agents Boyce and Henry, by their direction, and according to the request of Drake & Mitchel, remitted to Campbell Bowden and Co. a bill of exchange of J. B. Clough, on his firm of Crowder, Clough and Co. of Liverpool, at sixty days sight, on account of Drake & Mitchel, which bills were protested for nonpayment.

During all these operations, Mr. Edmondston was wholly uninformed of the change which had been made in the mode of reimbursement, and which had been stated to him by Drake & Mitchel, in their letter of 29 April.

On 16 September, Drake & Mitchel enclosed to Mr. Edmondston for collection an order on Thomas Robson in the following words.

"Havana, 16 September 1825"

"Thomas Robson, Esq. Charleston -- Please pay Charles Edmondston, Esq. or order the sum of \$26 for balance of your account with, dear sir, your obedient servants, Drake & Mitchel."

After calling upon Mr. Edmondston, as their attorney in fact, to collect the amount of the protested bills on Liverpool, from the Robsons, or from Boyce and Henry, and he not succeeding, Messrs. Drake & Mitchel instituted this suit in the circuit court.

On the trial, the counsel for the defendant requested the court to charge the jury as stated in the bill of exceptions, which being refused, and a verdict and judgment being rendered for the plaintiff, this writ of error was prosecuted.

The exceptions are stated in the opinion of the court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This suit was instituted by Drake & Mitchel, merchants of Havana, in Cuba, against Charles Edmonston, merchant of Charleston, in the Court of the United States for the Sixth Circuit and District of South Carolina in order to recover the balance of an account due to Drake & Mitchel from J. and T. Robson, who were merchants and partners of Columbia, in South Carolina.

Thomas Robson, being about to proceed to the Havana for the purpose of making a speculation in coffee, obtained from Mr. Edmonston the following letter of credit.

"Charleston, April 16, 1825"

"Messrs. Castillo & Black -- Gentlemen -- The present is

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intended as a letter of credit in favor of my regarded friends, Messrs. J. and T. Robson, to the amount of \$40,000 or \$50,000, which sum they may wish to invest through you in the produce of your island. Whatever engagements these gentlemen may enter into will be punctually attended to. With my best wishes for the success of this undertaking, I am, gentlemen, yours respectfully, Charles Edmondston."

On his arrival in Havana, Mr. Robson presented his letter of credit to Messrs. Castillo & Black, who being unable to undertake the business, introduced him to Drake & Mitchel, and showed them the letter of Mr. Edmondston, but did not deliver it to them. At this interview, an agreement was entered into between

Robson, and Drake & Mitchel, the particulars of which are stated in the following letter.

"Havana, April 28, 1825"

"Messrs. Drake & Mitchel -- Gentlemen -- I intend sailing tomorrow morning in the schooner *Felix* bound for Charleston, South Carolina, wind and weather permitting. I will thank you to execute the following order, at your earliest convenience, provided you feel yourselves warranted in so doing from the letter of credit I produced, *viz.*, two to 3,000 bags of prime green Havana coffee, provided the same can be had at prices from eleven to \$13, and for extra prime large lots thirteen and a half. Bills on New York at sixty days at two and a half to five percent premium, and to be governed in said purchase by the rise and fall in foreign markets, exercising your better judgment thereon. Said coffee to be forwarded, by first good opportunity, to Charleston, South Carolina, on board of a good, sound and substantial vessel, addressed to the care of Boyce and Henry, Kunhart's Wharf, Charleston. Bills of lading to be immediately forwarded to New York, and insurance ordered thereon to the full amount. Invoice of coffee, with duplicate loading, to be made out in the name of J. and T. Robson and forwarded with advice of drafts to the care of Boyce and Henry, Charleston. Wishing you success in said purchase and claiming your particular attention thereto, I am, gentlemen, your obedient servant, Tho. Robson."

"Please inform me the name of the house to whom the bills of lading, &c., will be addressed. "

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On the succeeding day, notice of this arrangement was communicated to Charles Edmondston in the following letter.

