

H. C. GUTTERIDGE AND MAURICE MEGRAH, *THE LAW OF BANKERS' COMMERCIAL CREDITS*. 3rd edition. [London: Europe Publication Ltd., 1962, 226 pp. inc. apps. & index. £1.10.0d.]

The third edition of Gutteridge and Megrah follows fairly closely on the previous, 1955, one. This, in itself, would tend to show how important this monograph on commercial letters of credit has become.

It should be said at once that in preparing the new edition, Mr. Megrah has used the blue pencil sparingly but with great skill. The book has been brought up to date. Yet, the structure of the second edition has been retained. No new chapters have been added and only few sections rearranged. These changes in the third edition are, thus, of importance.

The first important change concerns the theoretical analysis of letters of credit. While, in practice, the irrevocable letter of credit is considered irrevocable from the day of its notification to the seller, it is hard to find a justification for that opinion in law. The banker's promise in the letter of credit can hardly be anything but an offer. And there seems to be no acceptance of the offer, nor consideration for it moving from the beneficiary, at the time of the notification. The analysis of this problem in the second edition of Gutteridge and Megrah reflected the impact of the decision in *Smith and Snipes Hall Farm Ltd. v. River Douglas Catchment Board Ltd.* [1949] 2 K.B. 510. In this case Denning L.J. (as he then was) observed, *obiter dicta*, that a beneficiary of a commercial credit should be allowed to enforce the contract between the banker-issuer and the customer-buyer. This observation was quoted with approval in the second edition of Gutteridge and Megrah. In view of *Green v. Russel (McCarthy)* [1959] 2 K.B. 266 this view has been abandoned in the present edition. The recent decision of the House of Lords in *Midland Silicones Ltd. v. Scruttons Ltd.* [1962] 2 W.L.R. 186 would, too, support the course adopted by the learned editor in the third edition.

In the present edition Mr. Megrah resorts to the original view expressed by Professor Gutteridge in 1932. This theory, which was referred to in the second edition, is now clearly stated in the new Section V of Chapter III. The title of this section is "Buyer the Seller's Agent". It is suggested that, when the buyer asks the banker to open the letter of credit in favour of the seller-beneficiary, he acts as the latter's agent. The contract between banker and seller would, thus, come into existence when the buyer's request is accepted by the banker, *i.e.* when the letter of credit is issued. This theory is not without attraction. Two reservations can, nevertheless, be suggested. In the first place, from a point of fact, it is hard to agree that the buyer is the seller's agent. It is true that he procures the letter of credit from the banker in order to discharge an obligation undertaken by him towards the seller. This obligation is, however, included in a contract of sale made between the buyer and the seller. It is also significant that the buyer, when procuring the letter of credit from the banker, contracts in his own name. Moreover, Professor Gutteridge's "agency theory" can lead to legal difficulties. If the buyer is the seller's agent then the latter would — on the authority of *Lloyd v. Grace Smith & Co.* — be responsible for any fraud of the former committed in order to induce the banker to open the letter of credit. The security afforded by the letter of credit to the seller would, thus, be impaired.

In view of the exceptions to the "agency theory", a more elaborate analysis of the "offer and acceptance theory", advocated by Professor Davis (in his book *The Law Relating to Commercial Letters of Credit* at p. 65 *et. seq.* and in an article in 52 L.Q.R. 225) might have helped clarifying the difficulties.

Changes have been included in other chapters of the book as well. The decision of *British Immex Co. Ltd. v. Midland Bank* has necessitated amendments in the section about the bill of lading, in the chapter on "The Tender of Documents Under a Credit" (Section I of Chapter IV). The seller's duty—in the absence of stipulation to the contrary—to tender a "clean" bill of lading is well explained.

A further amendment in the same section concerns the discussion of "the description of the goods". Mr. Megrah approves of the decision of Devlin J. (as he then was) in *Midland Bank v. Seymour* [1955] 2 Lloyd's Rep. 147, *i.e.* that the documents constitute a good tender if, between them, they include a full description of the goods in the words of the letter of credit. It should, however, be stressed that one point was left open by the learned judge. He did not decide whether, in addition to the set of documents giving, between them, a sufficient description of the goods, each document should contain what is usually found in it.

The chapter about "The Tender of Documents Under the Credit" includes further amendments. The new, detailed, discussion of the nature of an "all risk" policy is commendable. The addition of a special section dealing with the invoice is also an improvement. So are the sections concerning "the Duty to Advise Principals" and the "Authority to Indemnify the Issuing Banker".

