NOTES OF CASES

STRICT COMPLIANCE WITH THE TERMS OF A DOCUMENTARY CREDIT

Overseas Union Bank, Ltd. v. *Chun Teng Hwee*

Winslow J. has recently delivered the first Malaysian judgment on documentary letters of credit. The facts of the case, *i.e. Overseas Union Bank, Ltd.* v. *Chua Teng Hwee,*[1] were as follows. The defendant, a merchant of Singapore, agreed to sell a consignment of seaweeds to a Japanese firm of Osaka. At the request of that firm, the Osaka Branch of the Bank of Tokyo opened a documentary credit in favour of the defendant, available by a sight draft of the defendant on the London Branch of the Bank of Tokyo. It was stipulated that the draft should be accompanied by several documents, including an —

> Inspection certificate in duplicate issued by Moine Comte Co. Ltd., Singapore evidencing shipment of about 25 tons of 2240 Ibs. nett of seaweeds *(tengusa)* at Stg. £135.0.0d per ton at 2240 Ibs. nett C.I.F. Osaka (Packed in 112 Ibs. nett per bale in new single hessian cloth) from Singapore to Osaka.

This documentary credit was, apparently, notified to the defendant by the plaintiff-bank.[2] In due course, the defendant presented to the plaintiff-bank a draft (drawn "without recourse") on the London Branch of the Bank of Tokyo. It was accompanied by the required documents, but the "inspection certificate" did not include, in the description of the goods, the word *"tengusa"*. Moreover, although the document was entitled "certificate of inspection", it included the following sentence:

> This report refers to weight only and does not certify to the proper description of the goods nor of the contents of the packages.

The plaintiff-bank was reluctant to negotiate the draft, since it thought that the "inspection certificate" did not comply with the requirements of the letter of credit. It agreed, however, to do so (and to pay the amount of the credit) against an indemnity of the defendant, the operative part of which read:

> In consideration of your negotiation of our above-mentioned bills which, in terms of the relative letter of credit is/are drawn 'without recourse'. We undertake and hereby accept full responsibility and keep you indemnified in respect of any and all discrepancies that may exist between the documents as called for in the terms of the credit and the documents which we now present to you with the above bills.

The plaintiff-bank then forwarded the draft to the London Branch of the Bank of Tokyo, together with a statement that all the required documents had been tendered by the defendant and had been mailed to the Osaka Branch of the Bank of Tokyo. The London Branch thereupon credited the account of the plaintiff-bank with the amount of the letter of credit. Subsequently, however, the plaintiff-bank received a cable from the Osaka Branch, in which it was pointed out that the "inspection certificate" was irregular, and that payment was refused by the Japanese firm (the buyer). A few days afterwards, the London Branch sent a cable to the plaintiff-bank in which it repeated the complaint of the Osaka Branch and asked for an

1. (1964) 30 M.L.J. 165.

2. It is not clear from the judgment whether the plaintiff-bank *confirmed,* the credit or only *advised* it. On this distinction see Gutteridge and Megrah, *The law of Bankers' Commercial Credits,* (3rd ed., 1962), at pp. 45-48; Davis, *The Law Relating to Commercial Letters of Credit,* (3rd ed. 1963), at pp. 96-97.

authority to re-debit the account of the plaintiff-bank with the amount previously credited. The plaintiff-bank gave the required authority and demanded repayment from the defendant. The latter refused to reimburse the plaintiff-bank, which thereupon brought an action.

The plaintiff-bank based its action on the indemnity. It claimed, in the first place, that the "inspection certificate" was a mere "certificate of weight" and, secondly, that it was irregular since it did not include the word *"tengusa"*. The defendant pleaded two defences. In the first place, he argued that the "inspection certificate" constituted a good tender. Secondly, he maintained that the plaintiff-bank was not entitled to recover under the indemnity, since the Bank of Tokyo was not entitled to be repaid by the plaintiff-bank.

Winslow J. found for the plaintiff-bank on all issues and allowed the action. In order to comment on this decision it will be convenient to discuss separately each of the findings.

The missing word "tengusa".

