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In The Privy Council

29 OF 1971

ON THE APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES
IN CAUSE No. 5160 of 1968

BETWEEN

JALSARD PTY. LIMITED

(Trading as JALSARD TRADING COMPANY)

.... Plaintiff (Respondent)

AND

THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED

.... Defendant (Appellant)

VOLUME ONE

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AMENDED ISSUES FOR TRIAL

TRANSCRIPT OF EVIDENCE

JUDGEMENT OF MR. JUSTICE MACFARLAN

THE RULE GRANTING FINAL LEAVE

CERTIFICATE OF PROTHONOTARY

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LEGAL STUDIES
10 MAY 1973
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IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES IN CAUSE
NO. 5160 OF 1968

<p>BETWEEN</p> <p>AND</p>	<p>JALSARD PTY. LIMITED (Trading as JALSARD TRADING COMPANY) Plaintiff (Respondent)</p> <p>THE COMMERCIAL BANKING COMPANY OF SYDNEY LIMITED Defendant (Appellant)</p>
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AMENDED ISSUES FOR TRIAL

Writ Issued: 10th July, 1968
Appearance Entered: 28th August, 1968

*In the
Supreme Court of
New South Wales*

No. 1

*Amended issues
for trial*

STATEMENT OF CLAIM: 9th October, 1968

- 1 The Plaintiff is a Company duly incorporated under the Companies Act 1961 as amended and able to sue in and by its said corporate name and style.
- 2 The Defendant is a Company duly incorporation and is liable to be sued in and by its said corporate name and style.
- 3 At all material times the Defendant has carried on the business of banking. As part of such business the Defendant arranges on behalf of its customers facilities for furnishing letters of credit overseas and advises customers in connection with transactions in which customers are purchasing goods from abroad. 10
- 4 The Plaintiff carries on business under the name Jalsard Trading Company. Jalsard Trading Company carried on business, inter alia, as an importer of goods from overseas. The Plaintiff was at all material times a customer of the Defendant.
- 5 Prior to the breaches hereinafter alleged and in or about the month of December 1966 the Plaintiff by its director Robin Diana Davey informed the Defendant by the manager of its overseas department Mr. Karman that it intended to engage in the importation of goods from Taiwan. The Plaintiff further informed the Defendant that it was unfamiliar with the procedure for obtaining letters of credit and for the payment of goods which were to be purchased by it f.o.b. for shipment from Taiwan. The Plaintiff sought advice from the Defendant as to the necessary procedures and the Defendant by the said Mr. Karman proffered certain advice. 20
- 6 Included in such advice was a statement the substance whereof is as follows: –
“You should have a certificate of inspection. This is a certificate given by your agents certifying that the goods are up to standard at the time of being loaded on the ship.”
- 7 Thereupon and from time to time the Plaintiff purchased goods in the Republic of Taiwan f.o.b. for shipment from Taiwan and obtained through the Defendant letters of credit by which payment for the goods was made. 30
- 8 In respect of each such letter of credit the Plaintiff signed a document in the form provided by the Defendant. In each such form it was provided that drafts presented for negotiation must be accompanied by certain documents. One of such documents was a certificate of inspection by which the Plaintiff intended that there should be produced a document from its agent in Taiwan that the agent had inspected the goods and that they were up to standard at the time of shipment. The Defendant well knew and understood that the document entitled “Certificate of Inspection” was intended to mean such a certificate. In each such case when drafts were presented for negotiation they were accompanied by a certificate or certificates from the Plaintiff’s agent in Taiwan certifying that the goods had been inspected and were up to standard at the time of being loaded on the ship or ships on which they were to be carried. 40

9. By request in writing dated the 11th day of July 1967 the Plaintiff requested the Defendant to open on its account an irrevocable credit authorising Raymond & Company Limited of Taipei Taiwan to draw on it for any sum or sums not exceeding in all \$US.16,920 purporting to cover the invoice cost f.o.b. of 75 gross battery operated Christmas lights round shape and 75 gross battery operated Christmas lights lantern shape at \$US.9.40 currency per dozen boxes of Taiwan origin to be shipped on the Plaintiff's account from Taiwan to Sydney in two shipments as therein specified, the first shipment not later than the 7th day of August 1967 and the second shipment not later than the 1st day of September 1967.
10. The request provided that the drafts therein referred to must be accompanied by the documents therein specified. The Plaintiff craves leave to refer to the said request when produced as if the same were fully set forth herein. 10
11. The Defendant accepted the said request in the course of its said business and the Plaintiff agreed to pay the Bank's charges in respect thereof.
12. By letter dated the 2nd day of August 1967 the Plaintiff requested that certain amendments be made to the said request. The said letter omitting formal parts was in the following terms.
"Re Documentary Letter of Credit No. 3/12341 for US\$16,920.00 in favour of Raymond & Company Ltd.
"Please amend this Letter of Credit as follows:— 20
Delete: 'To be shipped from Taiwan to Sydney as follows: 38 gross boxes each shape not later than 7th August, 1967 and 37 gross boxes each shape not later than 1st September, 1967.'
Substitute: 'To be shipped from Taiwan to Sydney as follows:—
not less than 38 gross boxes each shape not later than 10th September, 1967
balance each shape not later than 5th October, 1967.'
Extend expiry date to 15th October, 1967.
Additional document required.
Certificate of Inspection.
Please add the following clause:— 30
'Beneficiary is to forward non negotiable copies of all documents by airmail direct to Gollin and Company Ltd. 50 Clarence Street, Sydney and must certify on invoices that this has been done.'
All your charges to be debited to our account."
13. By letter dated the 3rd day of August 1967 the Defendant agreed to amend the request in accordance with the Plaintiff's letter of the 2nd day of August 1967. The Plaintiff craves leave to refer to the Defendant's said letter when produced as if the same were fully set forth herein.
14. The "Certificate of Inspection" referred to in the Plaintiff's said letter by reason of the statement made on behalf of the Defendant in paragraph 6 hereof and the subsequent course of dealing between the parties as alleged in paragraphs 7 and 8 hereof was intended by the Plaintiff and understood by the Defendant to mean a certificate of inspection by the Plaintiff's agent in Taiwan certifying that the goods mentioned in the request referred to in paragraph 9 hereof were up to standard at the times they were loaded on the ships upon which they were to be carried. 40
15. The goods mentioned and referred to in the request referred to in paragraph 9 hereof were shipped from Keelung Taiwan in two shipments. The first shipment was on the vessel "Taiyuan" on or about the 3rd day of September 1967 and the second shipment was on the "George Anson" on or about the 3rd day of October 1967.
16. At or about the time of each such shipment and at or about the time of the presentation of the drafts there were handed to the Defendant's agent in Taiwan certain documents. These documents did not include any certificate in relation to either shipment by the Plaintiff's agent or otherwise that the goods were up to standard at the time of being loaded on the ships on which they were to be carried. 50

17. The Defendant by its agent caused drafts for sums totalling \$US.16,920 to be paid to Raymond & Company Limited without any such certificates of inspection being received and the Plaintiff says that payments of the drafts which were subsequently made were accordingly contrary to the provisions of the said request dated the 11th day of July 1967 as amended by the letters of the 2nd and 3rd days of August 1967 hereinbefore mentioned.
- 17A The Plaintiff also says that the Defendant by its agent Mr. Karman negligently carelessly and unskilfully advised it in connection with the necessity for and specification of the certificate of inspection mentioned in paragraph 6 hereof.
- 17B By reason of such advice the Plaintiff suffered the damage more particularly alleged in paragraph 19 hereof. 10
18. On arrival in Australia large quantities of the goods were found to be defective for the following reasons:—
- (a) Faulty and loose contacts in the circuit causing failure of the bulbs to light or to flicker or to flash out of phase;
 - (b) faulty screw connections from battery in which the screwed portion was left in the battery or was too loose to risk screwing into the battery socket;
 - (c) sets contained defective globes;
 - (d) sets not working at all which had bare wires at the cross over points;
 - (e) poor workmanship and finish. 20
- Each defect was in existence prior to the goods leaving Taiwan and each defect would have been discovered if inspection had been made at or about the time of shipment.
19. As a result of these defects the Plaintiff was unable to sell the said goods in Australia and lost the moneys which were paid by the Plaintiffs therefor and moneys paid to the Collector of Customs. In addition the Plaintiff incurred expense in having the said goods examined in Australia and incurred interest and bank charges, and freight bonding and cartage charges and was otherwise damnified. Particulars of the Plaintiff's claim for damages are as follows:—
- | | | |
|--|--------------------|----|
| 11th day of July 1967 sold to the Plaintiff and bought by the Plaintiff from the Defendant \$US.16,920 | \$15,252.87 | 30 |
| Gollin and Company Limited for examination and testing of lights | 1,040.00 | |
| Sydney Chamber of Commerce for examination of lights | 64.00 | |
| Collector of Customs for Customs Duty | 5,136.43 | |
| Cartage and bond store charges | 384.46 | |
| Freight charges | 1,003.75 | |
| Interest and bank charges together with interest at the rate of \$1.87 per day | 628.01 | |
| | \$23,509.52 | |
20. By request in writing dated the 21st day of December 1967 the Plaintiff requested the Defendant to open an account by an irrevocable credit authorising Gollin and Company Limited to draw on it for any sum or sums not exceeding in all \$A.5,069.70 purporting to cover the invoice cost f.o.b. of toys of Hong Kong origin to be shipped on the Plaintiff's account from Hong Kong to Sydney. The request further provided that the drafts must be presented for negotiation not later than the 27th day of January 1968. The Plaintiff craves leave to refer to the said request when produced as if the same were fully set forth herein. 40
21. By letter dated the 21st day of December 1967 the Defendant accepted the said request and debited the Plaintiff's account with its charges in respect thereof. The Plaintiff craves leave to refer to the said letter when produced as if the same were fully set forth herein. 50

22. By letter dated the 3rd day of January 1968 the Plaintiff requested that the expiry date of the credit referred to in the said request be extended to the 31st day of March 1968. By letter dated the 4th day of January 1968 the Defendant agreed to this request. The Plaintiff craves leave to refer to the said letters when produced as if the same were fully set forth herein.
23. Contrary to the instructions contained in the said request as amended by the said letters the defendant permitted Gollin and Company Limited to draw on it in the sum of \$6,349.69 that is to say for the sum exceeding the amount specified in the request by \$1,279.99.
24. The said sum of \$1,279.99 was not authorised by the Plaintiff to be paid and the same was paid by the Defendant without the Plaintiff's authority. 10
25. The Plaintiff claims the said sum of \$1,279.99 from the Defendant additionally to the amounts claimed in paragraph 19 hereof.

J.J. WATLING
Plaintiff's Attorney

STATEMENT OF DEFENCE: dated 18th November, 1968

*In the
Supreme Court of
New South Wales*

No. 1

*Amended issues
for trial*

- (1) The Defendant admits the facts alleged in paragraphs 1, 2, 3 and 4 of the statement of claim.
- (2) In answer to paragraph 5 of the statement of claim the Defendant denies that Mr. Karman was at any material time the manager of its Overseas Department and says that his position with the Defendant was an officer therein.
- (3) In further answer to paragraph 5 of the statement of claim the Defendant denies that the Plaintiff sought advice from the Defendant as to the necessary procedures in relation to obtaining letters of credit or for the payment of goods which were to be purchased by it f.o.b. for shipment from Taiwan AND further denies that the Defendant by the said Mr. Karman or otherwise proffered certain or any advice to the Plaintiff. In further answer to the said paragraph the Defendant says that it furnished certain information generally to the Plaintiff and expressed certain views as to the procuring of certificates of inspection but the Plaintiff expressed disagreement with such views and expressed its intention to act otherwise. 10
- (4) In answer to paragraph 6 of the statement of claim the Defendant repeats its denial that it gave advice to the Plaintiff and further denies that it made a statement to the Plaintiff the substance where of was in or to the effect of the terms set forth in the said paragraph 6.
- (5) The Defendant admits the facts alleged in paragraph 7 of the statement of claim. 20
- (6) In answer to paragraph 8 of the statement of claim, the Defendant denies that the document signed by the Plaintiff in respect of each letter of credit therein referred to provided that drafts presented for negotiation must be accompanied by a certificate of inspection.
- (7) In further answer to paragraph 8 of the statement of claim the Defendant does not know and cannot admit that the Plaintiff intended that to constitute a certificate of inspection there should be produced a document from its agent in Taiwan that the agent had inspected the goods and that they were up to standard at the time of shipment.
- (8) In further answer to paragraph 8 of the statement of claim the Defendant denies that it knew or understood that any document entitled "Certificate of Inspection" therein referred to was intended to mean a certificate constituting a document from the Plaintiff's agent in Taiwan that the agent had inspected the goods and that they were up to standard at the time of shipment. 30
- (9) In further answer to paragraph 8 of the statement of claim the Defendant denies that in each case therein referred to when drafts were presented for negotiation they were accompanied by a certificate or certificates from the Plaintiff's agent in Taiwan certifying that the goods had been inspected and were up to standard at the time of being loaded on the ship or ships on which they were to be carried.
- (10) The Plaintiff admits the facts alleged in paragraphs 9, 10, 11, 12 and 13 of the statement of claim. 40
- (11) In answer to paragraph 14 of the statement of claim, the Defendant repeats its denial of the making of the statement alleged in paragraph 6 of the statement of claim and repeats its respective denials of facts alleged in paragraph 8 of the statement of claim and further denies that the facts alleged in paragraphs 7 and 8 of the statement of claim constituted a course of dealing between the parties.
- (12) In further answer to paragraph 14 of the statement of claim the Defendant does not know and is unable to admit that the "Certificate of Inspection" therein referred to by

reason of the alleged statement made on behalf of the Defendant or the alleged subsequent course of conduct between the parties or at all was intended by the Plaintiff to mean a certificate of inspection by the Plaintiff's agent in Taiwan certifying as therein alleged.

- (13) In further answer to paragraph 14 of the statement of claim the Defendant denies that the "Certificate of Inspection" therein referred to was by reason of the statement or the subsequent course of dealing alleged in the said paragraph or otherwise at all understood by the Defendant to mean a certificate of inspection by the Plaintiff's agent in Taiwan certifying as alleged in the said paragraph 14.
- (14) The Defendant admits the facts alleged in paragraph 15 of the statement of claim. 10
- (15) In answer to paragraphs 16 and 17 of the statement of claim the Defendant denies that payments of the drafts therein referred to were by reason of the facts therein alleged or otherwise at all contrary to the provisions of the request dated 11th July, 1967 as amended by the letters dated 2nd and 3rd August, 1967 respectively therein referred to.
- (16) In further answer to paragraphs 16 and 17 of the statement of claim the Defendant says that payment of each of the drafts therein referred to was specially and expressly or impliedly authorised by the plaintiff with knowledge and/or notice of the facts alleged in paragraph 16 of the statement of claim and was ratified and acquiesced in by the plaintiff. 20
- (16A) In answer to paragraphs 17A and 17B of the statement of claim the Defendant –
- (a) Repeats its denial that the Plaintiff sought advice from the Defendant and that it gave advice to the Plaintiff.
 - (b) Denies that in the circumstances it was under any duty or owed any obligation to the Plaintiff in respect of giving of advice to the Plaintiff as alleged.
 - (c) Denies that it negligently carelessly or unskilfully advised the Plaintiff as alleged or at all.
 - (d) Denies that by reason of any advice as alleged the Plaintiff suffered any damage as alleged.
- (17) In answer to paragraph 18 of the statement of claim the Defendant does not know and is unable to admit that on arrival in Australia large quantities of any of the goods were found to be defective for the reasons alleged or otherwise or that each defect was in existence prior to the goods leaving Taiwan or that each defect would have been discovered if inspection had been made at or about the time of shipment. 30
- (18) In further answer to paragraph 18 of the statement of claim the Defendant says that a certificate of inspection of the goods at or about the time of shipment was included in the documents handed to the Defendant's agent in Taiwan at the time of presentation of the drafts in respect of each shipment of the goods referred to in the said paragraph 18.
- (19) In answer to paragraph 19 of the statement of claim the Defendant does not know and is unable to admit that as a result of the defects therein referred to or at all the Plaintiff was unable to sell the goods in Australia or that it lost the moneys therein referred to or incurred the expenses therein referred to or was otherwise damnified. 40
- (20) In further answer to paragraph 19 of the statement of claim the Defendant says that the Plaintiff has been recouped the amount of the damage therein alleged to the extent of an amount recovered by it from the seller of the goods.
- (21) In further answer to paragraphs 5 to 19 inclusive and including paragraphs 17A and 17B of the statement of claim the Defendant submits that the facts therein alleged do not disclose a cause of action against the Defendant, and the Defendant craves the same benefit from this defence as if it had demurred to the statement of claim. 50

(22) The Plaintiff admits the facts alleged in paragraphs 20, 21 and 22 of the statement of claim.

(23) In answer to paragraphs 23, 24 and 25 of the statement of claim the Defendant denies that the sum of Twelve hundred and seventy nine dollars ninety nine cents (\$1,279.99) was not authorised by the Plaintiff to be paid or that the same was paid by the Defendant without the Plaintiff's authority.

(24) In further answer to paragraphs 23, 24 and 25 of the statement of claim the Defendant says that payment of the total sum of Six thousand three hundred and forty nine dollars sixty nine cents (\$6,349.69) was permitted to be made only after cheques drawn by the Plaintiff for the purpose of enabling such payment to be made had been delivered by the Plaintiff to the Defendant. 10

M.S. EDWARDS
Defendant's Attorney

REPLY dated: 12th December, 1968.

The Plaintiff joins issue with the Defendant upon its Statement of Defence herein.

J.E. THOMSON
Plaintiff's Attorney

DATED this 24th day of October 1969.

J. E. Thomson (sgd)
Solicitor for the Plaintiff 20
68 Pitt Street
Sydney

*In the
Supreme Court of
New South Wales*

No. 1

*Amended issues
for trial*

Monday, 9th March, 1970.