Apart of these major changes in the new edition the book has been brought up to date. Most post 1955 cases, as well as some older cases, which had been overlooked in the previous edition, have been included in the text. The only omission of significance is the decision of the Supreme Court of Australia in *Saffron v. Societe Miniere Cafrika* (1958) 100 C.L.R. 231. It is true that this case is, primarily, concerned with the "payment by letter of credit" clause in the contract of sale. Yet, the case discusses the distinction between irrevocable and confirmed letters of credit. It would, also, have been relevant to the discussion of the "Novation Theory" (p. 21). Moreover, in view of this case and *Enrico Furst & Co. v. W.E. Fischer Ltd*, [1960] 2 Lloyd's Rep. 340 (which is discussed in the new edition) the learned editor should, perhaps, consider the inclusion of a chapter about the "Documentary Credit Clause in the Contract of Sale" in any further edition of this book.

A further case which, most probably, appeared too late in order to find its way into the book is *Dulien Steel Products Inc. of Washington v. Bankers' Trust Co.* 189 F. Supp. 922 (1960). All the other new cases are included in the book. All but one are adequately discussed. The exception is the second written judgment of Devlin J. in *Midland Bank v. Seymour*. In this case Devlin J. discusses, *inter alia*, when should negotiation of drafts drawn under the letter of credit be allowed by the issuing banker. The case is mentioned—with reference to this problem—only once, and very briefly, on p. 172. It is to be regretted that this case is not more fully discussed in the section on "Negotiation Credits" (p. 57 *et seq.*).

The new materials included in the third edition give rise to no further remarks. Observation should, however, be raised with reference to two sections which have been retained in the third edition without amendment.

The first is Section V of Chapter IV, which is entitled "Recourse to the Beneficiary". Mr. Megrah suggests that, if the banker—due to a mistake on his part,—accepts deficient documents from the beneficiary, he can claim repayment before the latter changes his position. The cause of action is said to be quasi-contractual, namely, for money paid under a mistake of fact. It is, with respect, suggested that, perhaps, the acceptance of deficient documents by a banker should be regarded as ratification. Not only does the banker have the means but he is also under a duty to examine the documents. He might, therefore, on the authority of *Beevor v. Marler* (1898) 14 T.L.R. 289 be precluded from bringing an action for

money paid under a mistake of fact resulting from an inadequate inspection. This view would seem to derive support from the case of *Bank of East Asia v. Pang* 140 Wash. 603 (1926).

Exception can also be taken to the view expressed in the section concerning "Forged Documents". Mr. Megrah quotes with approval the *dictum* of Shientag J. in a judgment delivered in the Appellate Division of the Supreme Court of New York in *Sztejn v. J. Henry Schroeder Banking Corporation* 31 N.Y.S. 2d 631 (1941). In this case it was held that a banker is free to reject regular documents known to him to be fraudulent. It should be noted that in *Maurice O'Meare v. National Park Bank* 239 N.Y. 386 (1925) the majority of the New York Court of Appeal held that a bank is under a duty to accept regular documents "irrespective of what it knows or had reasons to believe". Moreover, it is difficult to see what—on part of the banker—would amount to "knowledge" of the fraud. Certainly, not a declaration of his customer (*Laudisi v. American Exchange National Bank* 239 N.Y. 234 (1925)). The doctrine of the *Sztejn* case should, it is submitted, be regarded as limited to the special facts of the case, *i.e.* that the fraud was not disputed at all and was brought to the notice of the banker before the tender of documents by the seller.

It is felt that a further discussion of these two last mentioned problems in the next edition of Gutteridge and Megrah would be of value. These observations should, however, be regarded as of minor importance and by no means as diminishing the value of the present edition. On the contrary, the book, with its rearranged chapters and new authorities, is a considerable improvement to the second edition.

Moreover, the style of the third edition is much clearer than that employed in the second. Another improvement is the setting apart of quotations which, in the third edition, appear in small print. The present edition is, it should be stressed, very readable.

Reference to the cases, too, are given in a more clear and accurate manner than in the second edition. Thus the case which, in the second edition, was entitled "Smith v. River Douglas Catchment Board" is now referred to in its proper manner. And in most cases references are given to their publications in the Law Reports. Only in a few cases, *e.g. Malas (Hamzeh) & Co. v. British Immex Industries Ltd.*, and *British Immex Industries Ltd. v. Midland Bank Ltd.*, references are given only to Lloyd's Reports, although both cases have appeared in the Law Reports. It is suggested that a table of cases, including references to all reports of each case, be included in the next edition.

Another improvement in the third edition is the new set of forms of Appendix C. The instruments used by merchant bankers, in particular, are of interest. The addition of the bibliography, too, is of value.

Another feature of the third edition is its aesthetic and pleasant form. Europe Publications—who are not law publishers—have succeeded in presenting a most commendable volume. It is neatly and clearly printed, italics are inserted whenever necessary, and footnotes are—with the exception of the reference on p. 112 to footnote (d) which is printed on p. 110—very well arranged.

In conclusion it should be said that both, the learned co-author, as well as the publishers, have done a good job. The present, third edition, is even better than the two earlier ones. The practitioner, as well as the academic, should consult this book whenever confronted with problems concerning letters of credit.