As regards this issue, the learned judge discussed a line of authorities, all of which stress that a banker, who issues a commercial credit, is under a duty to pay the sum of the credit only if the seller complies most strictly with all the terms of the commercial credit.[3] Holding therefore that the omission of the word *"tengusa"* in the "inspection certificate" was fatal, he said:[4]

> It seems to me, from the authorities cited earlier, that the conclusion is inescapable that on the facts of the case before me, there was no such strict accord or exact compliance with the terms of the credit concerned as to justify the plaintiffs in negotiating the draft which was presented in pursuance thereof. If the buyers stipulated in the letter of credit for "seaweeds *(tengusa)"* they were entitled to expect all the documents to mention "seaweeds *(tengusa)"*.

That a seller must comply, most strictly, with the terms of a commercial credit can readily be conceded. The above quoted words imply, however, that each of the documents tendered under a commercial credit must include a complete and strictly accurate description of the goods. This, it seems, was the view of the courts at one time, but it has subsequently been abandoned. An examination of the relevant English authorities will show this most clearly.

In *London & Foreign Trading Corporation* v. *British & North European Bank,*[5] at the request of the plaintiffs, the defendant, an English bank, opened a letter of credit covering a shipment of 500 tons "South African maize meal" in favour of a Singapore firm. The defendant paid that firm the amount of the credit against the tender of (1) a bill of lading for 5895 bags of maize meal (which bill of lading did not include a translation of the bags into terms of tons) and (2) an invoice specifying the same number of bags at 190 lbs. *per* bag, equalling 500 tons. It subsequently turned out that the bags did not contain 500 tons. The plaintiffs brought an action for a declaration that they were entitled to receive from the defendant the amount paid for the missing quantity. Rowlatt J. allowed the action. He decided that the weight should have been properly described in the bill of lading. He further said that it was not permissible to supplement the description in the bill of lading by the statement of the invoice. This part of the decision, it will be shown subsequently, may be doubted. But it is submitted that the learned judge was right in holding that the bill of lading was a bad tender. The letter of credit, apparently, explicitly required that the bill of lading should contain an accurate description of the goods. In view of this requirement, it was insufficient to tender a bill of lading without such a description. Moreover, bills of lading usually contain some specification of weight or

3. The following authorities were discussed: *English, Scottish and Australian Bank, Ltd.* v. *Bank of South Africa* (1922) 13 Ll.L.R. 21; *Donald H. Scott & Co., Ltd.* v. *Barclays Bank, Ltd.* [1923] 2 K.B. 1; Equitable Trust Co. of New York v. Dawson Partners, Ltd. (1927) 27 L1.L.R. 49; Rayner *(J.H.)* & *Co., Ltd.*, v. *Hambro's Bank, Ltd.* [1943] 1 K.B. 37; *Bank Melli Iran* v. *Barclays Bank D.C.O.* [1951] 2 Lloyd's Rep. 367.

4. (1964) 30 M.L.J. at p. 171.

5. (1921) 9 Ll.L.R. 116.

quantity. The bill of lading tendered could therefore be regarded as irregular and a bad tender.[6]

In *Rayner (J.H.) & Co., Ltd.* v. *Hambro's Bank, Ltd.*[7] the defendant-bank opened an irrevocable credit in favour of the plaintiffs, "covering about 1,400 tons Coromandel groundnuts in bags." The plaintiffs presented to the defendant-bank a draft accompanied by (1) an invoice for "Coromandel groundnuts," and (2) three bills of lading, each of which described the goods as "machine-shelled groundnut kernels". The defendant-bank refused to accept this draft, arguing that the description of the goods in the documents was faulty. The plaintiffs thereupon brought an action. It was proved that "machine-shelled groundnut kernels" were the same commodity as "Coromandel groundnuts" and that businessmen would be aware of this fact.