JALSARD PTY. LIMITED v. THE COMMERCIAL BANKING COMPANY
OF SYDNEY LIMITED

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence*

MR. BYERS, Q.C. and MR. SHEPPARD, Q.C. and MR. JENKYN appeared for the plaintiff.
MR. KENNY, Q.C. and MR. KEARNEY appeared for the defendant.

(Mr. Byers opened to his Honour and referred his Honour to the pleadings. Mr. Byers referred his Honour to the admissions.)

(By consent a copy of a letter from the plaintiff to the defendant dated 26th February 1970 tendered and marked Ex. B.)

(His Honour directed that the pleadings be marked as Ex. A.)

(Mr. Byers addressed further.)

(A copy of a letter from the plaintiff's solicitors to the defendant's solicitors dated 11th December 1968 and the original reply dated 15th May 1969 was tendered and without objection both letters were marked Ex. C.) 10

(Mr. Byers tendered a document dated 4th October 1968 but informed his Honour that the date is clearly in error, 1967, this document produced by the defendant which is a copy of a letter sent by the defendant to the plaintiff: document marked Ex. D.)

(Mr. Byers called for a letter from Messrs. Fell and Starkey to the defendant dated 9th October 1967, being the defendant's document numbered 63 on discovery: produced, tendered, with attached cheque, and marked Ex. E.)

(Tendered copy of letter from defendant to secretary of Jalsard Trading Company dated 1st November 1968 and a copy produced referring to the year 1967 and, without objection, marked Ex. F.) 20

(Tendered letter from the defendant to the secretary of Jalsard Trading Company dated 18th December 1968. Mr. Byers referred his Honour to the first three paragraphs only. He asked his Honour to disregard certain writing on this document.)

HIS HONOUR: You said 18th December 1968. Is that right?

MR. BYERS: I beg your pardon. 1967. If your Honour looks at the third paragraph your Honour will be able to connect the amount of money referred to in the last paragraph.

(Letter referred to above marked Ex. G.)

(Tendered statement of account of Jalsard Pty. Limited with the defendant commencing 29th September 1967 and concluding on 25th October 1967. Mr. Byers asked his Honour to disregard pencilled writing. Without objection marked Ex. H.) 30

(Mr. Byers called on subpoena the manager of the Commercial Banking Co. of Sydney Limited, the defendant.)

(Mr. Kenny stated he had already detached one document from the subpoena, the cheque numbered 58892 which was now part of Ex. E.)

MR. KENNY: As far as the rest is concerned Mr. Carman is here and can answer formally, if required, but I have been handed this subpoena together with such documents as we have available at the moment.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson — examined*

This (subpoena) was served on Friday afternoon, I understand. It is extremely wide and it may be that there are some other documents which, after a long search, could turn up but at the moment, that is it.

HIS HONOUR: It is your intention to pursue your inquiries, is it?

MR. KENNY: It is not, really.

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HIS HONOUR: I inferred it from what you said.

MR. KENNY: No. I do not think that we would be pursuing the inquiries any further. This is what we produce. If we are asked for any particular document I am sure we would pick it out for you.

(Document shown to Mr. Byers.)

(Mr. Byers called for a letter from Messrs. Fell and Starkey to the defendant dated 3rd January 1968. After discussion the call was amended to a letter, Jalsard Trading Co., 3rd January 1968: photostat copy produced. Mr. Byers' more legible copy tendered. Without objection marked Ex. J.)

HIS HONOUR: Is the letter of 21st December 1967 in evidence? I do not think it is.

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MR. BYERS: I have not tendered that.

HIS HONOUR: This is a reply to it.

(Mr. Byers added a further document to the tender and also, by leave, added a further letter from the defendant to the secretary of the Plaintiff dated 4th January 1968. There was no objection. Three letters dated 21st December 1967, 3rd January 1968 and 4th January 1968 incorporated as Ex. J.)

(Mr. Byers called for a letter from the plaintiff to the defendant dated 21st February 1968 and a further letter of 15th May 1968.

Tendered letter of the plaintiff to the defendant of 21st February 1968 and a letter from Messrs. Fell and Starkey to the defendant dated 15th May 1968: both letters marked Ex. K.)

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ROBIN DIANA WILSON
Sworn, examined as under.

MR. BYERS Q: I think your full name is Robin Diana Wilson? A. Yes.

HIS HONOUR: (to witness) Keep your voice up.

MR BYERS Q: You live at 2 March Street, Bellevue Hill? A. Yes.

Q. You are a married woman and I think you are also a director of the company concerned?
A. Yes, I am.

Q. I think during the year 1967, and 1968, your surname was Davey? A. That is correct.

Q. Were you, in those years, the managing director of the plaintiff company, Jalsard Pty. Ltd.? A. I was.

Q. Were you a shareholder? A. I was, yes; I held a share in the company.

Q. Prior to December of 1966 had you any personal experience in importing or exporting goods? A. No, none at all.

Q. During the year 1966 did you go to Taiwan? A. Yes, I did.

Q. That was for, initially in any event, a holiday; was it? A. That is correct, yes.

Q. Approximately when was it during that year that you went to Taiwan? A. Approximately September/October 1966.

Q. Whilst you were there did you observe that there were certain goods which you thought could be imported into Australia? A. I did. 10

Q. What type of goods was it that you noticed in Taiwan? A. There were snakeskins and handicraft goods, Christmas decorations, perhaps later plastic goods.

Q. Snakeskins, to be used for what purpose? A. For lasting shoes and handbags.

Q. These Christmas decorations were the little things one puts up in the home at Christmas-time? A. Yes, that is correct.

Q. When you were over there on that occasion, having observed these matters, did you pursue your inquiries any further in Taiwan? A. I went to various commercial people in Taiwan and asked their advice as to manufacture. I went and saw two or three banks there.

Q. You saw two or three banks. Did you, on that occasion, come into contact with any particular person in Taipei? A. I was introduced to Raymond & Co. — to the managing director of it. 20

Q. To the managing director of Raymond & Co. — I think you said? A. Yes.

Q. I take it you spoke to him on some occasion, did you not? A. Yes.

Q. In connection with some plans you had in mind? A. At this point in time, mainly snakeskins.

Q. How was it that you happened to come into contact with the managing director of Jackson & Co. — I beg your pardon — Raymond & Co.? I beg your pardon? A. It was suggested to me as a reputable trading company if I was interested in trade. (Objected to.)

(Counsel addressed. His Honour informed Mr. Byers that if he pressed the matter his Honour would rule against him at this stage. His Honour allowed Mr. Byers to use this evidence subject to objection.) 30

Q. I think Taipei is the capital of Taiwan, is it not? A. Yes, it is.

Q. And it is not on the coast? A. No.

Q. The harbour city is a city called Keelung? A. That is correct.

Q. Then, I take it, you came back from Taipei, did you, in 1966? A. In October approximately — towards the end of October 1966.

Q. After you had come back from Taiwan did you go to see anyone in the defendant bank? A. Yes. I went to the International Banking Division.

Q. Do you remember what officer it was? A. Either Mr. Parker or Mr. Stevens, or both.

Q. Which office of the bank was this; head office, was it? A. Yes.

Q. Did you have some discussion with either Mr. Parker or Mr. Stevens? A. Yes, I did. I informed them that I – (Objected to. Mr. Kenny addressed.)

MR. KENNY: Perhaps I should mention your Honour I have Mr. Carman in court. I meant to mention that.

HIS HONOUR: I have not made any order.

(Mr. Kenny addressed further and objected to the conversations with Mr. Parker or Mr. Stevens. Mr. Byers replied. Question withdrawn.)

MR. BYERS Q: Was there any discussion between yourself and Mr. Stevens or Mr. Parker, as the case may be, concerning importing? A. Yes. 10

Q. What was said by you to Mr. Parker or Mr. Stevens? (Objected to. Mr. Byers addressed.)

HIS HONOUR: I am not ruling against you Mr. Byers. I must confess I can see some ways in which it may be relevant.

MR. BYERS Q: Did you see Mr. Carman in December 1966? A. Yes.

Q. Had you met him, so far as your memory goes, before December 1966? A. Yes, I had.

Q. Approximately when was it that you had met him before December 1966? A. Approximately in November 1966.

Q. November 1966: in December 1966 was your company a customer of the defendant bank? A. Yes, it was. 20

Q. How long had it been, so far as your memory goes – that is, approximately – a customer of the defendant bank in December 1966? A. Some two to three odd years I would think.

Q. In December 1966 you remember where it was in the bank's premises that you saw Mr. Carman? A. In the Overseas Department.

(Short adjournment)

MR. KENNY: Before your Honour resumes could I call Gollin & Co. on subpoena duces tecum?

(Douglas Hyde Milne, an officer of Gollin & Co. Ltd. appeared before his Honour and produced some documents in answer to a subpoena served on that company: the documents and subpoena were handed to his Honour's associate. His Honour granted both sides access to the documents produced.) 30

HIS HONOUR: (to witness) You are still bound to tell the truth, Mrs. Wilson.

MR. BYERS Q: I think you told his Honour you saw Mr. Carman in December 1966? A. Yes.

Q. And that you saw him at the Overseas Department, is it, of the head office of the defendant bank? A. Yes, that is correct.

Q. When you saw him on this occasion had you previously had any dealings yourself by way of either import or export of goods? A. No, never.

Q. What about your company, Jalsard Pty. Ltd., the company of which you are managing director? A. No. They had never ever either had any dealings.

Q. I think there was another director, a Mr. Rowell? A. That is correct.

Q. He is a member of Messrs. Fell & Starkey? A. Yes.

Q. Who were accountants? A. That is correct.

Q. I think they were, at that time, both the accountants of the company, that is the plaintiff, and your own personal accountants? A. That is also correct.

Q. When you saw Mr. Carman on that occasion in December I suppose you had a conversation, did you? A. Yes, I did.

Q. What was it that you said to him? (Objected to. Allowed.)

Q. What did you say to Mr. Carman? A. I said to Mr. Carman that my company wants to go ahead with import-export; that I had an order for some snakeskins; that I was totally ignorant of every facet of importing and exporting and I looked to the bank to look after me and protect me in every conceivable fashion.

HIS HONOUR Q: What were those last few words? A. To look after me in every conceivable fashion.

MR. BYERS Q: Would you endeavour to keep your voice up please? A. I am sorry.

Q. Did Mr. Carman say anything to that? A. He said, "Do not worry Mrs. Davey. This is my job and I will look after you and protect you and advise you – help you fill in all documents pertaining to overseas import-export.

Q. Before you had had this discussion with Mr. Carman in December 1966 had you come to an arrangement in relation to the import of some snakeskin from Taiwan? A. Yes, I had.

Q. Had you come to that arrangement with a particular person in Taiwan? A. Yes, I had.

Q. What was that person in Taiwan? A. Raymond & Co.

Q. Was this snakeskin that you have mentioned for shoes or handbags? A. That is correct.

Q. After you had said what you mentioned to his Honour, what you said to Mr. Carman, and Mr. Carman gave the reply, was anything further said or done? A. Yes. We proceeded to fill in the form for a letter of credit.

HIS HONOUR Q: Would you just repeat that again? A. We proceeded –

HIS HONOUR: "We proceeded."

(Mr. Byers called for an application form of credit dated 16th December 1966.)

MR. BYERS Q: When you say: "We proceeded" to fill it in was that – did anyone write on it – write on the form? A. Mr. Carman wrote on it.

Q. Mr. Carman. All right. (No answer.)

(Application form produced.)

Q. Would you look at this document which my learned friend has produced in answer to the call dated 16th December 1966? (shown) A. Yes.

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Q. Now does that bear your signature? A. Yes, it does.

Q. You see it also has on it handwriting in the form of cursive script and printing? A. Yes.

Q. Did you see that form, first of all, on 16th December 1966? A. Yes, I did.

Q. Did you see the person who filled it in? A. Yes, I did.

Q. Who filled it in? A. Mr. Carman.

Q. Is that the form that he filled in in your presence on 16th December? A. Yes.

(Form tendered; objected to on the same grounds and as irrelevant. Admitted by his Honour and marked Ex. L. Read, in part, by his Honour.)

HIS HONOUR: I have seen all I want to at the moment. I have not read it in full, though.

MR. BYERS: If your Honour pleases. I propose to take Mrs. Wilson through part of that exhibit. There are certain conversations and handwritings I wish to clear up on it. It did look to us that that might occasion some difficulty in that I might ask the witness to look at the document, we have a photocopy here which I can show my friend — either I adopt one of two courses, either I could show the witness the photocopy — 10

HIS HONOUR: No, give me the photocopy. It would be better to let the witness have the other.

MR. BYERS: It stops short, I think — just short — of the bottom, that is, the photocopy, but I do not think very far short.

HIS HONOUR: It is practically all here. Thank you.

(Ex. L shown to witness.)

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MR. BYERS Q: You see the date on the top right-hand side of the document, “16.12.66.” A. Yes.

Q. Whose handwriting is that? A. Mr. Carman’s.

Q. And the word “Taipei” to the left of that? A. Mr. Carman’s.

Q. Mr. Carman’s too: and then “Raymond & Co. Ltd.”? A. Also Mr. Carman’s.

Q. And, I suppose, the address also, is it? A. That is correct.

Q. Was anything said, by Mr. Carman, to you before he wrote down the words “Raymond & Co. Ltd.”? A. He asked me who my agents were.

Q. Yes? A. And I replied: “Raymond & Co.”

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Q. You told him, “Raymond & Co.” A. Yes.

Q. You see the word “Cable” has been written above the words “Raymond & Co.”? A. Yes.

Q. Can you remember if anything was said between you and Mr. Carman that led to his writing the word “cable”? A. I explained to Mr. Carman — I said to Mr. Carman that I had to have them delivered by a specific date and he replied, “In this case it would be necessary to cable the order for the snakeskins through to expedite delivery.”

Q. You say “the order for the snakeskins through —” — cable what through, do you remember? A. To cable the letter of credit.

MR. KENNY: Cable the order for snakeskins?

MR. BYERS Q: Then there is an address written in his handwriting; is that right? A. Yes.

Q. Did he ask you for that address? A. To which address are you referring?

Q. "No. 4, Lane 42." A. Yes. He asked me the address.

Q. Did you give it to him? A. I did.

Q. Did you have anything with you at the time you had this discussion with Mr. Carman? A. I had an order from the Sydney company who wanted these snakeskins.

Q. That is, an order from — A. Well, it was from Grace Bros.

Q. To —? A. To Jalsard Trading Co.

Q. That had certain information in it, did it? A. It required certain conditions of snakeskins — certain width — this kind of information. 10

Q. What about the address? Where did you get that from, do you remember? "No. 4, Lane 42," etc.? A. I had had communication with them. The address I knew by heart.

Q. Then can you see it now mentioned, the sum of \$U.S.1,035? A. Yes.

Q. What led up to that being written into the body of the application form? A. I am sorry. I do not understand the question.

Q. Was anything discussed between you and Mr. Carman before Mr. Carman wrote down "\$U.S.1,035."? A. That it would need to be in U.S. dollars because money could not be remitted in Australian dollars and which bank did I wish to use in Taipei, and I replied at all times, "I wanted to use the First National City Bank of New York." I had been led to believe in Taipei that this was a reliable bank — (Objected to.) 20

Q. Did you say this to Mr. Carman? A. I said to Mr. Carman, "I have been told in Taipei First National City Bank is a reliable bank on whom I may depend. I would like you to transmit my letters of credit to this bank."

Q. What did Mr. Carman say to that? A. His reply was, "All right."

Q. If you go further down there is a reference to "Despatched by air freight." Do you see that? A. Yes.

Q. Was that subject matter, namely air freight, discussed before Mr. Carman made that entry onto the form? A. I cannot recollect.

Q. Then you see "partial shipments" next appears, and the word "are" is crossed out? A. That is correct. 30

Q. Who did that? A. Mr. Carman.

Q. Was that subsequent upon a conversation you had had with him at the bank there, or not; A. I do not believe there was a conversation about that.

Q. At any rate you did not cross out the word "are"? A. No.

Q. Then you see "transshipment" and then — it is difficult on the photo — it almost looks as though the "is" and the "not" are both crossed out; is that right? A. Yes.

Q. Did you do that? A. No.

Q. Can you remember whether that — the question of transhipment — was mentioned by Mr. Carman to you? A. Yes.

Q. What did he say about it? A. Mr. Carman said there was no through air service from Taipei to Australia; it was therefore necessary to allow any incoming goods to connect with an oncoming flight at some port of disembarkation. Mr. Carman also added that this would apply to shipping because although there was a through service it was very irregular and to get goods in quickly it was best to allow transhipment.

Q. What did you say to that? A. “Thank you,” or “I allow it.”

Q. Were you aware of these facts that Mr. Carman communicated to you before he told you? A. No.

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Q. Then you see there is crossed out next, I think, “full sets clean ‘on board’ or shipped negotiable bills of lading”, etc.; see that? A. Yes.

Q. Was that crossed out by you? A. No.

Q. Who did that; do you remember? A. Mr. Carman.

Q. Before he did that was there any discussion about it? A. He said that bills of lading were not required with air freight.

Q. And struck it out; did he? A. Yes.

Q. Then there is also a reference to “through export bills of lading”, so I presume that was crossed out at the same time; is that right? A. (No answer.)

Q. See, in the smaller print? A. Yes, yes. That was crossed out at the same time.

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Q. Then on the next line there was crossed out the words “parcel post receipts”? A. Yes.

Q. First of all, who crossed that out; do you remember? A. Mr. Carman.

Q. Was there any discussion between yourself and Mr. Carman about that that you remember? A. Not that I remember.

Q. Then I think there are also the words “This bank” saying “This bank marked account Jalsard Trading Co.”? A. Yes.

Q. Whose handwriting is that? A. Mr. Carman.

Q. He wrote it down whilst you were there? A. Yes.

Q. Was that mentioned between you and him at the time? A. He said it simply meant that it would be charged to my account at the Commercial Banking Co. headquarters. I am sorry. Not to my account. Jalsard Trading Co.