"Havana, April 29, 1825"

"Charles Edmondston, Esquire -- Dear Sir -- In virtue of your letter of credit to Messrs. Castello and Black in favor of Messrs. J. and T. Robson, and at their

request, we have consented to purchase 2,000 bags of coffee to be consigned to Messrs. Boyce and Henry of your city, the insurance to be effected by Messrs. Goodhue & Co. of New York, upon whom we are to draw for the amount by reason of the facility of negotiations, Mr. Robson or his friends remitting the money to these gentlemen to meet our drafts. Mr. Robson, who carries this, will no doubt explain to you in person this negotiation, and we trust that there will be no demur in forwarding the necessary funds, with the cost of insurance. We are, &c.;, Drake & Mitchel."

On 25 May, a short letter on business from Charles Edmondston to Drake & Mitchel concluded in these terms:

"In acknowledging the receipt of yours of 29 April, I cannot help expressing my grateful feelings at the manner you treated my letter of credit in Robson's favor; I am, &c.;, Charles Edmondston."

The shipment of coffee for J. and T. Robson was completed by 17 May, and on the 21st of that month, Drake & Mitchel had drawn bills on New York for nearly \$25,000, which were regularly paid. On that day they determined of their own accord to change the mode of reimbursement, and on the 25th drew bills on London for 4,000. This was communicated to Messrs. Boyce and Henry, the agents of J. and T. Robson at Charleston in the following letter:

"21 May, 1825"

"Gentlemen -- We crave reference to our last respects per brig *Catharine*, which vessel we hope is safely arrived at this date. We have this day received accounts from your city and from New York announcing to us the decline in the price of coffee; it is therefore well that we had not gone to the full extent of the instructions of Mr. Robson. We also

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note the decline of your exchange on London, and as ours is still maintained at fourteen percent, it has occurred to us to alter our plan of reimbursements for the

benefit of the interested in these coffee purchases by drawing on London for the balance of our shipments -- for some houses here are drawing on the United States at par, to one percent, a rate which we cannot submit to; we are accordingly about to value on our friends Messrs. Campbell Bowden and Co., to be covered by you, or Messrs. Goodhue & Co. as you may direct, to the amount of 4,000, which at \$444 at fourteen percent amounts to \$20,246.40. And we have already drawn upon Messrs. Goodhue & Co. \$12,699.12, with premium three and two and a half percent, \$337.43, and to complete this account we have again drawn on the same, \$2,071.34 at two and a half percent, \$2,123.12, making together \$35,406,07, from which deducting our commission for drawing and negotiating, two and a half percent, the remainder, \$34,522, will then be equal to the amount of our three invoices per *Eagle, Hannah, and Catharine*, as per enclosed statement. We trust that these dispositions will meet your approbation, and we pray you to make the necessary remittances to Messrs. Campbell Bowden & Co. including their commission and any other incidental charges."

On the same day Drake & Mitchel drew their last bill on New York, which was duly honored.

J. and T. Robson, afterwards, on 4 June, assented to this alteration in the mode of reimbursement and directed their agents Boyce and Henry to conform to it. They remitted a bill drawn by J. B. Clough on his firm of Crowder, Clough & Co. of Liverpool, at sixty days sight, for 4,000, on account of Drake & Mitchel.

No notice of this transaction appears to have been given to Mr. Edmondston. On 16 September, Drake & Mitchel

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enclosed to him for collection a small order on T. Robson, in the following words:

"Havana, 16th September 1825"

"Thomas Robson, Esq., Charleston -- Please pay Charles Edmondston, Esq., or order, the sum of \$26 for balance of your account with, dear sir, your obedient

servants, Drake & Mitchel."

The bill on Crowder, Clough and Co. having been returned under dishonor, Drake & Mitchel, in a letter of 15 October, employed Mr. Edmondston as their agent to obtain its amount from the Robsons or from Boyce and Henry. In a letter of 5 November, Mr. Edmondston informed Drake & Mitchel of the ill success of his endeavors to procure payment. The Robsons, who were insolvent, considered themselves as discharged from the debt by remitting the bill on London in conformity with the directions of Drake & Mitchel, and Boyce and Henry, whose names were not on the bill, said they had acted only as agents of the Robsons and of Drake & Mitchel. After some correspondence between Mr. Edmondston and Drake & Mitchel on the liability of the former for the protested bill on Crowder, Clough and Co. in the course of which Mr. Edmondston transmitted to them a copy of his letter to Castillo & Black, this suit was instituted on the original letter of credit of 16 April, 1825, and on the letter addressed by Edmondston to Drake & Mitchel on 25 May following.