The Court of Appeal dismissed the action. McKinnon L.J. discussed whether the defendant-bank should be affected with knowledge that "machine-shelled groundnut kernels" and "Coromandel groundnuts" were the same commodity. Giving a negative answer, he said:[8]

> ... it is quite impossible to suggest that a banker is to be affected with knowledge of the customs and customary terms of every one of the thousands of trades for whose dealings he may issue letters of credit. A homely illustration is suggested by the books in front of me. If a banker were ordered to issue a letter of credit with respect to the shipment of so many copies of the "1942 Annual Practice" and were handed a bill of lading for so many copies of the "1942 White Book," it would be entirely beside the mark to call a lawyer to say that all lawyers know that the "1942 White Book" means the "1942 Annual Practice." It would be quite impossible for business to be carried on, and for bankers to be in any way protected in such matters, if it were said that they must be affected by a knowledge of all the details of the way in which particular traders carry on their business.

Goddard L.J., in a concurring judgment, said:[9]

> In my opinion, in this case, whether the bank knew or did not know that there was this trade practice to treat "Coromandel groundnuts" and "machine-shelled groundnut kernels" as interchangeable terms, is nothing to the point. They were told to establish a credit, and to pay against a bill of lading describing particular goods, and the beneficiary under that credit presented a bill of lading which was not what they had promised to pay against. Therefore, it seems to me, whether it is reasonable or unreasonable for their principals to say that they want a bill of lading for "Coromandel groundnuts", or whether the bank had. or had not knowledge of some of the trade practices which are referred to, is not the question The question is "What was the promise which the bank made to the beneficiary under the credit, and did the beneficiary avail himself of that promise?" In my opinion, in the present case, he did not, and, therefore, I think that the bank was justified in re fusing to pay.

At first glance, this case seems to support the view that a complete description of the goods is required to be included in each document. But two facts should be noted. In the first place, the Court of Appeal treated the letter of credit as explicitly requesting a complete description of the goods in the bills of lading. This was particularly stressed by Goddard L.J. Secondly, this was not merely a case of incomplete descriptions of the goods in some of the documents. The two documents, *i.e.* the invoice and the bill of lading, gave two entirely different descriptions. It could hardly be doubted that a person, not familiar with the trade, was not in a good position for determining whether "Coromandel groundnuts" and "machine-shelled

6. It is a well known principle that a document which does not include what is usually found in one of its kind is irregular and therefore a bad tender: *National Bank of South Africa* v. *Banca Italiana Di Sconto* (1922) 10 Ll.L.R. 531 at p. 536; *Skandinaviska Kreditaktiebolaget* v, *Barclays Bank* (1925) 22 Ll.L.R. 523 at p. 525; *Midland Bank, Ltd. v. Seymour* [1955] 2 Lloyd's Rep. 147 at p. 152.

7. [1943] 1 K.B. 37.

8. *Ibid.,* at p. 41.

9. *Ibid.,* at p. 43.

groundnut kernels" were one and the same commodity. His immediate reaction to two such different descriptions was likely to be that, they did not refer to the same goods.

A somewhat similar case was *Bank Melli Iran* v. *Barclays Bank* D.C.O.[10] In this case the letter of credit was for "100 new Chevrolet trucks". The documents which the seller tendered described the goods in different manners. The invoice described them as being "in new condition"; a certificate as "100, new, good Chevrolet . . . trucks"; and a delivery order as "new (hyphen) good . . ." McNair J. held that these documents did not constitute a good tender. He said: [11]

> The delivery order . . . described the trucks as "new (hyphen) good." It was suggested that the phrase "new-good" comes into existence by the accident of the typist striking the wrong key. This may be so; but the result was that in this delivery order this composite word "new-good" appeared. In my judgment, this description, like the description "new, good" or "in new condition" is not the same as "new".

Thus, the learned judge stressed not the inadequacy of the descriptions of the goods in the documents but the variations between them. Neither is there any ground for doubting the correctness of his words. If the documents describe the goods in different terms, they might be considered as being contradictory and therefore clearly irregular. The contradiction, further, casts a doubt as to what is really shipped.