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Q. I think then there is a reference to bills of lading; this is again crossed out? A. Yes.

Q. Is that right? A. Yes.

Q. And then “insurance policies” are referred to and I think that is crossed out also, is it? A. Yes.

Q. Did Mr. Carman cross those out? A. Yes.

Q. Before he did that did he mention anything to you? A. Simply that when we — I — as I was buying f.o.b. I would not require these particular remarks left in.

- Q. Had you had any discussion with Mr. Carman on this occasion in December as to the words, or the letters, "f.o.b.": can you remember? A. I had discussed with the International Department the best way of buying and I found out what "f.o.b." meant, c. & f. and c.i.f.
- Q. I notice that the insurance policies were crossed out and I think you have mentioned that; when I say the "insurance policies" I meant the reference on Ex. L? A. Yes.
- Q. And "acknowledgment of declaration," who crossed that out; do you remember? A. Mr. Carman.
- Q. Was that the same time he crossed out the words, the reference to insurance policy? A. Yes.
- Q. On the righthand side of the form opposite the reference to insurance policies there is a statement, and I quote it, "in same currency as credit", and concludes with the words "plus per cent."? A. Yes. 10
- Q. Now that is also crossed out on the form? A. Yes.
- Q. Who crossed that out? A. Mr. Carman.
- Q. Was there any mention to you on this occasion, that you remember, about the reason for crossing out those words? A. No, not that I remember.
- Q. Then there appears the words "beneficiaries' inspection certificate" printed in in pencil, is it, or ink? A. In ink.
- Q. Who printed that in? A. Mr. Carman.
- Q. Before he did so was there any discussion between you and Mr. Carman on that topic? A. Yes, there was. 20
- Q. What was said? (Objected to on the same grounds. Allowed.)
- Q. What was said? A. I asked Mr. Carman was it not correct that a certificate of inspection from my agents was the best method of protecting myself, to be sure that the goods that arrived in Australia were similar to the sample I had seen — up to the standard of the sample I had seen — and of an acceptable quality.
- Q. What did he say to that? A. He replied that it was the best method of protecting myself, it was my agent's inspection certificate that would verify the condition, quality and standard of goods.
- Q. At this stage had you mentioned to him who your agents in Taiwan were? A. I had told him they were Raymond & Co. 30
- Q. Prior to your having this conversation had you had any experience in relation to the import and the export of goods concerning certificates of inspection? A. Prior?
- Q. Before you had this conversation with Mr. Carman? A. Yes.
- Q. In December 1966? A. Yes.
- Q. — had you, yourself, had any experience in importing and exporting goods so far as certificates of inspection were concerned? A. No, none at all.
- Q. To your knowledge at this time had the plaintiff company, that is, Jalsard Pty. Ltd., engaged in any import and exporting transactions? A. Never.
- Q. Had you, in any other capacity, engaged in importing and exporting transactions? A. No, I had not. 40

Q. Then, after this discussion, the words "beneficiaries' inspection certificate" were inserted, were they? A. Yes.

Q. I notice the word "beneficiaries" is to the left of the words "inspection certificate." Do you remember how that occurred? A. In detail, no. I believe there was some discussion as to Raymond & Co. and the beneficiary being the same person. Beyond this, no.

HIS HONOUR Q: I am sorry. I did not hear. "Some discussion —" A. About Raymond & Co. and "beneficiary" meant the same thing.

MR. BYERS Q: Can you remember what that discussion was? A. Not — in no further detail, no.

Q. Then there appeared next, I think in handwriting, the reference to insurance being cared for by the buyer? A. Yes. 10

Q. Whose hand is that? A. Mr. Carman.

Q. Was that written when you were there? A. Yes.

Q. Can you remember whether there was any discussion about that? A. Simply that as it was f.o.b. it was my company's responsibility to insure.

Q. I think to the right of that there is written "Please cost this credit —" I am sorry. "Please advise this credit through First National City Bank, Taipei." See that? A. Yes.

Q. Is that in Mr. Carman's hand also? A. I cannot be sure. I do not know if that was written in front of me. I do not remember.

MR. BYERS Q: You have mentioned that there was some conversation between yourself and Mr. Carman about the First National City Bank? A. Yes. 20

Q. Can you remember when during the course of your conversation that that particular topic was discussed between you? A. At the time he went to fill in the line "Office/Agents".

Q. That is towards the top of the form? A. This is towards the top of the form, yes.

Q. I think that was written in, "Freight is payable at destination"? A. Yes.

Q. Again by Mr. Carman? A. Yes.

Q. Was there any discussion before that was written? A. Again, as the goods were paid f.o.b., Mr. Carman said "Freight is payable at destination" and I said "Yes".

Q. The next hand-printing that occurs is the reference to 14th January? A. Yes.

Q. And Sydney? A. Yes. 30

Q. Was there any discussion between yourself and Mr. Carman before that was written in? A. Yes.

Q. What was said, can you remember? A. I told Mr. Carman the goods had to be in Australia by a specific time, and he told me I must allow a couple of extra days for the cheque to be cleared in Taiwan after the goods were shipped out, and that date was settled.

Q. Then I think on the next line or so the word "negotiating" before the word "bank" is drawn through? A. Yes.

Q. Can you remember anything about that? A. No.

Q. I think towards the bottom of the form Ex. L your signature appears? A. Yes.

Q. Can you remember whether you signed that at the bank in Mr. Carman's presence? A. I believe I did, but I cannot be sure.

HIS HONOUR: Mr. Byers, are you passing from this document now? I just noticed – you may care to or not if you wish – there are some parts of it which have ticks and other parts which have crosses.

MR. BYERS: I will clear that up, if I may, your Honour.

Q. Mrs. Wilson, you see there are ticks after, for example, "Cabled snakeskins" and so on?
A. Yes.

Q. Can you remember whether they were put on in your presence or not? A. No, I cannot remember. 10

Q. Can you remember there was any discussion between yourself and Mr. Carman in relation to the ticks? A. No, I cannot remember.

Q. Would you look to the words "14th January" which are about the middle of the form towards the right-hand side? A. Yes.

Q. You see there is a cross there? A. Yes.

Q. Can you recollect whether that was put in in your presence? A. No.

Q. You cannot. Was there any discussion between yourself and Mr. Carman that you remember in relation to that? A. Only the discussion I have already given you.

Q. That relates to the 14th January? A. Yes.

Q. But no discussion, as you recollect, relating to the cross? A. No. 20

Q. Or to any cross or to any tick? A. No.

Q. Then there is also, about one-third of the way from the top of the page on the left side, some initials? A. Yes.

Q. Were those put on, so far as your memory goes, in your presence? A. I have no memory of that at all.

Q. Again on the left-hand side there are some figures and some pencil I think. You see at the bottom the "original signature" – I am sorry, I think that is Mr. Bradley's hand? A. There is nothing here.

Q. You mentioned to his Honour some conversation that you can remember in relation to this form with Mr. Carman. Was there anything further that you remember which took place on this day in December when you were there? A. No. 30

Q. I think you mentioned to his Honour it was dated 16th December whilst you were there?
A. That is correct.

Q. Did you take the form away with you, do you remember, or did you bring it back or what? A. I had to take it with me to Fell & Starkey because it required Mr. Rowell's signature.

Q. Did you do that? A. Yes.

Q. Can you remember whether you returned it or not? A. I did not return it.

MR. BYERS: I call for an inspection certificate dated 7th January, 1967, produced on inspection by the defendant. (Produced). I also call for non-negotiable copy, so-called, dated 1st December, 1966 containing in its body a reference to an arranged date, 19th December, 1966, from the Nippon Kangyo Bank, Taipei Branch, to the First National City Bank, Taipei. (Produced). I also call for a document headed "Confirmation of cabled credit" and dated 19th December, 1966, bearing the name across the face Commercial Banking Company of Sydney Limited. (Produced). I next call, if your Honour pleases, for a copy of an extract of a telegram dispatched to the Nippon Kangyo Bank Limited, having typed on it 20th December, 1966. (Produced). I next call for a copy letter directed to the manager of Jalsard Trading Company from the defendant dated 19th December, 1966.

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MR. KENNY: We have not got a copy letter. We have a copy of something which has been typed on to a form.

(Inspection certificate tendered and marked Ex. M.)

(Non-negotiable copy dated 1st December, 1966, from Nippon Kangyo Bank tendered and marked Ex. N.)

(Confirmation of cabled credit dated 19th December, 1966, tendered and marked Ex. O.)

(Copy of extract of telegram dated 20th December, 1966, tendered and marked Ex. P.)

(Copy letter from defendant to plaintiff tendered and marked Ex. Q.)

MR. BYERS: I next call, if your Honour pleases, for a letter of credit from the plaintiff to the defendant dated 12th January, 1967. (Produced.)

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MR. KENNY: My objection goes to all this, your Honour. There is nothing before your Honour to which I could object at the moment. It is not an objection to the whole of the examination and letters of credit prior to the one requisitioned for on 11th July.

MR. BYERS: Q. Would you look at the copy of the application form which is being shown to you? Is that your signature on the bottom of it? A. It is.

Q. And Mr. Rowell's as well, is it? A. Yes.

Q. Can you recollect whether you saw Mr. Carman in relation to that application? A. No, I did not.

Q. You did not? A. No.

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(Application for letter of credit dated 12th January 1967 tendered and marked Ex. R.)

Q. Would you look at the back of the document, Ex. R. I think that has your initials on it, does it not? A. It has.

Q. And Mr. Rowell's again, is that so? A. Yes, it has.

Q. Can you recollect initialling the back of Ex. R? A. Yes.

Q. When did that happen, can you remember? A. I am not very clear, Mr. Byers. I believe in Fell & Starkey's offices.

Q. There is a reference there to a letter of 11th January, 1967? A. Yes.

Q. Can you recollect whether or not a letter bearing that date was sent by the plaintiff company to Raymond & Company? A. I can recollect writing a letter pertaining to the goods mentioned on this letter of credit, yes.

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Q. To Raymond & Company? A. To Raymond & Company.

Q. Did you know a gentleman by the name of Egan employed by Messrs. Fell & Starkey? A. Yes.

Q. Did you know him at this time? A. Yes.

Q. Did you have association with him as a client of Fell & Starkey? A. Yes.

Q. Both yourself and the company Jalsard Pty. Limited? A. That is correct.

MR. BYERS: I now call, if your Honour pleases, for a letter from Jalsard Trading Co. to the defendant dated 13th February, 1967. (Produced).

Q. I think the application Ex. R. was cancelled by letter dated 13th February 1967? A. Yes.

(Letter from plaintiff to defendant dated 13th February 1967 tendered and marked Ex. S.) 10

HIS HONOUR: There is a red mark on it. Is that of any importance?

MR. BYERS: I might ask my friend to admit the request for cancellation on 13th February, 1967, is accepted by the defendant.

MR. KENNY: I have no objection to making that admission, your Honour.

MR. BYERS Q: Did you see Mr. Carman again in February, 1967? A. Yes.

Q. Before seeing Mr. Carman do you remember having had some negotiation with Raymond & Company relating to a purchase from them of snakeskins? A. Yes.

Q. Now before you saw Mr. Carman in February 1967 did you see Mr. Egan of Fell & Starkey's office? A. Yes. 20

Q. Do you remember where it was that you saw him? A. In the office of Fell & Starkey.

Q. Was that long before you saw Mr. Carman? A. I would have seen Mr. Egan on many occasions in the office of Fell & Starkey.

Q. Did you see Mr. Egan around about the time you saw Mr. Carman in February? A. Yes, I did.

Q. You remember seeing Mr. Carman in February? A. Yes.

Q. Did you see him alone or was Mr. Egan with you or —? A. Mr. Egan and I were at the bank together.

Q. Where did you meet Mr. Egan before you saw him in the bank? A. We walked down from the office of Fell & Starkey to the bank together. 30

Q. Before you saw Mr. Carman in February were you shown an application form by a Mr. Egan? A. Yes.

MR. BYERS: I now call, if your Honour pleases, for an application for a credit dated 15th February, 1967. (Produced).

Q. Would you look at the application form which my learned friend has just produced, the one dated 15th February 1967, and see if your signature appears at the bottom of that? A. Yes, that is my signature.

Q. And Mr. Rowell's also? A. That is my signature. It is also Mr. Rowell's signature.

Q. And there is some handwriting on the bottom of the form, is there not? A. Yes.

Q. Whose handwriting is that? A. Mr. Carman's.

Q. Were you present when he put that handwriting in? A. I was.

(Application for letter of credit dated 15th February 1967 tendered and marked Ex. T. Photocopy handed to his Honour.)

Q. Mrs. Wilson, before you saw Mr. Carman on this occasion in February 1967 did the form which you now have in your hand, Ex. T, have on it the typing that appears on it? A. Yes.

Q. Did it have on it the writing that now appears on it? A. No.

Q. Then when you saw Mr. Carman you had this form with you, did you not? A. Yes.

Q. Had you seen it earlier in Fell & Starkey's office? A. I am sorry.

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Q. Had you seen the form earlier in Fell & Starkey's office? A. I had looked at it walking down with Mr. Egan.

Q. On the way to the bank? A. Yes.

Q. It then, I take it, had the typing on it that now appears on it although some of it is struck through? A. Yes.

Q. I take it this form was shown to Mr. Carman, was it? A. It was.

Q. Was there any discussion between Mr. Carman and yourself and Mr. Egan in relation to the first note that appears in Mr. Carman's hand, that is "Taipei" and I think "First National City Bank"? A. Yes, but I did not, and neither did Mr. Egan, fully understand what the meaning — (Objected to)

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Q. I am just asking you, if you don't mind, what was said? Would you tell his Honour? Can you remember what was said? A. "I do not understand fully what to put here."

Q. Who said this, do you remember? A. I did.

Q. "I do not understand fully what to put" — where, can you remember? A. "Office/Agents".

Q. After "Agents"? A. Yes.

Q. Was anything said by Mr. Carman to that? A. "It refers to the bank".

Q. That is what he said? A. Yes.

Q. Did he say what bank? A. "It refers to the bank in Taipei to whom the letter of credit is made."

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Q. Did he write down the matter that appears there? A. I repeated to him "In that case it should be First National City Bank of New York, all my letters of credit are put through this bank please".

Q. Did he say anything to that or just write it down? A. He wrote it down.

Q. Was there any discussion between you and Mr. Carman or Mr. Egan, and Mr. Egan and Mr. Carman about the words which are crossed out opposite "Partial transshipment"? A. No.

Q. You see the word "are" is crossed out? A. Yes.

Q. When you first saw Mr. Carman was the word "are" then crossed out on the form? A. You are referring to this particular form?

Q. Yes. A. Yes, it was.

Q. That had been crossed out before you saw Carman, is that right? A. Yes.

Q. I take it the same would apply to the double crossing out opposite the word "transhipment"? A. Yes.

Q. Was there any discussion about transhipment that you remember with Mr. Carman? A. No.

Q. Then you see the words "full sets" concluding with the words "or in blank" which is also crossed out? A. Yes.

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Q. I take it that also was crossed out on the form before you saw Carman? A. That was correct.

Q. There was no discussion about that? A. No.

Q. You see there is also crossed out with double crossing-outs, the words "Parcel post receipts"? A. Yes.

Q. That also was crossed out before you saw Carman, I take it? A. Yes.

Q. No discussion about that? A. None.

Q. What about the word "your", "consigned to your"? A. I can remember no discussion.

Q. Can you remember whether that was crossed out and there was some entry above it before you saw Carman or whether that occurred during the course of the conversation with Carman? A. To the best of my recollection there were no written remarks on the letter of credit prior to seeing Mr. Carman at all.

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HIS HONOUR: Is the word "your" scratched out, or is it not?

MR. BYERS: I have taken it to be so. Mr. Shepherd says the word "this" is substituted.

HIS HONOUR: Scratched out in pencil and "this" is written in pencil above the word "your".

MR. BYERS: Yes, your Honour.

Q. You see the words "acceptable in lieu of bills of lading" is crossed out, you see that? A. Yes.

Q. Was that crossed out before you saw Carman or not? A. I think not.

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Q. Can you remember whether there was any discussion with Carman? A. No.

Q. Then the reference to insurance policies is also crossed out? A. Yes.

Q. Can you remember whether that was crossed out before you saw Carman or not? A. I do not think so.

Q. Can you remember whether there was any discussion in relation to that topic between yourself and Carman or Egan and Carman? A. The remark made was that, by Mr. Carman, that these two lines should be crossed out as they were buying f.o.b. and they had no relationship to f.o.b. buying.

Q. Can you recollect who crossed them out? A. I believe Mr. Carman.

Q. I take it the same applied to the acknowledgment of the declaration of insurance? A. Yes.

Q. Then to the right-hand side again there are words “in some currency” and ending with the word “per cent”, which words are also crossed out? A. Yes.

Q. Who crossed those out? A. Mr. Carman.

Q. Any discussion about that that you remember? A. None at all.

Q. Well now, can you remember who crossed out the words “freight to be paid by buyer — collect destination”? A. Yes.

Q. Who was that? A. Mr. Carman.

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Q. Before he did so was there any discussion? A. The only discussion was that Mr. Carman said “Freight payable at destination” was adequate.

Q. Did he write that in? A. Yes, he did.

Q. He wrote it in, did he? A. Yes.

Q. And crossed out the words I have already referred to? A. Yes.

Q. Then you see “there is a letter of credit” down to the words “certificate of inspection” is also crossed out? A. Yes.

Q. Who crossed those out? A. Mr. Carman.

Q. Also written in of course “certificate of inspection”? A. Yes.

Q. In whose hand is that? A. Mr. Carman.

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Q. Was that crossing-out an addition or substitution made in your presence? A. Yes.

Q. Was there any discussion about it before it was made? A. Yes.

Q. What was said? A. I asked him why he crossed out “Raymond & Co.”, particularly bearing in mind that he had earlier letters of credit and Raymond & Co. or beneficiary had been in. His reply was “Who but my agents were qualified as to give a certificate of standard and quality of the goods” that they were looking after.