At the trial of the cause, the following bills of exceptions were taken:

"First Exception. The counsel for the defendant insisted that the letter of the defendant of 16 April, 1825, addressed to Castillo & Black was not a general letter of credit, but an engagement only to guarantee the contracts of J. and T. Robson with Castillo & Black and not with the plaintiffs, and that the said guarantee was not assignable, and that the defendant on the said letter was not accountable to the plaintiffs. But the court instructed the jury that the said letter of 16 April, 1825, was a general letter of credit in favor of J. and T. Robson; that it authorized the said Castillo & Black

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not only to give but to procure a credit for the said Robsons, and if the jury believed that under the said letter the said Castillo & Black had procured such credit for them with Drake & Mitchel, that Drake & Mitchel, the plaintiffs, had under this letter the same right to call on the defendant to make good the contracts of J.

and T. Robson with them the plaintiffs as Castillo & Black would have had, if they, Castillo & Black, had, on the faith of this letter, contracted with the said J. and T. Robson."

"Second. And the counsel for the defendant contended, and so moved the court to instruct the jury, that in order to make the defendant liable to the plaintiffs under the said contract, they were bound by the law merchant to give him due notice thereof, and as the defendant neither received notice of nor ever assented to the subsequent change as to the place or form of payment, he was fully discharged therefrom, on which the court, being divided in opinion, refused to give the instruction. It was therefore not given to the jury. And on the contrary, his honor Judge Lee, one of the presiding judges, charged and instructed the jury that they, the plaintiffs, were not bound to give the defendant notice of the original contract, and though they gave him notice of it, they were not bound to give him notice of the alteration made in it."

"Third. And the counsel for the defendant argued to the court, and requested the court so to instruct the jury, that if the defendant was bound at all to the plaintiffs, he was bound for the performance of the agreement made between the Robsons and the plaintiffs as set forth in the letter of Thomas Robson to them dated 28 April, and the plaintiffs' letter of 29 April, 1825, to the defendant, and that the arrangement afterwards made between the plaintiffs and Robson for payment in London, instead of New York, was an alteration of the contract, and the defendant, not having consented thereto, was not bound for the performance of the agreement thus altered, but was discharged from his liability if in fact, he was at all liable, but, the court being divided, refused to give such instruction."

"Fourth. And the counsel for the defendant further argued to the court, and requested the court so to charge and instruct the jury, that the guarantee of the defendant was not a

continuing guarantee, and could not be extended to any other engagements than those mentioned in the letter of the plaintiffs to him of 29 April aforesaid and set forth in that of Thomas Robson to them of 28 April aforesaid, and that the change in the place of payment from New York to London, made without due notice thereof given to the defendant, discharged him from the said guarantee, but the court, being divided in opinion, refused to give such instruction."

"Fifth. And the counsel for the defendant further argued to the court and requested the court so to charge and instruct the jury that the plaintiffs in their letter of 29 April, having given notice to the defendant of the contract made by them with the Robsons in virtue of his the defendant's letter of 16 April, were bound to give him notice of the change of the contract, and as they did not give him any such notice, he is thereby discharged. But the court, being divided in opinion, refused to give the instruction; it was therefore not given to the jury, and on the contrary, his honor Judge Lee, one of the presiding judges, charged and instructed the jury that the plaintiffs were not bound to give the defendant notice of the original contract, and though they gave him notice of it, they were not bound to give him notice of any alteration made in it."

The jury found a verdict for the plaintiffs, the judgment on which is brought before this Court by writ of error.

In the view which the Court takes of the case, it is unnecessary to decide on the first instruction given by the circuit court. If the letter of 16 April, 1825, was limited to Castillo & Black, that of 25 May unquestionably sanctioned the advances made by Drake & Mitchel on its authority and made Edmondston responsible for Robson's contract with them. It is on his part a collateral undertaking, which binds him as surety for the Robsons that they will comply with their contract. No doubt exists respecting his original liability. The inquiry is has the subsequent conduct of the parties released him from it?