It can thus be seen that the last case, as well as the previous one, did not concern the mere omission of descriptive words in a single document. Such a question arose in *Midland Bank, Ltd.* v. *Seymour,*[12] which was, unfortunately, not brought to the attention of Winslow J. In this case the defendant, a merchant of London, agreed to purchase a consignment of "Hongkong duck feathers" from a seller in Hong Kong. He ordered the plaintiff-bank to open a documentary credit in favour of the seller. The "application form", which was a form given by the plaintiff-bank to the defendant for completion, was in the following pattern. It left a blank space in which the defendant listed the documents to be tendered by the seller. Following these there were blank spaces meant for (1) the description of the goods, (2) the quantity and (3) the price. Thus, the description of the goods, *i.e.* "Hongkong duck feathers — 85 per cent. clean" appeared beneath the list of documents. Subsequently, the plaintiff-bank accepted from the seller a draft accompanied by the following documents: (1) an invoice describing the documents in the words of the application form, (2) a bill of lading describing the goods as "Hongkong duck feathers" and (3) several other documents which apparently included the complete description. The defendant refused to take up these documents. He claimed *inter alia* that it was insufficient that all the documents, when read together, gave a perfect description of the goods. In his view the bill of lading (and apparently each other document) should have included all the details mentioned in the application form. Allowing the action, Devlin J. (as he then was) rejected this argument. He discussed at length whether each document should include a complete description of the goods or whether it was sufficient if all the documents gave, between them, such a perfect description. He held that the latter was the correct view.

The learned judge explained that he arrived at this conclusion on two grounds. First, the application form treated the documents as a set and not as individual documents. This was obvious from the fact that the application form stipulated for payment "against delivery of the following documents", which were listed, the list being followed by a description of the goods. This first ground was of course based on the special facts of the case. However, the application form in question was in a very common form and most letters of credit follow the same pattern. This reasoning will therefore be applicable to many cases. The second ground for Devlin J.'s decision is of even wider application. It is lucidly stated by the learned judge as follows: [13]

10. [1951] 2 Lloyd's Rep. 367.

11. *Ibid.,* at p. 375.

12. [1955] 2 Lloyd's Rep. 147.

13. *Ibid.,* at pp. 152-163.

> The second consideration is this. As I have said, either one must say that each document must contain all, or that it is sufficient if the set contains all. If each document contains all, it would produce a state of affairs that would be most unusual. For instance, I suppose rarely if ever does one find the price of contract goods set out in the bill of lading. It is a piece of information which is wholly irrelevant to any of the purposes of the bill of lading, and one does not find it there. Similarly, I suppose one would not find it in the insurance certificate. But I cannot see upon what principle of construction you can say that the bill of lading need not contain the price, but that it must contain the quantity and the full description, except by saying that each of the documents must contain all. Similarly, the term "85 per cent. clean" is one which I suppose could find its way into a bill of lading, but I should have thought on the whole that it was rather unlikely to be there because there again the condition of feathers in the bale — as to whether they are clean or dirty — is not a matter which anyone who is receiving the goods is likely to commit himself to.

This case enunciates, in England,[14] a very important principle. In the absence of provisions to the contrary, it is sufficient if all the documents, when read together, give a complete and fully conforming description of the goods.[15] One must, in this connection, distinguish between two types of cases. On the one hand, if the letter of credit specifically requires a certain description in each or any document, then such a description must be given. This derives support from *London & Foreign Trading Corporation* v. *British & North European Bank* [16] and is echoed in *Midland Bank, Ltd.* v. *Seymour.*[17] On the other hand, if a letter of credit merely specifies that certain documents need be tendered and specifies a general description of the goods, it is sufficient if all the documents, when read together, give a fully complying description. The fact that one part of the description is missing in one of the documents is in such cases not conclusive. However, even in these cases, if the descriptions of the goods in the different documents conflict with each other, then the tender is bad.

It follows that the principle stated by Winslow J. in the case under review is inaccurate. His actual decision is, however, supportable. It appears that the letter of credit specifically stipulated for a complete description of the goods in the "inspection certificate". Under these circumstances it was, of course, insufficient to tender a certificate with an incomplete description.