Q. Who but your agents or who but my agents, or what? A. He said, “Who but your agents are qualified to give a certificate of inspection as to the standard and quality of your goods other than your agents who are looking after this matter.”

Q. Anything further said about that? A. I asked him was he quite satisfied with it; he replied, yes, he was. When I say quite satisfied with it, I mean repeating again this deletion of Raymond & Co. and leaving only “certificate of inspection”. 30

Q. When the words “certificate of inspection” were written in did you have any belief as to what it meant? A. Yes. (Objected to).

HIS HONOUR: Having regard to the issue of fact laid by the pleadings I must allow the question.

(Question marked read by court reporter)

WITNESS: Yes, I did.

MR. BYERS Q: What was your belief? A. That it was a certificate pertaining to quality and to ascertain that the goods would be up to the standard of the sample I had seen and to generally acceptable saleable standards.

Q. Did you have any belief as to who would give that certificate? A. Yes.

Q. Who was the person whom you believed would give it? A. Raymond & Co.

Q. Upon what was it that you based those two beliefs about the certificate of inspection? A. Upon discussions I had with — (Objected to).

HIS HONOUR: I think I am against you, Mr. Byers. I rule against you without prejudice to any rights which you may have to re-examine in the light of any cross-examination.

(Luncheon adjournment)

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MR. BYERS Q: Mrs. Wilson, you did mention I think this morning that in relation to the application form which is Ex. T, that is the one in February, there was some discussion in relation to the printed form that begins with the words “your office/agents”? A. Yes.

Q. I think thereafter Mr. Carman’s writing appears, is that right? A. Yes.

Q. I am not quite sure whether I got this from you. What was said between you and Mr. Carman when that part of the form was given to —

MR. KENNY: You did get this. I have a note of the question and answer.

MR. BYERS: Apparently I have it, your Honour.

Q. Was there any other discussion between yourself and Mr. Carman or Egan and Mr. Carman in relation to the form Ex. T, that is the one you have in front of you, February 1967? A. Only my comment that I did not comprehend the document, that in fact I was a complete bunny at the game of import/export; that I had no idea virtually, even on seeing this second or third letter of credit, second letter of credit, and that I looked at the bank to totally protect me in every sense. I am sorry, I did make another comment.

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Q. Yes, what was that? A. I asked Mr. Carman, as far as the certificate of inspection was concerned when this discussion took place about crossing out “Raymond & Co. Limited, certificate of inspection”, in fact exactly what was expected of the agent when he inspected the goods, and the reply was that it was an accepted practice to inspect ten per cent of the goods and if this ten per cent came up to standard and quality then it was reasonable to presume that the entire shipment would be as desired and as requested and expected by my company.

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Q. I think your signature and Mr. Rowell’s appears on the form Ex. T? A. Yes.

Q. Was your signature put on in Mr. Carman’s presence or afterwards, or before, do you remember? A. I believe it was put on in Mr. Carman’s presence.

Q. What about Mr. Rowell’s? A. That to the best of my knowledge was put on at Fell & Starkey’s office.

Q. Before you saw Carman on this occasion in February, or after, do you remember? A. Before.

Q. Now having signed the document did you read it, do you remember? A. I believe I showed Mr. Carman a piece of snakeskin, yes, that I was interested in, and then we departed.

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Q. That is you and Mr. Egan? A. Mr. Egan and myself, yes.

MR. BYERS: I call, if your Honour pleases, for a confirmation of irrevocable credit dated 16th February, 1967. (Produced). I further call for a certificate of inspection, so described, dated 8th March, 1967, and signed Raymond & Co. Limited (Produced).

(Confirmation of irrevocable letter of credit tendered and marked Ex. U.)

(Certificate of inspection tendered and marked Ex. V.)

Q. Can you remember whether you saw Mr. Carman again, I mean additionally in the month of April, 1967? A. I cannot remember which month I saw him, Mr. Byers.

Q. Do you remember having some negotiations with Raymond & Co. in relation to some Christmas lights? A. Yes.

Q. In connection with any Christmas lights did you see Mr. Carman at the bank? A. Yes. 10

Q. When you saw him do you remember whether or not you had with you an application form for a credit? A. Yes.

Q. You mean yes, you remember, or yes, you did? A. Yes, I did, to the best of my knowledge.

Q. Prior to seeing Carman had you had any discussions with any firm or company other than Raymond & Co. Limited? A. Yes.

Q. With what other company had you had discussions? A. With Gollin & Co. in Sydney.

Q. Had there been any discussions between your company and that company in relation to a back-to-back credit? A. Yes, there had.

Q. Then when you saw Mr. Carman in relation to this Christmas lights order, can you remember what was said between you and Carman in connection with a credit? A. That this was a Gollin & Co. back-to-back credit. 20

Q. Who said this? A. I told Mr. Carman it was to be a back-to-back letter of credit between Gollin & Co. and Jalsard Trading Co.

Q. What did Mr. Carman say to that? A. Mr. Carman said he understood this, he knew of it, and that the wording on both had to match up one to the other.

Q. The wording on both what? A. My letter of credit and the back-to-back letter of credit. I am sorry, when I say "my", I mean my company's letter of credit and the back-to-back letter of credit put up by Gollin & Co.

MR. BYERS: I call for an application dated 26th April, 1967, for a credit directed to the defendant and signed by Jalsard Trading Co. (Produced). 30

Q. Would you look to the application form dated 26th April, 1967, which my learned friend has produced. Does your signature appear on that? A. Yes.

Q. That is at the bottom, I take it? A. Yes.

Q. And on the left-hand side, is that right? A. Yes.

Q. I think Mr. Rowell's signature appears at both of those places also? A. Yes.

Q. Does Mr. Carman's writing appear on the document? A. On the sixth line down, "First National City Bank of New York," I believe.

(Application for letter of credit dated 26th April, 1967, tendered and marked Ex. W.)

Q. Did you have any discussion with Mr. Carman in relation to the application for credit, which is Ex. W, the last one you were shown? A. Yes.

Q. You have mentioned a conversation that took place between you in relation to Gollin & Co., and I think a reference was made to the credit being back-to-back credit, is that right? A. Yes.

Q. Did that conversation occur when an application form was before you and Mr. Carman? A. Yes, it did.

Q. Was the application form the one you have just seen which is Ex. W? A. Yes.

Q. (Witness shown Ex. W.) Now you see that the blank spaces in the printed form have been filled fairly substantially with typing? A. Yes.

Q. Can you recollect whether or not the typing was on the application form when you discussed it with Mr. Carman? A. Yes.

Q. Now can you recollect what was said in relation to the form? (Objected to. Allowed.) A. I first of all asked Mr. Carman what does "provided on through bills of lading" mean.

Q. That is about a quarter of the way down the form, opposite the words "partial shipments"; is that right? A. "Transshipment is allowed provided on through bills of lading."

Q. Did Mr. Carman say anything to that? A. Yes, he told me that it guaranteed that because transshipment was necessary, which we had previously discussed, that it meant that instead of the goods perhaps being allowed to lie on a wharf between Taipei and Australia, at the connecting port they would be placed on the first available 'plane or ship and so transhipped in the quickest possible time.

Q. Was there any discussion between you as to how those words you have last mentioned "provided on through bills of lading", how they got on to the form? A. As far as I know —

Q. I am only asking about the discussion? A. No.

Q. Was there any further discussion between yourself and Mr. Carman before you left? A. Yes.

Q. What was said? A. I noticed that for the first time we had in the right-hand column, approximately half way down, "In the same currency as credit covering marine and war risks, C.I.F. value of the shipment plus 10" — which was typewritten — "per cent". This had been crossed out on other letters of credit. I asked what this meant. Mr. Carman replied that as it was a C.I.F. shipment this allowed for a discrepancy of 10 per cent either way in the insurance bill because one could never be exactly sure of the exact cost.

Q. Was there anything discussed after that? A. Yes.

Q. What was said? A. I commented that Gollin & Co. had not called for a certificate of inspection, that I was not happy about it, but I had no option but to follow the wording as it was a back-to-back letter of credit that they had nominated.

Q. Did you say the wording in what? A. The wording of the application.

Q. Did Mr. Carman say anything to that? A. No.

Q. After that the form was signed by you, was it? A. Yes.

Q. Before you signed can you recollect whether anything further was said by you to Carman or by anyone else to Carman? A. Not to my recollection.

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Q. Can you recollect whether anyone was with you on this occasion? A. No. I mean yes, I can recollect; no, I believe no one was with me.

Q. Did you see Mr. Carman again between April 1967 and June of that year? A. No.

MR. BYERS: I call for an application dated 9th May 1967, from the plaintiff to the defendant. (Produced.)

Q. Would you look at the document which I now show you dated 9th May 1967. Does that have your signature on it? A. Yes.

Q. That is on the bottom and on the side, is it? A. Yes.

Q. And again I think it has Mr. Rowell's signature? A. Yes.

Q. Can you see on that any handwriting of Mr. Carman's? A. "First National City Bank of New York", both the top "in Taipei" and then lower down. 10

Q. Can you recollect where it was that you signed that particular application? A. In the office of Fell & Starkey.

Q. In whose presence, do you remember? A. No, I do not.

(Application for letter of credit dated 9th May 1967, tendered and marked Ex. X.)

Q. In relation to the document which has just been tendered, Ex. X, had you had any negotiations with a company other than Raymond & Co.? A. In Australia, Gollin & Co.

Q. In relation to what topic? A. The contents that were being ordered with this letter of credit?

Q. The goods? A. Yes. 20

Q. What were they, can you remember? A. Christmas decorations.

Q. Were there negotiations between you and Gollin in relation to the form of credit, anything of that sort? A. Again back-to-back.

Q. Had you given any instructions in relation to the words "certificate of inspection" which appear on Ex. X to anybody? A. Yes.

Q. To whom? A. To Mr. Egan.

Q. What had you told Mr. Egan? A. That I was not – (Objected to. Rejected.)

MR. BYERS: I now call for a confirmation of credit dated 9th May 1967; a letter from the plaintiff, Jalsard Trading Co. to the defendant dated 11th May, 1967, and a certificate of inspection signed by Raymond & Co. Limited dated 2nd June, 1967. (Three documents produced.) 30

(Confirmation of letter of credit tendered and marked Ex. Y.)

(Letter from plaintiff to defendant dated 11th May 1967 tendered and admitted Ex. Z.)

(Certificate of inspection dated 2nd June 1967 tendered and marked Ex. AA.)

Q. Do you remember seeing Mr. Carman in relation to a letter of credit in July 1967? A. Yes.

Q. Do you remember whether you were alone or was anyone with you on this occasion? A. Mr. Egan was with me.

Q. Did you have any conversation with Mr. Carman in relation to the issue of a credit by the bank? A. I am sorry, I don't understand the question.

Q. You saw Mr. Carman in July, 1967? A. Yes.

Q. Where did you see him? A. At the overseas department.

Q. Did you speak to him at all? A. Yes.

Q. Can you remember what was said? A. We were to look up the letter of credit.

Q. You had previously made arrangements with Raymond & Co. in relation to the sale of some Christmas decorations, is that right? A. Christmas lights.

Q. Did you tell him that? A. Yes.

Q. What did you say to him, if you can remember? A. I said to him that I had been in Taiwan, that I was very pleased with the work I had done because I had after considerable effort with Raymond & Co. developed – well, I had done it and they were to act for me up there, developed a set of battery operated lights and that this had been, I felt, some achievement.

Q. Did you have any discussion with Mr. Carman on this occasion relating to the issue of a credit for \$U.S.16,920? A. Yes.

Q. Did you indicate a sum of that amount to him? A. Yes.

Q. In relation to battery operated Christmas lights? A. Yes.

Q. Did you indicate to him the dates for the first shipment as not later than 7th August? A. Yes.

Q. And the second shipment not later than 1st September? A. Yes.

Q. Was there any discussion between you on this occasion in relation to a certificate of inspection? A. Yes.

Q. What was said about that? A. I am sorry, on this particular occasion this was not discussed.

Q. Then you signed an application and you left, did you? A. Yes.

Q. Well now, did subsequently something then occur in relation to the extension of the letter of credit? A. Yes.

Q. Did you discover some necessity arose for the letter of credit to be extended? A. That is correct.

Q. Having discovered that did you speak to anyone on the telephone? A. Yes.

Q. To whom? A. I spoke to Mr. Carman.

Q. This would be about 2nd August 1967? A. It was early August 1967.

Q. Can you remember what was said? A. I told Mr. Carman that the suppliers in Taiwan had been unable to fill the order by a date, and that it would be necessary to extend the letter of credit. I also mentioned that in looking at the letter of credit in the office of Fell & Starkey

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to see on what date it expired, I had noticed the absence of the words, "certificate of inspection", that I was extremely perturbed about it, and that from Mr. Carman I understood this to be such a protection –

Q. This is what you said? A. I said to Mr. Carman "I understood from you this is my protection; therefore, please will you cable through to Taiwan immediately and have, with the amendment for time, the amended words 'certificate of inspection from Raymond & Co.' also added to the application or the letter of credit".

Q. What did Mr. Carman say to that? A. He replied that he would do so, "would Jalsard Pty. Limited please confirm this in writing".

Q. Then I think on 2nd August 1967 a letter was sent by Jalsard Trading Co. to the defendant which is set out in par. 12 of the statement of claim. (approaching). Would you just read par. 12 in the statement of claim to yourself? A. Yes. 10

Q. A letter in that form was sent by the plaintiff on 2nd August? A. Yes. I cannot guarantee it was 2nd August.

Q. Then do you remember seeing Mr. Carman again in relation to another application for a credit? A. Yes.

Q. Did you see him somewhere around about the end of August 1967? A. Yes.

MR. BYERS: I call for an application for credit dated 6th August 1967 and signed on behalf of Jalsard Trading Co. by R.D. Davey and H.C. Rowell. (Produced.)

Q. Would you look at this document dated 6th August 1967. Is that your signature appearing on that? A. Yes. 20

Q. And of course Mr. Rowell's? A. Yes.

Q. Would you look at these two sheets of paper? Have you seen those before? A. No.

(Two sheets of paper m.f.i. 1)

(Application for credit dated 6th August 1967 tendered and marked Ex. BB) (Photo copy handed to his Honour.)

Q. The typing on the form Ex. BB which you have in front of you, do you know whose typing that is? A. Yes.

Q. Whose is it? A. My own.

Q. You typed it, did you? A. Yes. 30

Q. Did you take it as it was typed along to Mr. Carman or not, can you remember? A. Yes.

Q. Can you remember whether there was any discussion between yourself and Mr. Carman in relation to that letter of credit? A. Mr. Byers, the discussion was first of all that the First National City Bank was to be used.

Q. You said that, did you? A. Yes. I don't know if I am speaking out of turn, Mr. Byers, but this recalls to my mind something else which had happened in the past. Am I allowed to go back?

Q. I will ask you that in a moment. You have seen something on this form? A. Which reminds me of something that had occurred on another letter of credit.

Q. What was it on the form that recalled this to your mind? A. I just noticed the wording at the top "Nippon Kangyo Bank Limited, Taipei". 40

Q. Whose hand is that? A. Mr. Carman's.

Q. Can you remember whether that was written when you were there? A. No, I cannot.

Q. Was there some earlier discussion in relation to the Nippon Kangyo Bank? A. Yes, and it is this wording that reminds me of it.

Q. When did that discussion take place? A. When I had to change the order for the Christmas lights, when I was requested to.

MR. KENNY: Requested by whom?

WITNESS: When I was requested to lengthen the time for the letter of credit. That had to go through by cable and Mr. Carman said —

MR. BYERS: Q. Can I interrupt for just a moment. You have told his honour of the terms of the July letter or application to extend? A. Yes. 10

Q. You have told his Honour you spoke to Mr. Carman on the telephone about that? A. Yes.

Q. Now did this conversation occur over the telephone also at that time? A. No.

Q. About when did it occur? A. I am sorry, Mr. Byers, I am trying to think which letter of credit it occurred with, but that it did occur I am quite sure; that it pertained to cabling I am equally sure.

Q. Can you remember whether between yourself and Carman? A. It was between myself and Carman at the bank.

Q. Was it after December 1966? A. It was after December 1966. 20

Q. Was it before 6th August? A. Yes.

Q. Can you recollect as to whether it was closer to December 1966 than it was to August 1967? A. No, it was definitely sometime between April and July 1967.

Q. What was said in this context? A. That the Commercial Banking Company —

Q. Did you say this or Mr. Carman? A. I said to Mr. Carman, my usual request for First National City Bank. Mr. Carman replied "in this instance could we please use Nippon Kangyo Bank; we have cabling arrangements with Nippon Kangyo Bank and we don't have them with First National City. It would therefore expedite matters for the Commercial Banking Company of Sydney to be permitted to use Nippon Kangyo". I asked Mr. Carman were they reliable and he said they were, they had representatives in Taiwan. And I must confess with some reluctance I allowed the credit to go through to Nippon Kangyo. 30

Q. Was that the first time you were aware of any relationship between the defendant and the Nippon Kangyo Bank? A. Yes.

Q. Had you seen any of the earlier confirmed credits that came from the bank? A. No.

Q. You mention that to his Honour as having been now recalled to your mind? A. Yes.

Q. Could we get back to the form which is Ex. BB dated 6th August? A. Yes.

Q. Did you have any discussion at all, so far as your memory goes, with Mr. Carman in relation to the form that is Ex. BB? A. Yes.

Q. What was the first topic discussed? A. I believe I showed Mr. Carman one of the decorations and made some comment as to how pretty it was. As to the letter of credit, I told him that we required invoices in triplicate because this was what Gollin & Co. required; that Gollin & Co. would use their own insurance company.

Q. You see the words, “Beneficiary to certify” that have been crossed out? A. Yes.

Q. Firstly, who crossed that out? A. Mr. Carman.

Q. Was there any discussion about that? A. That this was a letter of credit, not a piece of information and that the wording was limited, that it was not necessary; “packing list in triplicate” would be adequate.