It is necessary to ascertain exactly what the contract really was. The evidence of it is to be found in the letter of T. Robson to Drake & Mitchel, of 28 April, 1825, and in the letter written by Drake & Mitchel to Edmondston on

the succeeding day. The first states the order to be executed by Drake & Mitchel. It is for

"2,000 to 3,000 bags of prime green Havana coffee, provided the same can be had at prices from eleven to \$13, and for extra prime large lots, thirteen and a half. Bills on New York at sixty days, at two and a half to five percent premium, and to be governed in said purchase by the rise or fall in foreign markets, exercising your better judgment thereon."

The last states it to Edmondston in the following words:

"We have consented to purchase 2,000 bags of coffee, to be consigned to Messrs. Boyce and Henry of your city, the insurance to be effected by Messrs. Goodhue & Co. of New York, upon whom we are to draw for the amount by reason of the facility of negotiation, Mr. Robson or his friends remitting the money to these gentlemen to meet our drafts."

The contract consists of the quantity of coffee to be purchased, the house to which it was to be shipped, and the mode of payment. On the quantity to be purchased, Drake & Mitchel were to exercise their judgment. It was to be from 2,000 to 3,000 bags, as the rise or fall of foreign markets might render advisable. The letter of Drake & Mitchel, giving notice of the contract to Edmondston, shows their determination to limit their purchase to 2,000 bags. On the other parts of the contract, if we are to judge from its language, they could exercise no discretion. The coffee was to be shipped to Boyce and Henry of Charleston, and the mode of payment was settled definitively. It was to be by remittances to Messrs. Goodhue & Co. of New York, on whom Drake & Mitchel were to draw at a rate of exchange settled between the parties. This contract was obligatory in all its parts, and when communicated to Mr. Edmondston, gave him precise information of the extent of his liability. His letter of 25 May was written with a view to the particular contract, which had been thus communicated.

In estimating the influence of this notice on the cause, it has been supposed of some consequence to establish its necessity. The district judge, sitting in the circuit court, informed the jury that it was not necessary. The attempt has not been made to sustain this instruction in its terms, but to explain it so as to limit it to the necessity of giving Mr. Edmondston

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notice of the mode in which Drake & Mitchel were to be reimbursed for the coffee. This was probably the intention of the judge. It would indeed be an extraordinary departure from that exactness and precision which peculiarly distinguish commercial transactions which is an important principle in the law and usage of merchants if a merchant should act on a letter of this character and hold the writer responsible without giving notice to him that he had acted on it. The authorities quoted at the bar on this point unquestionably establish this principle.

If it were incumbent on Drake & Mitchel to give notice to Mr. Edmondston that they had acted on his letter of credit, did the nature of the transaction require a communication of that part of the contract which stipulated for the mode of payment?

It cannot be alleged that this part of it was of no importance or that it did not concern Mr. Edmondston. It is an essential article in all contracts, and was of peculiar interest to Mr. Edmondston in this. The parties thought the particular mode of reimbursement of sufficient importance to stipulate for it expressly in their agreement. We cannot determine positively whether it was or was not a matter of indifference to them. They selected this, and when selected, it became a part of the contract. Each had consequently a right to insist upon it.

We have said that this part of the agreement was of peculiar interest to Mr. Edmondston. For any failure in it he was responsible. Being informed of the place on which bills were to be drawn by Drake & Mitchel and to which remittances to meet them were to be made, he was enabled to bestow that general attention on the course of the business which he might think necessary for his own safety. He

might observe generally the shipments made on account of the Robsons to New York, and be led to further inquiry by any apparent remissness. Drake & Mitchel seem to have given him the information with this view. After saying they are to draw on Messrs. Goodhue & Co. of New York, they add, "Mr. Robson or his friends remitting the money to these gentlemen to meet our drafts." It was essential to Mr. Robson, or to the friends by whom the remittances might be made,

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that the place and persons to whom they might be made should be fixed.

We cannot consider this part of the agreement as immaterial. It was the part in which Mr. Edmondston was most deeply interested.

Being part of the contract, it is not pretended that Drake & Mitchel could alter it without the consent of the Robsons. They could no more vary a contract made than they could make one originally. The one as much as the other requires the consent of both parties.