The Inspection Certificate

The learned judge further held that the "inspection certificate" was a bad tender. The letter of credit, it will be recollected, stipulated for an "inspection certificate" evidencing the shipment of the goods. The certificate tendered by the defendant was entitled "certificate of inspection", but included a sentence that "[t]his report refers to weight only and does not certify to the proper description of the goods nor of the contents of the packages." Evidence was brought to show that this was not an "inspection certificate". Two other certificates of Moine Comte & Co., Ltd., the specified surveyors, were put into evidence. Both, like the document in question, were entitled "certificate of inspection". However, the first certified both the quantity and nature of a shipment of dried prawns. The second one, on the other hand

14. In the U.S.A. this principle has been recognized for a longer time. See *Laudisi* v. *American Exchange, National Bank* 239 N.Y. 234, 146 N.E. 347 at p. 349 (1924): *Maurice O'Meara Co.* v. *National Park Bank of Nem York* 239 N.Y. 386, 146 N.E. 636 at p. 640 (1925). See also *Guaranty Trust of New York* v. *Van Den Berghs* (1925) 22 Ll.L.R. 286, 447, in which Scrutton L.J. (at p. 454) discussed the American doctrine.

15. It should be noted that *Midland Bank, Ltd.* v. *Seymour, (supra}*, was a dispute between banker and buyer whereas the case under review was one between banker and seller. This, however, is immaterial. The same mode of compliance is required in both relationships. This is a most important aspect of the transaction, since any other rule might lead to unsuitable results, *e.g.* to forcing a banker to take up documents from the seller which the buyer will not be forced to accept from the banker. In English law this similarity in the mode of compliance in the different relationships has never been doubted. Thus, *Equitable Trust Co. of New York* y. *Dawson Partners, Ltd.* (1927) 27 Ll.L.R. 49, which concerned a dispute of banker-buyer was cited in *Rayner (J.H.) & Co., Ltd.* v. *Hambro's Bank, Ltd., (supra),* which was a dispute of banker-seller and in many other cases. This similarity has been expressly recognised in the U.S.A. in *Camp* v. *Corn Exchange National Bank* 285 Pa. 337. 132 A. 189 at p. 191 (1926).

16. (1921) 9 Ll.L.R. 116.

17. [1955] 2 Lloyd's Rep. 147 at p. 152.

certified the weight of another consignment of dried prawns but did not purport to certify their origin or nature. It contained the same reservation as the instrument in question. On the force of this evidence Winslow J. said: [18]

> The mere fact that Moine Comte & Co., Ltd. have issued and do issue certificates of inspection as such, without qualification, separately from certificates of weight, *albeit* under a printed heading which they always use, indicating inspection, shows that there is some kind of trading practice which lends credence to the submission that there is a definite distinction between the two. I do not think that the mere fact that the words "Certificate of Weight" appear as a separate sub-heading under the general printed heading "Certificate of Inspection" (as used on all their printed forms) converts a certificate of weight into a legitimate certificate of inspection for all purposes. It is in short a certificate of inspection of weight and little else apart from what it says. It is not a certificate of inspection of the goods themselves.

This is an unexpected conclusion. It is, with respect, submitted that the evidence was insufficient to warrant it. Whether Moine Comte & Co., Ltd. treated a specific instrument as an "inspection certificate" or not could hardly indicate the existence of a trade practice. The question to be decided was whether the instrument in question amounted at law to an inspection certificate. The mere fact that a certain company or individual had formed an opinion or even a practice on the matter could hardly dispense with the necessity of further analysis, especially since there was no evidence to indicate that either of the parties had any knowledge of the eccentric terminology employed by Moine Comte & Co., Ltd.

Since there is no authority as to the meaning of the term "inspection certificate" one can only rely on the general principles of the interpretation of documents. It should be noted that the term "inspection certificate" is not a particularly elegant one. Any certification involves an "inspection" or "examination". A certificate of weight should be given after an inspection of the weight of a shipment of goods; a "certificate of origin" after an inspection of the origin; and a "certificate of quality" after an inspection of the quality. It follows that any of these certificates is a "certificate of inspection". In other words, the term is ambiguous, because it does not explain what type of an inspection is required *(i.e.* of origin, quality, weight, quantity or analysis).