Q. That was what Mr. Carman said, was it? A. Yes.

Q. Then he wrote in those words, did he? A. That is correct.

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Q. Packing and what? A. “Packing list in triplicate”.

Q. Then you say “Please show current domestic values” in typing? A. Yes.

Q. Were they crossed out? A. Yes, they were.

Q. Who crossed them out? A. Mr. Carman.

Q. Did he say anything before he did that or having done it? A. Yes.

Q. What did he say? A. That it was not necessary, that it would go on to the customs invoices, and again it was simply a letter of credit, not an overseas letter.

MR. BYERS Q: Was there anything else said that you can recollect? A. No.

Q. Were you absent from Australia towards the latter half of 1967? A. Yes.

Q. I think you were over in the East? A. I was.

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Q. Whereabouts were you? A. I was in Hong Kong, Japan and Taiwan.

Q. About when was this? A. Approximately September/October of 1967.

Q. Did you receive certain information from Sydney? A. Yes.

Q. Was that in relation to the goods which were the subject of the application of July of 1967? A. Yes.

Q. What was the information that you received? (Objected to. Allowed.)

Q. What were you told — did someone tell you something? A. Yes.

Q. Who was it? A. Mr. Rabbage of Gollin & Co.

Q. Was he accompanying you on this tour? A. No, it was Mr. Keith Gates. (sic)

Q. Who is also with Gollin & Co.? A. Yes.

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Q. Did you receive some information from Mr. Rabbage? A. Yes, by telephone to Hong Kong.

Q. What did he say to you? A. That 11 percent of the goods, the Christmas Lights had been proved faulty and that they were being returned from various purchasers, the stores and such back to Gollin & Co. — the retailers was the way it was said.

- Q. Was there anything suggested as to what you should do between yourself and Mr. Rabbage? A. It was suggested that I should go to Taiwan and endeavour to make some settlement claim on Raymond & Co.
- Q. What did you say to that? A. I said I would; it was extra expense but I would certainly do it.
- Q. Did you go to Taipei and see Raymond & Co.? A. Yes.
- Q. The director of Raymond & Co.? A. I saw Mr. Jackson Woo who was the managing director.
- Q. You had some conversation with Mr. Jackson Woo? A. Yes.
- Q. Eventually you came to some sort of agreement in relation to payment by Raymond & Co. to your company of a certain sum of money? A. Yes. 10
- Q. At the time you had this conversation were you aware of anything other than the fact that Mr. Rabbage had told you that 11 percent of the goods had been returned? A. No.
- Q. Then you came back to Sydney? A. Yes.
- Q. You then discovered something further in relation to the goods? A. Yes.
- Q. What did you discover? (Objected to. Withdrawn.)
- Q. When you came back to Sydney you learned something in relation to the goods? A. Yes.
- Q. I am not asking you what it was, but you learnt something? A. Yes.
- Q. Having learnt that did you make another visit to see Mr. Jackson Woo in Taipei? A. Yes.
- Q. When was it that you made the second visit? A. In approximately March of 1968. 20
- Q. What did you say to Mr. Jackson Woo? (Objected to. Allowed) A. That I had returned to Sydney from my previous visit to Taiwan and that I had observed there were far greater than 11 percent of the lights damaged and that something in excess of 60 percent of the lights had been returned from the retailers to Gollin & Co.; and that we had looked at various lights and found them faulty and I sought further compensation.
- Q. Eventually did the plaintiff receive from Raymond & Co. sums which converted to Australian currency was \$2,901.04? A. This included both settlements.
- Q. The one you first mentioned to his Honour relating to the 11 percent? A. Yes.
- Q. And the one which was the result of your visit in March 1968? A. Yes.
- Q. I think there was some sale made of a small number of the goods here? A. That is correct. 30
- Q. Do you know how much it was? A. You mean the number of the amount of money?
- Q. The number of the goods? (Objected to. Not pressed.)
- Q. (Ex. D handed to witness) Do you remember yourself receiving this letter, or a copy of it in October 1967? A. No.
- Q. Did you yourself see any of the shipping documents which are referred to in the letter which are Ex. D? A. No.
- Q. (Ex. F handed to witness) Did you receive the letter of which that is a copy in November 1967? A. No.

Q. Did you see any of the shipping documents referred to in that letter? A. No.

(Document headed "Survey Report" called for by Mr. Byers, such document dated September, 1967; not produced.)

(In substitution of the above called for document, the following document called for: "Survey Report" by International Surveyor Company dated 7th September, 1967, being document No. 79 referred to in the Schedule to Mr. Carman's affidavit of discovery; produced.)

(Copy of Inspection Certificate and Survey of Ho Cheng Surveyor & Co. Ltd. dated 4th October, 1967, being item No. 40 in the Schedule to Mr. Carman's affidavit called for; —)

(Survey Report dated 7th September, 1967 tendered; without objection admitted and marked Ex. CC.)

(Document marked Ex. DD.)

HIS HONOUR: The date on it is 4th September?

MR. BYERS: Yes your Honour. That does seem to be the date. My learned friend's affidavit refers to one on the 7th.

HIS HONOUR: Yes, that is the one you gave me, the 7th.

(Tendered inspection certificate dated "October 4, 1967" and purporting to have been given by "Ho Cheng Surveyor Co. Limited" without objection marked Ex. EE.)

MR. BYERS: I propose to tender next a document which is, on its face, complete but may be the document that is referred to here. 20

MR. KENNY: I produced them both together.

MR. BYERS: I realise that but this is the way I propose to tender them, unless, your Honour —

MR. KENNY: It could be noted, in response to the call I produced both documents.

HIS HONOUR: I will give them separate numbers and have it noted that you produced both documents in answer to the one call. The inspection certificate, a copy of that, will be Ex. EE. That is Mr. Ho Cheng's inspection certificate.

This gentleman who signed this seems to be a Mr. Wu also.

(Tendered document headed "Ho Cheng Survey Co. Limited," signed apparently by a man who says he is the Chief Inspector and which Mr. Kenny produced together with the documents in the last exhibit: without objection document marked Ex. FF.) 30

MR. BYERS: Your Honour has observed the condition in the last document referred to? The last document, Ex. FF, as has the one two before it, Ex. DD a statement of condition.

HIS HONOUR: Yes.

MR. BYERS: And a reference to the cases again follows the form of the Exhibit DD.

Might Mrs. Wilson be shown the last three exhibits, Ex. DD, Ex. EE and Ex. FF? (shown)

Q. When was it that you first saw these documents? A. When I first asked my solicitors to find out more about the letter pertaining to the whole of the reason for this ill-fated case. 40

Q. Approximately when was that? A. Towards the end of 1967 or the beginning of 1968.

Q. You may remember that it would seem that in October 1967 a cheque was sent by the company, the plaintiff, to the bank in relation to the goods on the first ship, the "Taiyuan." A. Yes.

Q. Were you aware of the existence of those documents on 9th October 1967? (Objected to. Counsel addressed. Question withdrawn.)

Q. At any stage were you aware of an examination made by Gollin & Co. Limited of the lights, the subject of the letter of credit of July 1967? A. Yes.

Q. Were these done — was this examination made at the request of your company; do you remember? A. There were two different examinations made. I am not sure what you are referring to. 10

Q. You notice there is a sum of \$1,040 in relation to an examination —? A. Yes.

Q. — examination and testing of lights? A. Yes.

Q. Is that in relation to the lights the subject of the order of July 1967? A. Yes.

Q. Has your company paid Gollin & Co. the sum of \$1,040? A. Yes, we have.

Q. Also you are aware, are you not, that there was an examination — a much smaller examination — by the Sydney Chambers of Commerce? A. Yes.

Q. I think, in relation to which, a sum of \$64 was paid to that body? A. Yes.

Q. Was that paid by the company? A. By Jalsard Pty. Ltd.

Q. Then I think there was some cartage and bond store charges amounting to \$384.46? A. Yes. 20

Q. Paid by the plaintiff? A. Yes.

Q. You remember towards the end of 1967 there was a local documentary credit opened by the plaintiff? A. Yes.

Q. Did you see Mr. Carman in relation to that; do you remember, or not? A. Yes.

(Mr. Byers called for an application form of local documentary credit dated 21st December 1967. Produced.)

(Document produced on call, tendered. Mr. Byers informed his Honour that the signatures were the same as on the other documents. Without objection application form marked Ex. GG.) 30

MR. BYERS: There is no dispute as to the entry into and existence of this application, if your Honour pleases.

(Mr. Byers called for a credit number 97593, a bank letter, in the amount of \$1,320.94 signed by a Mr. Batts or Watts. Produced, dated 17th May 1968.)

(Credit Number 97593 dated Ex. HH.)

MR. BYERS: Your Honour might care to look at the back of the document. Your Honour will see the letters "L.D." Local documentary credit 753 and your Honour might compare that with the number given to the credit of 21st December 1967.

(Mr. Byers called for confirmation of credit dated 21st December 1967, the Commercial Banking Co. of Sydney, authorising Gollins to draw on Jalsard for the sum of \$5,069.70. Produced.)

(Confirmation of credit tendered and without objection marked Ex. JJ.)

(Tendered what appeared to be a bill of exchange in the sum of \$5,021.22 drawn by Gollin & Co. directed to Jalsard Trading Co., bearing the endorsement "Paid to the order of Commercial Banking Co. of Sydney as agents for collection of the Australia and New Zealand Bank, and a stamp by the defendant to that effect; an endorsement that is drawn under documentary credit 753 dated 19th February 1968. Without objection bill of exchange marked Ex. KK.)

(Tendered bill of exchange dated 10th May 1968 drawn by Gollin & Co. purported to be drawn on the Commercial Banking Co. of Sydney's documented credit 753 dated 21st December 1967, bill of exchange being in the sum of \$1,319.94 bearing endorsement by the defendant. Without objection bill of exchange marked Ex. LL.)

MR. BYERS: That is the evidence in chief, your Honour.

(Mr. Kenny at his Honour's invitation elected to defer his cross-examination until Tuesday 10th March 1970.)

(Further hearing adjourned to 10 a.m. on Tuesday, 10th March, 1970.)

JALSARD PTY. LIMITED v. THE COMMERCIAL BANKING COMPANY
OF SYDNEY LIMITED.

SECOND DAY: TUESDAY, 10TH MARCH, 1970.

(By agreement the following amendments were made to the third line on page 14; the word "not" was deleted and the word "and" was altered to read "on.")

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson —
cross-examined*

ROBIN DIANA WILSON
On former oath:

HIS HONOUR: (to witness) You are bound to tell the truth by the oath you took yesterday.

Q. Do you understand that? A. Yes Your Honour.

CROSS-EXAMINATION.

MR. KENNY: Q. Would you look at this cheque which I show you dated "21-2-68" for the sum of \$5,028.75? Are the signatures on the foot of that cheque your signature and that of Mr. Rowell? (shown) (no answer).

Q. I am asking you about the top one, Madam? A. I am sorry. Yes, Mr. Kenny.

Q. In whose handwriting is the cheque made out? A. I do not know.

HIS HONOUR: I had better have that marked, Mr. Kenny, had I not?

MR. KENNY: Yes, Your Honour.

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HIS HONOUR: What is the date of it?

MR. KENNY: The date is "21-2-68".

(Cheque m.f.i. 2)

Q. You recollect drawing the cheque, do you (objected to).

Q. Signing the cheque? A. I recollect signing the cheque, yes.

Q. Of course it was signed after a notification or request from the defendant bank, was it not? A. Not necessarily.

Q. I thought you said that you recollected signing the cheque? A. I do.

Q. You recollect that before the cheque was signed, you by some means, became aware that the bank had requested that the cheque be forwarded? A. No.

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Q. You did, in fact, after you had signed the cheque, I think, delivered it or cause it to be delivered to the bank? A. I did not deliver it.

Q. But you know, in fact, it was delivered by somebody on your behalf to the bank, do you? A. Yes.

Q. And against it you, or the person delivering it, uplifted some invoices? (Objected to.) A. I was not — (Objected to as irrelevant. Allowed).

Q. There were some invoices lifted in consideration of the cheque, were there not? A. I was not there.

Q. Did you subsequently see some invoices for goods to a value of something in excess of \$5,021? A. I saw some invoices for goods subsequently.

Q. They were goods, of course, to which letter of credit L.D. 753, which is Ex.GG — that is the application, I suppose — Ex. GG related? A. I am sorry. I would not remember what Ex. GG was.

MR. KENNY: Might the witness have a look at Ex. GG, please. (Ex. GG shown to Mr. Kenny).

Q. You see, this is your signature and Mr. Rowell's signature on this document, Ex. GG, is it not? (shown) A. Yes.

Q. That is a credit which you opened up in connection with the purchase of some toys? A. 10
Yes.

Q. The invoices which you saw subsequently after payment of the cheque which I have just shown you, m.f.i. 2, were invoices relating to the same toys as referred to in Ex. GG, were they not? A. Yes, I presume so.

Q. Would you look at the cheque 16th, May 1968? May I have that please? (Ex. GG returned to Mr. Kenny) which are dated 16th May, which I now show you, for the sum of \$1,320.94; the signatures on that cheque are those of you and Mr. Rowell? A. They are.

(Cheque m.f.i. 3).

Q. Of course Mr. Rowell who signed that cheque and the one which is m.f.i. 2 is the Mr. Rowell who is a director of Jalsard Pty. Limited? A. Yes. 20

Q. Are you able to say in whose handwriting that cheque is made out. A. No, I am not. I am sorry.

Q. Do you recollect signing that cheque. A. Yes.

Q. And that cheque? A. Mr. Kenny, perhaps I should correct myself. You asked me do I recollect signing that cheque. It was my habit to leave signed cheques in the office of Fell & Starkey because they required two signatures, one signature being inadequate; therefore that cheque could very easily have been signed prior to ever being filled in and Mr. Rowell's signature would then go on it making it the legal cheque.

*Q. Do you suggest that the cheque was improperly paid? A. By whom?

*Q. By Jalsard Pty. Limited to the Commerical Banking Company of Sydney Limited 30
(objected to as a question which is irrelevant and which does not go to credit. Allowed).

WITNESS: Would you please repeat the question?

(Questions and answers marked with * repeated).

The answer is that it was paid on my authority.

MR. KENNY: Q. Of course it was paid pursuant or after a message had been received by somebody on behalf of Jalsard Pty. Limited from the bank, was it not? (objected to. allowed).

Q. You know that that cheque was delivered in response to the bank — in response to a message from the Bank to Jalsard Pty. Limited, do you not? A. Yes, I know now.

Q. And you know, do you not, that after delivery of that cheque certain invoices were handed over by the bank to a representative of Jalsard Pty. Limited? A. At the time I did not know it. Now I do know it. 40

Q. They were invoices relating to goods sold by Gollin & Company Limited to Jalsard Pty. Limited? A. I am not sure that this would be the exact interpretation.

Q. Where are the invoices now? A. Mr. Kenny, I do not have them.

HIS HONOUR: Q. You mean by that that Jalsard Pty. Limited has not got them? A. I do not know. I assume that they are kept with the Jalsard bookkeeping ledger.

MR. KENNY: Q. Do you know that Jalsard uplifted invoices from the bank? A. Yes.

Q. To what did the invoices relate? A. To toys.

Q. To toys; they were toys which were coming through Gollin & Company Limited? A. They were coming through Jalsard into Gollin's store. Q. They were goods which had been purchased by Jalsard from Gollin's? A. No.

Q. In the event, you got invoices – your company got invoices – and it got those in return for the cheque? A. Yes.

Q. When was this company Jalsard Pty. Limited incorporated? A. I believe 1965 or 64.

Q. Were you a director at that stage? A. Yes.

Q. Was the other director at that time Mr. Rowell? A. Yes.

Q. Have the two of you been the directors of this company then continuously since its incorporation? A. Yes.

Q. What was its business prior to December 1966? A. It was purely an investment company.

Q. Have you been active in the management of the affairs of the company between the time of its incorporation and December 1966? A. I would like – would you be good enough to explain what “active in management” means?

Q. You were a director of the company? A. Yes.

Q. Did you act as such? A. I took a lot of advice from people who I considered knew better than I did.

Q. Including Mr. Rowell? A. Including Mr. Rowell.

Q. Mr. Rowell, of course, is an accountant? A. Yes.

Q. He is a member of the firm called Fell & Starkey? A. Yes.

Q. He is one of the senior members of that firm? A. That is correct.

Q. You are aware, are you not, that that firm has a large practice amongst commercial firms, commercial companies in Sydney? A. I have really never asked them what business they indulge in.

Q. Anyway, Fell & Starkey were your accountants, the company's accountants, from the time of its formation, were they? A. That is correct.

Q. They were your personal accountants also? A. That is also correct.

Q. Prior to the incorporation of the company, had you had business interests? A. No.

Q. What had your occupation been? A. Housewife.

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- Q. How long had that been your occupation? A. Since I was married.
- Q. When was that? A. 1952, I believe.
- Q. You were accustomed then, in connection with the affairs of Jalsard Pty. Limited, to seek the advice of, amongst others, Mr. Rowell? A. Yes.
- Q. You went to Taiwan, when, first? A. 1966.
- Q. What time in 1966? A. Approximately September or October.
- Q. You there became acquainted with Raymond & Company, did you? A. That is correct.
- Q. In fact you became extremely well acquainted with the members of Raymond & Company. A. Well acquainted — in what way, Mr. Kenny?
- Q. You were on Christian name terms with them, were you not? A. I was, but not at that point in time. 10
- Q. Very soon after you returned to Sydney, you were, were you not? A. I am sorry, I could not tell you when I became on Christian name terms with them.
- Q. You see, you also made enquiries of banks on Taiwan, did you? A. Yes.
- Q. What number of banks? A. Bank of America, Bank of Taiwan, First National City Bank; I cannot remember any others.
- Q. What was the nature of your enquiries of those banks? A. As to the standing of Raymond & Company in Taiwan.
- Q. Was that the extent of your enquiry at the banks? A. To the best of my knowledge.
- Q. At that time you were contemplating business with Raymond & Company, were you? A. Not when I first went to Taiwan, no. 20
- Q. Before you left? A. Yes.
- Q. You had never engaged in business before, do you say? A. I have already said no.
- Q. On your return you registered a business name, did you? A. I would not know when it was. I would think that probably occurred a little later.
- Q. When? A. I am sorry, I could not tell you when.
- Q. Who advised you to do that? A. Mr. Rowell.
- Q. Then shortly after you returned you got into touch with Gollin & Company, did you not? A. I believe that would have been after my second trip but I could not be sure.
- Q. You believe it would have been after your second trip. When was your second trip? A. In November. 30
- Q. In November: which year? A. In 1966.
- Q. I may have misunderstood you. I thought you said you first went to Taiwan in 1966? A. Yes.
- Q. I thought you said approximately September or October? A. That is correct.
- Q. I see. You then returned to Sydney? A. Yes.