Drake & Mitchel and the Robsons, being capable of binding themselves by an original contract, were equally capable of varying that contract at will. But though capable of binding themselves, they were not capable of binding Mr. Edmondston. To this his own consent was indispensable. Any new stipulation introduced into it was so far a new contract, which could only affect themselves. Mr. Edmondston was a stranger to it unless his letter to Castillo & Black of 16 April, 1825, in connection with his letter to Drake & Mitchel of 25 May in the same year, made him a party to it.

The letter of 16 April, in its object and its language, is limited to a contract to be made by Mr. Robson during his stay in the Havana. It was written for a special purpose, and its obligation could be extended no further when that purpose was accomplished. It was intended to pledge the credit of the writer to the amount of \$40,000 or \$50,000, to be invested by Mr. Robson in the purchase of the produce of the island. The letter was directed to an operation for which Mr. Robson went to the Havana, and which was to be completed while there. It was addressed to

merchants of that place, and relates to an operation to be performed in that place. If instead of proceeding to the Havana, and purchasing the produce of the island, he had proceeded to Great Britain, and purchased a cargo of woolens; it would scarcely be pretended that the vendor trusted to this letter. Still less could it be pretended if, after actually making the contract in Havana, he had proceeded to Europe and made purchases in that part of the world. The cases cited in argument show that in law and in the understanding of

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commercial men, the credit given by such a letter is confined to the particular operation and to the particular time. It extended to no contract made by Robson after returning to the United States.

Still less can the letter of 25 May avail the defendants in error. That is obviously confined to the contract stated in the letter of Drake & Mitchel to which it is an answer.

The credit then given in the letter of Mr. Edmondston was exhausted by the contract made by Robson while at Havana, and the extent of his responsibility under those letters is confined to that contract. Drake & Mitchel and the Robsons could no more affect him by any change in its terms than by an entirely new stipulation or an entirely new contract.

It has been said that this change was made for the advantage of the Robsons and with their consent. It is immaterial whether it was made for the benefit of the Robsons or of Drake & Mitchel, or of both. They had no right to vary a contract for their own benefit at the hazard of Mr. Edmondston.

It has been urged that the risk of remittances to New York was as great as the risk of bills on England. Were this true, it could not affect the case. Mr. Edmondston had a right to exercise his own judgment on the risk, and the persons who varied this contract had no right to judge for him.

But is it true that the risk was not increased? While payments were to be made in New York, the agents in the transaction were in some measure within the view of Mr. Edmondston. He could observe their situation and act for his own safety. This power is essentially diminished when a bill, without his knowledge, on a house of whose stability he may be ignorant, is remitted at sixty days sight to England. It is on every reasonable calculation, at all events, a prolongation of the risk.

The contract at the Havana may be considered as one to be performed immediately. It does not appear that any time was given for the shipment of the coffee, and the whole transaction has the appearance that the bills were to be drawn as soon as the coffee was shipped. The last bill on New York was drawn on 21 May, and notice of the bill on

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London was given on the 26th of that month. It may be considered, then, as a transaction to be completed as soon as the nature of the business would permit. It might be reasonably supposed that it would be completed before the condition of the parties would be essentially changed. Had the bill which was drawn on London been drawn at the same time on New York, there is reason to believe that it would have been paid.

The change in the mode of payment by substituting a bill on London at long sight necessarily prolonged the time at which payment should be made and prolonged the risk of Mr. Edmondston. This they had no right to prolong without his consent.

It is admitted that Drake & Mitchel could not change the mode of payment without the consent of the Robsons. Then it is a part of the contract -- of that contract for which alone Mr. Edmondston became responsible.

It has been said that the engagement respecting the place of payment was contingent, dependent on the facility of negotiations, and subject to any future arrangement to be made between the parties.

We do not so understand the agreement. Its terms are positive, dependent upon no contingency. "The facility of negotiations" was the motive for the stipulation. No hint of a reserved power to change it is given either in the letter of T. Robson to Drake & Mitchel or in theirs to Edmondston. It was not a contingent, but an absolute, arrangement -- as absolute as any other part of the contract.

We think the court erred in not giving the second, third, fourth, and fifth instructions to the jury, and the judgment ought to be

*Reversed and the cause remanded with directions to award a venire facias de novo.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of South Carolina and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed and that this cause be and the same is hereby remanded to the said circuit court with instructions to award a *venire facias de novo*.

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