In so far as the term was ambiguous, it should have been interpreted according to the wellknown "maxim in law that every man's grant shall be taken by construction of law most forcibly against himself." [19] This rule has been explained most clearly by Lord Evershed M.R. in *John Lee & Son (Grantham), Ltd.* v. *Railway Executive;* [20]

> We are presented with two alternative readings of this document and the reading which one should adopt is to be determined ... by a consideration of the fact that the defendants put forward the document. They have put forward a clause which is by no means free from obscurity and have contended that ... it has a remarkably, if not an extravagantly, wide scope, and I think that the rule *contra proferentem* should be applied ..."

If this *contra proferentem* rule were applied in the case under review, the issue should have been decided against the plaintiff-bank. The term "inspection certificate" was capable of more than one interpretation. It could mean a certificate given after an inspection of each and every feature of the goods, *i.e.* nature, origin, weight, quantity and quality. It could equally mean a certificate concerning an inspection of one of these details. Since this ambiguity was due to the use of an inadequate terminology in the letter of credit, which was prepared by the plaintiff-bank, the construction least favourable to it should have prevailed. It follows that the instrument in question, which was described by the learned judge as "a certificate of inspection of weight", should have been regarded as adequate.

18. (1964) 30 M.L.J. at p. 170.

19. Co. Litt. 36a, 183a, 183b, cited in *Chitty On Contracts,* (22nd ed., 1961), para. 613.

20. [1949] 2 All E.R. 581 at p. 583. cited in Chitty, loc. *cit.* See also *Edis* v. *Bury* (1827) 6 B. & C. 433; *Lloyd* v. *Oliver* (1852) 18 Q.B. 471; *Beck & Co.* v. *Szymanowski* [1924] A.C. 43; *Houghton V. Trafalgar Insurance* [1954] 1 Q.B. 247.

The view that the certificate in question was a good tender can obtain further support from a provision in the new revision of the Uniform Customs and Practice for Documentary Credits.[21] Article 31 of these regulations, which apply in Malaysia,[22] reads:

> When other documents are required, such as ... Certificates of Origin, of Weight, of Quality or of Analysis, etc., without further definition, banks may accept such documents as tendered, without responsibility on their part.

Obviously, it is not the duty of banks to verify what are the legal effects of ,such documents. In so far as a document bearing the right title and general particulars is tendered, the bank should accept it. This is an important provision for the determination of cases like the one under review. Obviously, the only way of showing what exactly were the requirements of an "inspection certificate" would have been to prove a mercantile trade usage. Apart from the difficulty of proving such a usage, it has already been shown that bankers should not be affected with knowledge of such specific trade usages. It should therefore be considered sufficient if the beneficiary of a documentary credit submitted a certificate which, on its face, purported to be what was required.

The Independence of the Letter of Credit

Another defence raised in the case under review concerned the nature of the goods. The defendant argued that the goods were accepted by the Japanese buyer without protest, and that the plaintiff-bank was therefore not entitled to recover. This argument was rejected by Winslow J., who said: [23]

> Further, I do not think that in a case like this, which is based on the defendant's liability on his own indemnity against discrepancies as between the documents submitted in purported compliance with the letter of credit and those actually required thereunder, any question arises as to whether the goods actually shipped were nuts and bolts or seaweeds *(tengusa).* If the goods actually shipped and received were seaweeds *(tengusa),* the buyers, on their contract with the seller, would not have had cause for complaint.
>
> So far as the status of bankers who negotiate letters of credit is concerned, however, their position is different. They are not concerned, as such, with the contract between the seller and the buyers and this, I think, is where the fallacy in [counsel for the defendant's] approach to the whole case lies. If the banker does not receive documents exactly complying with the terms of the credit he is entitled to refuse payment.
>
> If he refuses payment for non-compliance the seller should look for redress to the buyers if he insists that he has shipped the right goods. If the banker finds that the documents comply exactly with the terms of the letter of credit he will pay, even if it should subsequently turn out that the wrong goods have been shipped. In such a contingency it would be up to the buyers to pursue their remedies under their contract with the seller and the banker is not concerned in the matter at all. He is merely the conduit pipe through which the money flows under the letter of credit. The business of banking could not be securely transacted if bankers were to find themselves embroiled in disputes between the buyers and the seller in regard to the question whether the goods are up to contract or not where there has been exact compliance between the documents submitted and those called for in the letter of credit. /

This, it is submitted, is a commendable pronouncement. The letter of credit is, indeed, independent of and unqualified by the contract of sale. This is a most

21. (1962 Revision), promulgated by the International Chamber of Commerce, *Brochure* 222.