Q. And you returned to Taiwan in November 1966? A. Yes.

Q. Then when did you return to Sydney? A. The same month.

Q. The same month; would it be correct to say that by November 1966 you were on first name terms with Mr. and Mrs. Wu? I very much doubt it but again, I am so sorry, I really could not tell you what month that occurred in.

Q. When did you make enquiries at the banks; on your first trip or on your second trip? A. First trip.

Q. On the first trip. And further enquiries — (interrupted).

Q. What? A. And further enquiries on the second.

HIS HONOUR: Speak up, would you please?

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MR. KENNY: Q. And, of course, you became on first name terms with at least one bank officer, did you not, a man named Gearon? A. I think if you check your records I did not meet Mr. Gearon at that stage at all.

Q. Mr. Gearon, of course, is an officer of the First National City Bank in Taipei? A. That is correct.

Q. Then did you take advice from anybody between your first and second trips to Taiwan? A. What sort of advice?

Q. Advice about the advisability of you going into, or, the company going into the business? A. It was discussed between Mr. Rowell and myself.

Q. And anybody else? A. Not to my knowledge.

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Q. Did the discussion between Mr. Rowell and yourself extend to the question of financing purchases made in Taiwan? A. Mr. Rowell suggested I should discuss that with the bank.

Q. Of course your dealings with Raymond & Company were on the basis of seller and purchaser, were they not? (no answer)

Q. They sold goods which you purchased? A. They sold goods which I purchased?

Q. Yes. A. They were my agents.

Q. Madam, they sold to you, did they not (no answer).

HIS HONOUR: The plaintiff; the company.

MR. BYERS: You mean the company?

MR. KENNY: The company, I am sorry.

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Q. They sold to the company, did they not? A. Yes.

Q. So that the goods — in relation to goods which came from Taiwan, Raymond & Company were the sellers and Jalsard Trading Company were the purchaser? A. Yes.

Q. Raymond & Company, of course, were remunerated out of the price which the company paid to them for the goods? A. Yes.

Q. When did you first become associated with Gollin & Company? A. I would say around November — December — the end of November 1966.

Q. Gollin & Company, of course, is a firm, a company, having a large importing business? A. Yes.

Q. It is a large importing business from various places in the East? A. I really would not know. I did not ask them what type of business they indulged in.

Q. What was the nature of your association with Gollin & Company in November and December 1966? A. It was basically preliminary discussions as to what form of business relationship we could assume.

Q. But may I take it that very shortly after that there was some definite association between you and Gollin & Company? A. Yes.

Q. That association would have dated from not later than January 1967? A. I do not remember the month. 10

Q. Look, did you not write to Raymond & Company on 25th January 1967 referring to the company which was associated with you? A. I wrote to them, yes. If you tell me it is 27th January I would not dispute it. I do not know what date I wrote on.

(Mr. Kenny called, as on subpoena, for document No. 2 on the plaintiff's list of documents. Produced).

Q. Is not this a copy of a letter dated 25th January 1967 written by you to Mr. Jackson Wu under the title of, "Jack," of Raymond & Company Limited? (shown) A. Yes.

Q. On the second page do you see a reference to the company "which is associated with me"? A. Yes.

Q. That company is Gollin & Company Limited, is it not? A. Yes. 20

Q. So that the association had been established at some stage prior to the date of that letter? A. I believe I have already said so.

Q. But is it the fact, madam? A. Yes.

(Letter m.f.i. 4).

Q. By April of 1967 you were describing Gollin & Company in letters to Mr. Jackson Wu as your distributor, were you not? A. Yes.

Q. Is it the fact that such — your company was an agent for Gollin & Company? A. I am sorry?

Q. Did your company become an agent for Gollin & Company in early 1967? A. In this particular field, yes. 30

Q. Were you yourself employed by Gollin & Company at any stage? A. No.

Q. But you had contact with a number of representatives of Gollin & Company, did you? A. Yes.

Q. Who were they? A. Mr. Keith Gale, Mr Bob Peachey, Mr. Geoff Rabbage, would be the three main people I was associated with.

Q. They were people experienced in business? A. I would presume so.

Q. You discussed business affairs with those three people? A. I discussed the development of an article which they required, namely Battery Operated Christmas Lights.

Q. But you discussed other things than that, did you not? A. Other imports, yes.

Q. Of course these Christmas lights were something that you had, in effect, devised yourself, were they not? A. No.

Q. You came back from Taiwan with a sample which was of a Christmas light, did you not? A. Yes.

Q. It was not a battery operated light, was it? A. You are now going back to '66, yes.

Q. Yes. A. It was not a battery operated light.

Q. You with these people from Gollin & Company worked out the idea that lights somewhat, or perhaps the same, in design should be produced and operated by batteries? A. That is correct. You asked me before did I devise it. I did not. It was devised with Gollin & Company. 10

Q. It was devised by Gollin & Company? A. With Gollin & Company, at their suggestion.

Q. When I asked you if you devised the lamp you said, "No" because you devised it with Gollin & Company; is that the position? A. No, I did not devise it. They devised it. I developed it.

Q. They devised the lamp and you developed it? A. Yes.

Q. I see. Of course the communications were with Raymond & Company who were selling to you — were carried on by you — is that right? A. Yes.

Q. You referred to, of course, the Christmas lights in the letter dated 25th January which I have shown you? A. Yes. 20

Q. Then subsequently you set out in a further letter a specification of the lights that you wanted? A. May I see it?

(Mr. Kenny called, as on subpoena, for a letter, a document No. 5 on the plaintiff's list of documents. Produced).

Q. Is this a copy of the letter — — was Mr. Wu's wife's name Margie? A. Yes.

Q. Is this a copy of a letter which you wrote to Mrs. Wu on 17th February 1967? (shown) A. Yes.

Q. On page 3 of that letter you gave some specifications with regard to Christmas lights? A. Yes.

Q. You said you had spoken to one of your associates. Who was that? A. Mr. Peachey. 30

Q. What other associates did you have in connection with Christmas lights? A. Mr. Peachey and Mr. Rabbage.

Q. But they were both in the same firm, were they not — the same company? A. Yes.

(Letter n.f.i. 5).

(Mr. Kenny called, as on subpoena, for document No. 8 on the plaintiff's list of documents. Produced.)

Q. Is this a copy of a letter dated 14th April which you wrote to Raymond & Company? (shown) A. Yes.

Q. By this time you had discussed the lights with Union Carbide, had you? A. No.

Q. Had somebody, on your behalf, discussed it with Union Carbide? A. Gollin & Company on their own behalf had discussed — —

Q. — the lights with Union Carbide? A. Yes.

Q. And told you about it (no answer).

(Letter m.f.i. 6).

Q. Of course you knew that Raymond & Company required credits to be made available to them before they would ship the goods? (objected to only on the ground of imprecision).

HIS HONOUR: Were you speaking about this time Mr. Kenny?

MR. KENNY: Yes, Your Honour, I will put a date.

Q. You knew before the first set of snakeskins were sent — before you first transaction with Raymond & Company, you knew that they required a credit to be established before they would ship goods to you? A. I understand so from the International Department of the Commercial Banking Company of Sydney. 10

Q. Did Raymond & Company not ask you for a credit? A. It was not discussed. I presumed they would require money.

Q. You what? A. I presumed they would require money.

Q. You presumed that they would require money? A. Yes.

Q. It was because of that that you went to the bank, was it? A. Yes.

Q. Of course you knew at that time that what would happen would be that Raymond & Company would hand documents to a bank in Taipei? A. I did not know anything at that time, Mr. Kenny, if you are going back to 1966. 20

Q. I will come back to that. Your first interview with Mr. Carman was when you called at the Overseas Department at the bank? A. I was taken down and introduced to him by Mr. Stevens from the International Section.

Q. You were by yourself? A. Yes.

Q. And you — — A. I am sorry. By myself, other than with Mr. Stevens.

Q. And you told Mr. Carman that you proposed to bring in some snakeskins from Taiwan? A. Not at this stage. It was merely an introduction from Mr. Stevens who said I was a respected member of the bank — that he asked Mr. Carman to look after me and I understood Mr. Carman to be certainly amongst the top heads of his department if not the head. 30

Q. This was some occasion before you sought any letter of credit at all? A. That is correct.

Q. How long before you first sought the letter of credit? A. I would say approximately three weeks; four weeks perhaps.

Q. After this lapse of time — by the way, during that period had you had any discussions with Mr. Rowell about this project? A. I believe I mentioned to you that I told Mr. Rowell that I was interested; he suggested the bank would advise me.

Q. You were one director of this company, Mr. Rowell was another; were there any others? A. Yes.

Q. Who were they? A. Mr. de Montfort. 40

Q. He is a solicitor, is he? A. Yes.

Q. He is a partner in the firm of Sly & Russell, is he? A. Yes.

Q. When did he first become a director? A. He is actually an alternate director acting only in my absence; basically for signatures.

HIS HONOUR: I am sorry. Would you repeat that? A. Basically for signatures.

MR. KENNY: Q. Correct me if I am wrong; you were absent, were you, from Sydney when the bank sent the document which has been tendered and which is Ex. "E"? (no answer)

MR. KENNY: Might I have Ex. "E"? (furnished). It is Ex. "D". (furnished).

HIS HONOUR: 4th October?

MR. KENNY: Yes.

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Q. I am showing you Ex. "D". Were you absent from Sydney when this document was forwarded by the bank to Jalsard Pty. Limited? (shown) A. I do not know. It is very possible. I went maybe September or October away, but I do not remember.

Q. You returned — — A. Excuse me. This is changed from 1968 to 1967, is it?

MR. KENNY: Q. Yes. It is a document that bears date 1967? A. It is a document that bears a date, 1968, actually.

Q. Yes, I know. The correct date is 1967? (no answer).

HIS HONOUR: It has "7" on top.

WITNESS: I think it probably was but I cannot be sure, Mr. Kenny.

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MR. KENNY: Q. In any event the decisions as to what the company was to do were normally made by you and Mr. Rowell; is that the position? A. Pertaining to what?

Q. The activities of the company — what it did? A. In the form of investment generally, yes.

Q. What it did in connection with trade was determined by the directors, was it not? A. Yes.

Q. The directors were you and Mr. Rowell? A. Yes.

Q. During the interval between your introduction to Mr. Carman and your going back to ask for the first letter of credit you had discussed the importation of snakeskins from Taiwan with Mr. Rowell, had you? A. Not specifically snakeskins. We had merely discussed imports from Taiwan.

Q. So we may take it that at all relevant times Mr. Rowell knew that you were proposing, on behalf of the company of which he was a director, to import goods from Taiwan? A. No. (objected to.)

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HIS HONOUR: I will allow it. The answer was "No". That was your answer?

WITNESS: Yes.

MR. KENNY: Q. You suggest there were actions by you relating to the importation of goods that were not known to Mr. Rowell (objected to. rejected in this form).

Q. You say that you imported goods on behalf of this company without consulting Mr. Rowell? (objected to. counsel addressed. rejected in this form. His Honour directed that Mr. Kenny may pursue this matter.)

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Q. Of course the administrative work of this company, the paper work was done in Fell & Starkey's office, was it not? A. Yes.

Q. What is that? A. Yes.

Q. How often did you attend at the office? A. When my signature was required for some purpose or other; when I had something to discuss with whoever worked on the company books.

Q. On these occasions did you see Mr. Rowell? A. If he was in I might talk with him. If he was out, no.

Q. And did you communicate with Mr. Rowell on any of these occasions that you were importing goods on behalf of the company from Taiwan? A. Yes.

Q. You did? (no answer).

Q. Is that what you say? A. At times.

Q. You, on the day on which you obtained a letter of credit – (with Ex. "L") – on 16th December 1966 when you went to requisition a letter of credit from the bank, you went to see Mr. Carman at the Overseas Department? A. Yes.

Q. You told him that you were bringing in some snakeskins from Taiwan? A. Yes.

Q. And that you wanted to arrange a letter of credit to pay for them? A. Yes.

Q. Mr. Carman asked you what the market was like for snakeskins? A. He might have.

Q. I suggest that he asked you that and that you replied that the order you proposed to import had already been sold and that Grace Bros. were the purchasers? A. Grace Bros. were the purchasers, yes.

Q. That was the fact, was it not? A. That was a fact.

Q. They had already been sold to Grace Bros? A. That is correct.

Q. I suggest that you told him that on this occasion? A. It is quite possible I did.

Q. He then, I suggest to you, got out a form and asked you some questions? A. Yes.

Q. He asked you what was the name of the beneficiary – ? A. Yes.

Q. – of the credit; is that so (no answer) (objected to. allowed).

HIS HONOUR: You must make it plain whether you are putting conversations or summarising.

MR. KENNY: I have prefaced every question, Your Honour, "Mr. Carman said," or "you said."

MR. KENNY: Q. He then asked you what was the address? A. Yes.

Q. You said, "No. 4, Lane 42, Chungshan, North Road, Section 2, Taipei. A. Yes, Taipei, yes.

Q. He then said to you, "Drafts to be drawn at sight." A. If he had said that, Mr. Kenny, my reply would have been what do you mean.

Q. You say he did not say it to you? A. I am not saying he did not say it to me. I do not remember.

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Q. But you see you have given a long account of what took place (both counsel approached). See, if you look at the fourth line there where my thumb is you will see a tick alongside the word "sight". A. Yes.

Q. That was put there during the interview, was it not? A. I do not know. (counsel retired from the witness).

Q. But of course you took the document away with you, did you not? A. Yes.

Q. And read it; while you had it away from the bank? A. No.

Q. Did you look at it while you had it away from the bank? A. I did not have it away from the bank. I took it to Fell & Starkey.

Q. It was away from the bank? A. I just told you, I took it to Fell & Starkey. 10

Q. Did you look at it while it was away from the bank? A. I just told you, no.

(Ex. "L" shown to Mr. Kenny).

Q. I suggest to you that Mr. Carman said to you, "What is the amount to be quoted on the Letter of Credit?" A. Yes.

Q. And you said, "\$US1,035." A. I would not know if I gave it to him in Australian or U.S. dollars.

Q. And he said to you, "What is the basis of shipment, f.o.b., C & F or C I F?" A. Yes.

Q. And you said, "F.O.B.?" A. Yes.

Q. He then said, "What is a brief description of the goods being imported?" A. Yes.

Q. You said, "Snake skin"? A. Yes. 20

Q. He said, "What is the country of origin of the goods?" A. Yes.

Q. And he said "Taiwan"? A. No. I said, "Taiwan."

Q. I am sorry. You said, "Taiwan"? A. Yes.

Q. And he said, "From what port or country will the goods be despatched?" A. Yes.

Q. And you said, "Taiwan"? A. If he said "What port" I would not have said "Taiwan".

Q. That is what it says in the letter of credit, is it not? "Port or country of shipment?" "Taiwan"? A. I think this is an air-freight letter, is it not?

Q. Does it not say, the letter of credit? (no answer).

HIS HONOUR: Is that the application or is that the letter?

MR. KENNY: I am sorry. On the requisition, Ex. "L" (shown to witness). 30

WITNESS: Yes.

MR. KENNY: Q. Do you recollect now that when he said, "From what port or country would the goods be despatched?" you said, "Taiwan". A. Mr. Kenny, I repeat if he said the port I would have said, "Keelung". If he had asked me the country I would have said, "Taiwan". It is possible that we sorted this out between us as to the fact that it should be Taiwan, not Keelung.

Q. Did he say to you, "What is the port of destination?" A. I would presume so.

Q. Did you say, "Sydney"? A. Yes.

Q. Did he say, "How were the goods to be shipped, sea, air or parcels post?" A. It was an airfreight, I believe.

Q. Did he ask you, "Were the goods to be shipped sea, air or parcels post?" A. I am sorry, I do not remember exactly.

Q. You did tell him that they were to be sent by airfreight? A. I said they were to be sent by air.

Q. Did he say to you, "Are part-shipments allowed or must all the order be despatched at one time?" A. Yes, he did.

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Q. Did you say, "All the order must come." Did he say to you, "Is transhipment allowed?" A. Yes.

Q. Did you ask him what that means? A. Yes.

Q. Did he say, "Well, can the goods be shipped from one vessel and transferred to another en route?" A. Yes.

Q. Did you say, "Yes"? A. I asked him – I – he explained about the air service not coming directly to Australia.

Q. So you said they could be transhipped? A. Yes.

Q. Did he say to you, "What documents do you require to be submitted under this letter of credit?" A. Yes.

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Q. Did he then go on to say, "A commercial invoice."? A. I told him I would not know what I needed and I cannot remember what his reply was. I believe he told me what I would need; the only thing I knew I wanted was a certificate of inspection.

Q. What? A. From my agents.

Q. I beg your pardon? A. The only thing I knew I wanted was a certificate of inspection from my agents.

Q. You knew that before you got to the bank? A. Not before I originally got to the bank.

Q. Did you ask, or make any enquiry of Mr. Carman about a certificate of inspection on this occasion? A. I asked him what was the best protection I should have as to the goods arriving as I had seen samples of quality.

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Q. As what? A. As to the sample goods I have seen and to ensure that the standard of quality would be correct.

Q. You asked him what was the best document? (sic) A. Yes.

HIS HONOUR: What was the best protection.

MR. KENNY: What was the best protection.

HIS HONOUR: That is what the witness said.

MR. KENNY: Q. Did you not say to him, is it not correct that a certificate of inspection from my agents is the best method of protecting yourself? A. I asked him was this correct. Yes, I am sorry. My words are not quite as I said.

Q. So you asked him about a certificate of inspection? A. Yes.

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Q. Who had told you that the certificate of inspection was the best method of protecting yourself? (objected to, rejected in this form).

Q. Had somebody told you that a certificate of inspection was the best method of protecting yourself? A. Yes.

Q. Who had told you that? A. It had been discussed with – I am sorry – International Banking Section of the Commercial Banking Company of Sydney and it had been discussed when they brought me down to introduce me to Mr. Carman. Perhaps “discussed” is not correct, mentioned.

Q. Do you say that you had been told at some early point of time by officers of the bank – that the best – that a certificate of inspection was the best method of protecting yourself? A. I had been told a certificate of inspection was a necessary document, yes.

Q. Why did you ask Mr. Carman on this occasion was it correct that a certificate of inspection was the best method of protecting yourself? A. Because I understood he would know more than anybody else about placing overseas funds.

Q. According to your account you had already been told by officers of the bank that this was so? A. I had been told by the Department not concerned with putting up overseas funds and I had been told I could – –

Q. You did not say anything to Mr. Carman about having been told this by another section of the bank, did you? A. No.

Q. Did you accept it as being the fact when you were told it by the International Division? A. No.

Q. Did you make any enquiries of anybody else? A. Yes.

Q. Who? A. Mr. Carman.

Q. Anybody other than Mr. Carman? A. No.

Q. So what you say is that it was not until Mr. Carman gave you an answer that you accepted that the best method of protection – or a certificate of inspection was the best method of protecting yourself? A. That is correct.

Q. Why did you not accept it when you were told it by the International Division? A. Because they told me Mr. Carman was the man who was in charge of putting up funds overseas; he was the person to rely on; he was the person to ask advice of, and he was the person I could trust.

Q. Who was it, in the International Division, that you had this conversation with? A. Either Mr. Parker and Mr. Stevens or one or the other.

Q. What was the content of the conversation? A. Generally that I was interested in import-export from Taiwan.

Q. What else? A. That I did not know anything about it; that I was a complete – I think I might have used the expression “idiot” at the game – I had no idea – I had never done it and would they advise me what to do and they took me down to Mr. Carman.

Q. Was that the whole of the conversation? A. Bar the fact that to be very careful of Taiwan; this was an area where the greatest protection possible is needed on any goods that came in to cause trouble.

Q. Any goods came in, what? A. Which caused trouble.

Q. Was that the whole of the conversation? A. To the best of my memory, yes.

Q. Not a word in that conversation about certificates of inspection, was there? A. I am presuming that you accepted the first part of my statement as having, as being included in the conversation, when you asked what other parts.

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Q. Madam, I asked you to give the conversation, did I not? A. I am sorry Mr. Kenny. I misunderstood the question.

Q. In response to the question, "What was the conversation?" you did not say a word about certificate of inspection did you? A. I repeat I misunderstood the question. I presumed it was the rest of the conversation other than the part I have already given you.

Q. What led you to presume that? A. I can only put it down to my own stupidity.

*Q. Now, perhaps you will give his Honour the whole of the conversation you had with the International Division? A. Certainly, Mr. Kenny. I believe I said, "Good afternoon," or "Good morning," and one of them replied the same. We exchanged general pleasantries, I told him I was interested in importing from Taiwan. I did not understand anything about it; I have never imported or exported. "I", I mean my company or myself. 10

Q. Which did you say? A. It is quite likely I said "I".

Q. What else was said? A. I wonder whether I could just have that last part of what I said back please, Your Honour? A. I have lost track of it.

HIS HONOUR: Mr. Kenny, I think the witness should. You, after all, did ask another question in the middle of her answer.

(Answer marked with * above read).

WITNESS: I had come to the bank for advice and assistance. "What should I do?" and he got out several books pertaining to import-export from Taiwan – several catalogues were given to me. He told me that I should protect myself because this was an area of very under-quality goods. I asked, I believe, what protection did one have and he replied he would introduce me to Mr. Carman – that one of the requirements was a certificate of inspection. 20

We then went on generally discussing imports and at the end of the conversation Mr. Stevens took me down and introduced me to Mr. Carman, using the words that I have previously mentioned.

MR. KENNY: Q. On this day Mr. Carman asked you what documents did you require to be submitted under the letter of credit, did he not? A. Yes.

Q. And he asked you about commercial invoices? A. You say so, yes.

Q. Is it not a fact, Madam, and did you not say, "Yes". A. I said, "I do not know what documents are required on a letter of credit. I believe a certificate of inspection is a protection. Is this correct or not?" 30

Q. Do you say that you did not know what a commercial invoice was? A. That is precisely what I am saying, Mr. Kenny.

Q. You did not know what an invoice was? A. I did not say I did not know what an invoice was; I did not know what a commercial invoice was.

Q. He asked you if you wanted a commercial invoice, did he? A. You have told me he did, Mr. Kenny. I presume he must have.

Q. You say you do not remember? A. That is it.

Q. So you do not remember whether he asked you about invoices, commercial invoices? A. He asked me about documents; I do not remember specifically by name which documents. 40

Q. Look, did he ask you about insurance? A. Yes. He did ask me about insurance.

Q. What did you say? A. I said that it was f.o.b., I would be taking care of insurance, I understood.

Q. Where did you – in fact, did you insure these goods? A. I really cannot remember.

Q. And that was the whole of the conversation about insurance? A. To the best of my knowledge I think it was.

Q. So you did not ask for any assistance in relation to insurance? A. If there was to be no insurance why would I ask for insurance?

Q. You mean you were proposing not to insure the goods during their travel? A. I think these were not insured but I cannot be sure.

Q. At any rate you said to him, "I will look after insurance"? A. I do not remember.

Q. And you said that – and you do not remember? A. I do not remember if I said, "I will say there is no insurance because it is f.o.b."

Q. Who had told you that? That there was no insurance with f.o.b.? A. I had ascertained what f.o.b. meant and C & F and C I F. 10

Q. Where did you ascertain that? A. I am sorry, I have tried to remember but I do not.

(Short adjournment).

HIS HONOUR: You are still bound by your oath to tell the truth.

MR. KENNY: Q. At this time, say about 16th December, 1966, did you know Mr. Wall? A. Yes.

Q. What was he? A. The manager of the Commercial Banking Company of Sydney.

Q. Did his name arise during this conversation with Mr. Carman? A. Not to my memory.

Q. Going back to the conversation you told us you said you would look after insurance. Did Mr. Carman then say to you, "What about the freight charges? Will you pay that here on arrival of the goods?"? A. Yes. 20

Q. Did you say, "Yes"? A. I asked him what it meant and he told me. He said freight would be payable at this end. I said, "Yes, it would."

Q. You made inquiries about f.o.b. did you not? A. I did ascertain what f.o.b. meant.

Q. You knew that involved your paying freight at this end? A. No, I did not know I had to pay at this end.

Q. You knew that freight had to be paid presumably? A. Yes.

Q. You knew that f.o.b. meant that the goods were carried as far as the point of departure by the seller? A. Yes.

Q. And you knew then that you would have to pay freight here, did you not? A. I knew I would have to pay freight. 30

Q. Why did you ask Mr. Carman what it meant? A. For the simple reason I was not sure exactly where freight was paid other than the fact that I paid it.

Q. After the inquiry about the freight did Mr. Carman say to you, "Any additional documents?"? A. Yes.

Q. Did you say, "Inspection certificate"? A. I said would I require certificates of inspection as it was the protection it would give me, the quality of the goods, as I have seen some. (sic)

Q. After whatever was said about inspection certificates did he then write "Inspection certificate" on the document? A. No, we discussed the fact that the agents should give the certificate of inspection. 40

Q. Of course there had been no mention of an agent up to this point of time in the conversation had there? A. There had, yes. Raymond & Company were my agents.

Q. You have already agreed Mr. Carman asked you who would be the beneficiary of the credit and you said Raymond & Company? A. I have agreed, that is quite right.

Q. Is that right? A. Yes.

Q. Up to this point of time there had been no mention of an agent, had there? (Objected to; allowed).

Q. Had there been any mention of an agent up to this point of time in the conversation? A. I am on oath and I cannot say yes there had but I can say on oath that to me my agent and my beneficiary was the same person.

Q. Do I take it what you are saying is you cannot recollect any mention of an agent up to that point of time in the conversation? A. No, I am sorry, you cannot take it that that is what I have said. I have not. 10

Q. Was there any mention of an agent up to that point of time in the conversation? A. I have replied I cannot remember whether the word "agent" came up or not.

Q. I suggest to you that the words "inspection certificate" were written down before the word "beneficiary" or "beneficiaries"? A. I believe yesterday I said I did not know which was written first.

Q. Have a look at Ex. L. A. Yes.

Q. What you said yesterday was after the discussion the words "beneficiaries, inspection certificate" were inserted. That is what you said yesterday was it not? A. Yes.

Q. You now wish to say you don't know what order the words "beneficiaries, inspection certificate" were written in? A. I presume it would be natural to write it in the order in which it has occurred, "beneficiaries, inspection certificate." 20

Q. That is what you were seeking to suggest by your answer yesterday, was it not? A. Yes.

Q. I suggest to you that at this point there was quite a discussion about inspection certificate, is that right? A. I believe I have made that clear, yes.

Q. And I suggest to you that what happened was that when Mr. Carman said to you "Any additional documents?" you said, "Inspection certificate"? A. No, I am sorry I did not.

Q. And I suggest to you that he then wrote down on the form "Inspection certificate" in the place in which those words now appear on Ex. L? A. I am sorry. The conversation was a certificate of inspection from my agents or from Raymond & Company. 30

Q. You are saying he did not write down the words "Inspection certificate" first before the word "beneficiaries"? A. I am saying I don't know.

Q. The words "Inspection certificate" are roughly in line with the margin and the other writing on the document, the writing and printing? A. Yes.

Q. And I suggest to you that after you had mentioned "Inspection certificate" Mr. Carman said, "Who is to issue the inspection certificate?"? A. I believe I had previously mentioned the inspection certificate, was it the best form of protection from my agents, and Mr. Carman had replied, "Yes."

Q. I suggest it was at that point of time after Mr. Carman said, who was to issue the certificate, that you said the inspection certificate was to be arranged by your agents Raymond & Company? A. I suggest I asked Mr. Carman was it correct that the inspection certificate would be best issued by my agents Raymond & Company, as I have already said. 40

Q. Was something said about who were suitable people to give inspection certificates? A. Not to my recollection other than the fact my agents were.

Q. What? A. Other than the fact that my agents were.

HIS HONOUR: Q. You mean that was said in this conversation, that your agents were satisfactory people? A. I am sorry. I believe I said to Mr. Carman, "Is it correct that a certificate of inspection from my agents is the best form of protection I can have?" and Mr. Carman replied, "Yes."

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson —
cross-examined*

MR. KENNY: Q. Your agents had an interest in the transaction? A. Yes, to look after me.

Q. They were only your agents in the sense they were selling to you? A. They were my agents inasmuch they were supposed to deliver the goods to the standard of inspection as I have explained to Mr. Kearney.

Q. Do you suggest to his Honour you cannot appreciate on this occasion Raymond & Company had an interest in the matter which was contrary to yours. Do you say that? A. Would you repeat the question? 10

Q. Do you tell his Honour you cannot understand that in this transaction Raymond & Company had an interest which was not the same as yours? A. I cannot see why their interest would not be the same as mine.

Q. Did you think they had an interest as sellers? A. They had an obligation to me to look after me, they were my agents, my representatives.

Q. Do you say they did not have an interest of their own? A. They were entitled to earn commission from the sale if that is what you are suggesting.

Q. They were not paid by commission were they? A. I really don't know what they were paid. 20

Q. You agreed with me earlier this morning that they took their profit out of the price they got for the goods? (Objected to).

Q. Did you not say to his Honour earlier this morning that Raymond & Company were remunerated out of the price they got for the goods? A. I believe that is what you said, I don't quite know exactly what my answer was. It was yes, if that is your wording. I cannot remember the exact wording.

Q. Their remuneration in this instance was dependent upon their getting the price? A. On their getting — —

Q. The price for the goods they were selling? A. Dependent on selling the goods. 30

Q. And in fact on getting their price? A. No.

Q. Do you seriously suggest to his Honour you cannot see that Raymond & Company had an interest adverse to yours? A. No, I seriously suggest to his Honour I cannot see they had an interest adverse to mine.

Q. Did Mr. Carman say at any time that day that it was not a good idea to have an inspection certificate issued by the beneficiary of the creditor? A. No, he did not.

Q. Never said anything of that sort? A. No.

Q. Never even suggested any terms whatsoever that there might be a clash of interests on the beneficiaries' part? A. No.

Q. Never said anything like that? A. No. 40

Q. Of course you tell me do you not on this occasion you were on first name terms with two of the employees of the company? A. No I do not.

Q. It was the fact was it not? A. I cannot see that that was the question with respect. You asked me had I told Mr. Carman.

Q. It was the fact you were on first name terms with two of the employees, was it not? A. It is the fact I am on first name terms with many people including Raymond & Company.

Q. You are not on first name terms with them now, are you? A. I have not had any communication with them for some time.

Q. This break in communication arose after these goods had been delivered, is that so? A. Yes.

Q. And at that point of time when the first lot were delivered – –

HIS HONOUR: You asked her about “these goods”. I am not sure which goods you are referring to.

MR. KENNY: Q. This break in communication started from the time or shortly after the time these Christmas lights were delivered? A. Not shortly after, towards the end. 10

Q. How long after? When did it develop? A. When I found – the end of 1967.

Q. It developed because there was a dispute between you, I mean you yourself on behalf of the company, and the Wu’s about the quality of the Christmas lights? A. The main dispute was the difficulty in obtaining removal from Taiwan.

Q. After the Christmas lights had been delivered, that you had established credit for in July of 1966, you went and saw the Wu’s did you not? A. Yes.

Q. At some time after the goods were delivered there was a lengthy conference in the Ambassadors Hotel in Taipei? A. That is correct.

Q. In which you were asserting that the goods, the Christmas lights, were not up to standard? A. That is correct. 20

Q. And the Wu’s were asserting that they were? A. No.

Q. You say the Wu’s agreed they were not up to standard? A. The Wu’s on seeing certain samples I presented to them indeed suggested that they were not up to sample.

Q. Did they take the goods back? A. Ultimately.

Q. Did they take the whole of the goods back? A. Everything that was not sold. As you know there were a few that were sold.

Q. Did they reimburse you for the money which you had paid for the goods? A. No. To the greatest degree of their ability, yes.

Q. They were prepared to reimburse you for the full amount were they? A. No. 30

Q. Did you seek the full amount? A. Yes.

Q. What? A. Yes.

Q. But they would not agree to pay the full amount? A. They didn’t have the full amount, they had to pay the supplier.

HIS HONOUR: Q. I missed the last word? A. They had to pay the supplier.

MR. KENNY: Q. Mr. Carman asked you after the talk about the inspection certificate? – –

HIS HONOUR: That is in December?

MR. KENNY: Q. December 1966, when the credit was to expire? A. Yes.

Q. You said 14th January, 1967? A. Yes.

Q. He then said, “What is the name of the account on whose behalf the credit is to be established?”? A. I don’t remember. It sounds reasonable. 40

Q. You said that the firm had been established for the purpose of handling importing of goods and it was called Jalsard Trading Company? A. I am sorry, I did not say a firm.

Q. What? A. I would not have said a firm because it was not a firm.

Q. It was not a firm? A. No.

Q. What was it? A. It is a registered name.

Q. In any event the credit was signed by you in the office? —

HIS HONOUR: The application for credit.

MR. KENNY: Q. The application for credit was signed by you on 16th December, 1966, or was it? Did you sign it in the bank or did you take it away? A. I took it away.

HIS HONOUR: Q. I am not quite clear on the last answer. When you said you took it away did you mean you signed the document after you had taken it away? A. To the best of my recollection it was signed later. 10

MR. KENNY: Q. It was signed after taking it away? A. I believe so.

Q. In whose writing are the words “Jalsard Trading Company” in this document Ex. L? A. I don't know.

Q. They are not yours? A. No, they are not mine.

Q. In fact they are Mr. Carman's are they not? A. I just said I am not sure.

Q. Mr. Carman asked you on this occasion in December 1966 was the account open, the Jalsard Trading account open? A. Yes, I think he did.

Q. You said yes? A. I don't remember. 20

Q. In fact the account was not opened until 30th June, 1967, was it? A. No it was not. I am sorry, I cannot be sure of the date but it was certainly not open then.

Q. And he said to you after asking was the account open, and you said yes, “Who owns the account?”? A. I don't remember.

Q. You said, “I do”? A. I can hardly think I said, “I do.” It would have been a company account.

Q. Did he say, “Who operates on the account?”? A. I don't think so.

Q. Did he say, “Is it registered under the Business Names Act?”? A. I don't think so. I don't even think it was registered at that point in time. I cannot be sure.

Q. Did he say, “Who controls the account?”? A. I don't remember any discussions on detail on the account at all. 30

Q. Did you say, “Mr. Wall” in answer to the question, “Who controls the account?”? A. No I certainly did not.

Q. Did he say, “Have you made arrangements with Mr. Wall to establish letters of credit?”? A. Yes.

Q. Did you say, “I have seen Mr. Wall”? A. Yes.

Q. Did you say to him, “If any information is required Mr. Rowell or Mr. Egan of Fell & Starkey will provide it”? A. Information pertaining to what?

Q. Any information of any sort relating to the transaction. A. Of the financial side, I very possibly could have, but in general – how can I answer that question?

Q. I suggest what you said was, “If any information” – without specifying what – “If any information is required Mr. Rowell or Mr. Egan of Fell & Starkey will provide it.” A. If I said that it would certainly mean as to our financial standing.