22. See list of countries which on April 24th, 1964 adopted the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce.

23. (1964) 30 M.L.J. at p. 171.

fundamental principle [24] and it is surprising that counsel for the defendant attempted to question it. It is now most clearly expressed in General Provision c. of the Uniform Customs and Practice for Documentary Credits, which reads:

> Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.

The Enforcement of the Indemnity

The defendant further argued that the plaintiff-bank was not entitled to recover under the indemnity. This defence was rejected in the following words: [25]

> A considerable amount of argument was directed towards the question whether the plaintiffs were legally compellable to repay the issuing bank. Having regard to my findings as to the inadequacy of the documents presented, it follows that they were in fact so compellable. As agents of the issuing bank they were bound to make repayment because they had innocently misrepresented to the latter that the documents were in order. Acting on this assurance, the issuing bank credited the plaintiffs with the required amount which they would not have done had they been aware of the true facts. As soon as they received the documents they repudiated the credit. There was therefore no question of waiver or ratification on the part of the issuing bank.

Since the defendant, as has already been pointed out, did not tender an adequate set of documents this decision is fully supportable. The quoted words might derive further support from the decision of the House of Lords in *Hedley Byrne & Co., Ltd.* v. *Heller & Partners,* Ltd.[26] This case has established that a person may be liable for an innocent misrepresentation made in connection with a business transaction. The rule in this case has been propounded in connection with instances in which the innocent misrepresentation is made in reply to an enquiry. There is, however, no reason for treating the rule as being limited to that type of case. A person who volunteered information on which he knew that another would rely should not be in a better position than a person who gave similar information in answer to a question. The two should be equally aware of the damage which might arise from their statements and should be considered as owing the same duty of care and skill.

Conclusion

In view of the special facts of the case, the decision is undoubtedly correct, Since the letter of credit explicitly required a certificate of inspection relating to seaweeds *"tengusa"*, such a document should have been tendered. The omission of the word *"tengusa"* was accordingly decisive. As regards the sufficiency of the certificate of inspection, the decision might be doubted. It is perhaps unfortunate that the omission of a single word in one document had so harsh a result. But if the letter of credit and its terms were unsatisfactory, the defendant should have required amendments before performing his bargain. Since, apparently, he was satisfied with the letter of credit he should have made a point of submitting a strictly conforming tender. This case can be well described in the words of Winslow J. as "The Mysterious Affair of the Missing Word." [27]

E. P. ELLINGER.

24. In England see *Urguhart Lindsay & Co., Ltd.* v. *Eastern Bank, Ltd.* [1922] 1 K.B. 318 at pp. 322-323; *Malas (Hamzeh) & Sons* v. *British Imex Industries, Ltd.* [1958] 2 Q.B. 127 at p. 129. In the U.S.A. see *Lamborn* v. *Lake Shore Banking & Trust Co.* 196 App. Div. 504, 188 N.Y.S. 162 at p. 163 (1921), *affirmed* 231 N.Y. 616, 132 N.E. 911 (1921); *National City Bank* v. *Seattle National Bank* 121 Wash. 476, 209 P. 705 at p. 707 (1922); *Kingdom of Sweden v. New York Trust Co.* 197 Misc. 431; 96 N.Y.S. 2d 779 at p. 787 (1949); *Dulien Steel Products, Inc., of Washington* v. *Bankers Trust Co.* 189 F. Supp. 922 at p. 927 (1960), *affirmed* 298 F. 2d 836 (1962) noted in (1962) 4 Malaya L.R. 307.

25. (1964) 30 M.L.J. at p. 172.

26. [1963] 3 W.L.R. 101.

27. (1964) 30 M.L.J. at p. 166.