HIS HONOUR: Q. I think Mr. Kenny is asking you if you have any present recollection of having said that to Mr. Carman in December 1966? A. I do not have any recollection of that actual statement.

MR. KENNY: Q. I show you now Ex. L. again. On the occasion on which you and Mr. Carman were present together, Mr. Carman wrote the ink portion, the ink writing on the document to which I have taken you, is that correct? A. I believe he also wrote the pencil “Office agents, Taipei. Reimburse First National City Bank, New York”. 10

Q. You requested that the letter of credit be established through the First City Bank, Taipei? A. First National City Bank of New York, Taipei branch, yes.

Q. You said the manager was a personal friend of yours? A. No.

Q. Was it the fact? A. No.

Q. Did you say that he or the manager would steer it through? A. No, I would not understand what you mean.

Q. There was a subsequent discussion between you and Mr. Carman about the requisition for a credit, Ex. L, was there not? A. I am sorry, what did you say? 20

Q. There was a subsequent conversation, a conversation of another day, between you and Mr. Carman about this requisition for a letter of credit which is Ex. L? A. That is the one we have been discussing.

Q. Yes. A. Not to my memory.

Q. What? A. Not to my memory.

Q. There is no doubt that Mr. Carman on some occasion did tell you that the First National City Bank was not the agent of the Commercial Banking Company in Taipei? A. That is correct.

Q. And he, I suggest to you, told you that on the day this form was made out, Ex. L? A. I am sorry, he did not. 30

Q. You know do you not that the credit in fact was paid through the Nippon Kangyo Bank in Taipei? A. I know now.

Q. I suggest to you that Mr. Carman rang you or got in touch with you in some way after the 16th December, 1966, and told you that the cost of cabling this credit, this request to Taipei, would be excessive? A. I am sorry, I have no recollection of that.

Q. Did he tell you it would cost you something of the order of \$46? A. If I don't remember him contacting me how do I remember what he told me?

Q. Did he say to you that it would be cheaper to establish it through the Nippon Kangyo Bank in Taipei? A. The Nippon Kangyo Bank was never mentioned until February.

HIS HONOUR: Q. February of what year? A. 1967. 40

MR. KENNY: Q. Did he say to you that he would arrange for the credit to be advised through the First National City Bank? A. On the day when I bought the letter of credit up, the 16th — yes, when I made the application.

Q. Your request was that the credit be paid through the First City National Bank? A. That was my request, yes.

Q. And the pencil writing you say was put on the document in your presence? A. To the best of my memory.

Q. So in your presence Mr. Carman wrote on this document “Nippon Kangyo Bank Limited, Taipei” at the top? A. No, that was not what I have said.

Q. Was the writing put on it in your presence? A. We are referring to the writing on the sixth line down, “office agents in Taipei, First National City Bank.” That is the writing I think was put on. I cannot be sure. 10

Q. What about the writing on the top of the document? A. Certainly I never saw “Nippon Kangyo Bank”, never heard of the Nippon Kangyo Bank. I did not know they were in existence until February.

Q. What about the writing on the side of the document “Please advise through First City National Bank” or words to that effect? A. I don’t remember when that was put on. I do not think it was put on in my presence.

Q. The words on the sixth line in pencil don’t refer to the First City National Bank, Taipei, do they? A. They refer to Taipei, “Reimburse First National City Bank, New York”. 20

Q. It is addressed to their agents in Taipei, the agents of the Commercial Banking Company, and it then says “Reimburse through First City National Bank, New York”? (Objected to)

Q. “Reimburse First National City Bank, New York.” A. That is the full name of the bank.

Q. You say that was on it when you took it away? A. I have told you I cannot be sure. I believe it was written on in front.

HIS HONOUR: Q. You cannot be sure? A. I believe it was written on while I was at the bank.

MR. KENNY: Q. At this time in December 1966 you had not completed any transaction with Raymond & Company? A. No.

Q. But you were I suggest determined that there was to be a certificate of inspection granted by that company? A. Yes. 30

Q. I have Ex. R. After this it was the practice of Mr. Egan was it not to draw up these requests for letters of credit? (Objected to).

Q. After the occasion in December 1966, as you said yesterday, in proceeding to fill in the form in the office the practice was for Mr. Egan to fill out requests for letters of credit in the office of Fell & Starkey? A. Not all of them.

Q. Exhibit R was filled out in the office of Fell & Starkey? A. I really would not know. I was not present. I am on oath. I cannot see what I did not see.

Q. Is this your signature on this document? A. Yes.

Q. Is that Mr. Rowell’s signature? A. Yes. 40

Q. Were those signatures put on in the office of Fell & Starkey? A. Either in the office or it would have been sent to my home for my signature.

Q. Then you were asked were you not by the bank to sign another requisition? A. Who was asked.

Q. You were asked? A. Not to my knowledge.

Q. You did in fact sign another requisition did you not? A. Obviously, I was shown a different one yesterday.

Q. You signed that document before it got to the bank, is that so? A. This one?

Q. Yes. A. I have already suggested that I did.

Q. I beg your pardon? A. I have already said that I did.

Q. And then you subsequently signed another request for the same credit, which is Ex. R; is not that the fact? A. That is my signature, yes.

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HIS HONOUR: You had better identify the first document.

MR. KENNY: I will have it marked.

HIS HONOUR: All I can see at the moment is a document printed on blue paper.

(Document printed on blue paper m.f.i. 7)

MR. KENNY: Q. Of course that document — neither the copy of that requisition, Ex. R, or the document m.f.i. 7, refers to inspection certificate? A. No. Can I see the back of the other one? I believe it says — “Raymond & Company” has been crossed out. “Beneficiary to certify on invoice that goods shipped are in accordance with and conditions adhered to as detailed in Jalsard Trading Company’s letter to .. ” — “them” has been crossed out. “Raymond & Company has been substituted. 11th January, 1967.

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HIS HONOUR: Q. Which document were you reading from? A. The blue document.

HIS HONOUR: The witness gave that answer in relation to m.f.i. 7.

(M.f.i. 7 tendered and marked Ex. MM)

MR. KENNY: Q. As I understand it the document which was formerly m.f.i. 7 which has been tendered and is now Ex. MM, that was signed by you either in Fell & Starkey’s office or at your home? A. This first one?

Q. Yes? —

HIS HONOUR: That is the document here?

WITNESS: Yes.

MR. KENNY: Q. And the second one was sent to you and signed by you where? A. I have no recollection. 30

Q. You have no recollection at all of the circumstances in which this Ex. R. was signed? A. No, not at all.

Q. Exhibit T was a requisition for a credit for a quantity of snake skins. Was the vendor in that instance also Raymond & Company. A. My agents were also Raymond & Company, yes.

Q. I asked you was the vendor of the snake skins in that instance Raymond & Company? A. I am not sure if the vendor is the supplier or my agent I am sorry.

Q. Did you purchase these snake skins referred to in that requisition Ex. T from Raymond & Company? A. Yes I did.

Q. May I have Ex. W? You said in answer to Mr. Byers yesterday that you had been told that the First City National Bank in Taipei was a bank upon which you could rely? A. Yes.

Q. Rely for what? A. To execute the documents as requested by my bank in Sydney.

Q. You knew then did you that the documents would be handled in the first instance by a bank in Taipei? A. Yes.

Q. They would be the documents which would make the proceeds of the credit available and exchange the documents which would be handed to them? A. When I first saw the bank I had no idea what they would do, I told you I knew nothing about import or export.

Q. At the time at which you spoke to Mr. Carman on 16th December, 1966, you told him that you had been informed that the First City National Bank in Taipei was a bank upon which you could rely? A. Yes.

Q. The purpose on which you could rely on them was to handle the documents? A. Yes.

Q. So you knew that the documents as at 16th December, 1966, would be received in the first instance by a bank in Taipei? A. I knew that certain documents would be received in Taipei.

Q. And you knew that the documents would then be forwarded by that bank to the Commercial Banking Company of Sydney? A. No I did not.

Q. Did you ever find that out? A. Yes I certainly did.

Q. Did you find it out when you took up the documents relating to the first set of snake skins, the first purchase of snake skins? A. When I took up — ?

Q. The documents relating, or somebody on behalf of the company took up the documents relating to the first purchase of snake skins? A. I didn't go.

Q. Did you ascertain at the time or about the time when the documents were taken up relating to the first purchase of snake skins that the procedure was that the documents came through the Commercial Banking Company of Sydney? A. Yes.

Q. That was the first knowledge you had of that? A. Yes.

Q. On 11th July, 1967, you made a further application for a requisition? A. Yes.

Q. Where did you ascertain the meaning of a back-to-back credit? A. From Gollin & Company.

Q. When? A. When they suggested using it.

Q. When would that have been? A. The first back-to-back letter of credit was used in around May.

Q. Who was it who told you? Did somebody tell you you could not get a certificate of inspection in the back-to-back credit transaction unless the both parties called for it? A. Yes, I was told — —

Q. Who told you that? A. I did not finish my sentence. I was told the wording had to match up and be identical and there was no certificate of inspection called for by Gollin & Company.

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Q. When did you ascertain that? A. I was informed of this by the banks, and I use the word "banks" meaning the Commercial Banking Company and the A.N.Z., because there was a lot of difficulty in wording, matching up.

Q. This was in May? A. I cannot be sure of the month. I know which application it was but not the month.

Q. We may take it at some time, that being the time of the first back-to-back credit, you became aware Gollin & Company did not require certificates of inspection? A. That is correct.

Q. Did you say anything to anybody about that? A. Yes.

Q. To whom? A. Mr. Carman. I am sorry, I must correct myself there. I believe I said it to Mr. Egan. 10

Q. You did not at any stage mention this to Gollins? A. To whom?

Q. To anybody at Gollins, the fact that you were not asking for a certificate of inspection? A. I don't think so, no.

Q. You mentioned it to Mr. Egan you think? A. After the letter of credit was placed. I said to Mr. Egan I considered it was absolutely Jalsard's responsibility financially and I did not care what matched or what did not match up, that on all future letters of credit I would have a certificate of inspection as the Commercial Banking Company informed me, and Mr. Carman thought it so important.

Q. This back-to-back credit was one arising out of a transaction in which you were importing some goods and before importing them you sold them to Gollin & Company? A. Yes. 20

Q. Of course you appreciated that you were a vendor to Gollin & Company of those goods? A. Yes.

Q. And you were responsible for the quality of those goods? A. Yes, that is why I later changed my mind.

Q. When did you change your mind? A. When I asked for the certificate of inspection on the next back-to-back letter of credit.

Q. This is the one relating to the Christmas lights is it? A. The first order I believe.

Q. What? A. I believe the first order, I cannot remember. It is very difficult to remember every single letter of credit. 30

Q. The first back to back transaction was one in April was it not? A. I told you I thought April. I think I said May. I don't know. I think it was Christmas decorations.

Q. Is this the request for the first back-to-back transaction, Ex. W (showing document)? A. Yes.

Q. That typing was done by somebody. It was not done in the bank? A. No.

Q. It was done in Fell & Starkey's office? A. I was not present. To the best of my knowledge it was not done in Fell & Starkey's office.

HIS HONOUR: Q. What? A. It was not done in Fell & Starkey's office.

MR. KENNY: Q. Do you know where it was done? A. Yes. 40

Q. Where was it done? A. Gollin & Company.

Q. But you did see Mr. Carman at the bank with that requisition I think? A. Yes.

Q. Of course the history of the Christmas lights is this, is it not, after you sent the letters to which I have already referred to Taiwan, you got some samples of Christmas lights from Taiwan made according to your specifications did you not? A. I am sorry, I am not sure to which letters of credit you are referring.

Q. I showed you some letters this morning? A. You showed me a lot of letters.

Q. I showed you some letters this morning which were marked for identification 4, 5 and 6. (Showing documents) A. Yes. After the letter of 17th February I believe.

Q. On 26th April you made the requisition Ex. W? A. I am still reading the documents.

Q. On 26th April, 1967, you made the requisition which is Ex. W. (Showing document) 10
That was a requisition for 200 dozen Christmas lights was it not? A. Yes.

Q. And that was a case in which no certificate of inspection was called for? A. By Gollin & Company, no.

Q. Or by you? —

HIS HONOUR: Q. I am sorry, would you keep your voice up please. I did not hear the answer. A. No, no certificate of inspection was called for because of it being a back-to-back letter of credit.

MR. KENNY: A. Nobody had told you you could not call for a certificate of inspection with a back-to-back transaction? A. The bank told me my wording and Gollin's wording had to match up exactly. 20

Q. Nobody ever told you in so many words you could not have a certificate of inspection in a back-to-back transaction did they? A. No.

Q. And the requisition is for credit for 200 dozen lights in that instance? A. Yes.

Q. Which were shipped and came to hand, is that correct? A. Yes.

Q. Would it be correct that they came on a ship about 6th June, 1967? A. I really would not remember when they arrived.

Q. On 11th July, 1967, you requisitioned for a credit by virtue of this document did you not? (Showing document) A. Yes. That was not pinned to it when I requisitioned it.

(Document dated July 1967 m.f.i. 8)

(Mr. Kenny called on subpoena for letter No. 19 in plaintiff's list of documents; letter produced) 30

Q. On 12th July you wrote a letter to Mrs. Wu at Raymond & Company of which that is a copy is it not? (Showing document) A. Yes.

(Letter dated 12th July m.f.i. 9)

(Mr. Kenny called on subpoena for document No. 21 in the plaintiff's list of exhibits; document produced.)

Q. On 31st July, 1967, you wrote a further letter to Mrs. Wu of which that is a copy? (Showing document) A. Yes.

(Letter of 31st July, 1967, marked for identification 10)

(Luncheon adjournment)

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AT 2 P.M.

HIS HONOUR: You are still bound by your oath.

MR. KENNY: Can I have Ex. X?

Q. Where was Ex. X prepared, where was it typed? A. I could not be sure. I think in the office of Fell & Starkey, but I am not sure.

Q. Exhibit X is another back-to-back transaction, is it not? A. Yes.

Q. Was the document prepared to the best of your knowledge by Mr. Egan? A. I believe it was.

Q. And it was he who added the words on the side "Inspection certificate" was it? A. To the best of my knowledge, yes.

Q. When did you sign the document, on or before 9th May, do you know? A. I don't recollect. 10

Q. By 9th May at the latest you were aware there was no bar to having an inspection certificate even though either party on a back-to-back transaction had to call for it? A. I think I had asked them to match their words up as per directions.

HIS HONOUR: Q. As per what? A. Directions of the bank, that the wording had to be matched up.

MR. KENNY: Q. You did ask Gollins that? A. Yes.

Q. You got a letter of credit from Gollins? A. A back-to-back letter of credit.

Q. You say you asked Gollins to match their documents to yours with regard to a certificate of inspection? A. I believe so to the best of my recollection. 20

Q. This is a copy is it not of the letter of credit which your company got from Gollins' bank in respect of this transaction? A. I never saw this document at the time.

Q. Did you see it since? A. I don't believe I have ever seen it.

Q. There was a back-to-back transaction you told his Honour? A. Yes I did.

Q. So you would have no doubt that Jalsard Trading Company got a letter of credit from Gollins? (Objected to).

Q. From the bank, Gollins' bank? A. I knew there was a back-to-back letter of credit, yes.

Q. And that transaction matches up with the one that is referred to in Ex. X. (Showing document) A. I don't think so. The wording does not match up.

Q. What is the alteration in wording, the difference in wording? A. There seems to be many alterations in the wording. I cannot see "One complete set of documents to be airmailed to this office immediately shipment is made." I cannot see "Christmas decorations as per indent number." I cannot see "Certificate of inspection." 30

Q. The amount matches does it not? A. No it does not.

Q. Within a few dollars? A. One says \$654 and the other says \$643.

(Documents referred to above tendered and marked for identification 11)

Q. How many back-to-back credit transactions did you have with Gollin? A. I think only two. Again that is only to the best of my recollection.

Q. This letter of credit which I now show you refers to the first of the transactions, does it not? A. Yes I think so. Yes it does.

Q. So that the one which has been marked for identification 11 refers to the second transaction does it not? A. I would presume so, yes.

Q. And that this requisition, Ex. X, which is a requisition for a credit in favour of Raymond & Company, is part of the second back-to-back transaction is it not? A. That is correct.

(Document referring to first back-to-back transaction marked for identification 12)

Q. In actual fact of course you were not able to utilise the second letter of credit were you from the A.N.Z. Bank? A. I believe we utilised it. 10

Q. The bank would not accept the documents, is that the position, and the documents subsequently were taken up against the cheque of Gollin & Company? (Objected to; allowed).

Q. When your company sent the documents on to Gollins' bank, the A.N.Z., they would not accept them. Is not that the position? A. I don't know.

Q. You don't know? A. No.

Q. Who would know that, who did that sort of thing, Fell & Starkey? A. That is correct.

Q. In any event we may take it there were no alterations in letters of credit which you got from the A.N.Z. Bank to refer to a certificate of inspection? (Objected to; allowed). 20

Q. Neither of the letters of credit which you got on these back-to-back transactions with Gollins includes a reference to a certificate of inspection? A. The application for my letter of credit on the second one includes a certificate of inspection request.

Q. Neither of the letters of credit which you received from Gollins' bank contains any reference to a certificate of inspection? A. No, I am sorry, I misunderstood you. That is correct.

Q. But your requisition Ex. X does contain a reference to a certificate of inspection? A. Yes.

Q. So his Honour may take it that by 9th May you were aware that in a back-to-back transaction it was possible for one party to require a certificate of inspection although the other didn't? A. No, I was not aware. 30

Q. However, your second requisition in Ex. X, a back-to-back transaction, did in fact require a certificate of inspection? A. Yes.

Q. At the time were you concerned about the fact that the first back-to-back transaction made no provision for a certificate of inspection? A. That is why I wanted a certificate of inspection for the second.

Q. Of course you had inserted "Certificate of inspection" in the second back-to-back transaction by virtue of the requisition Ex. X? A. Yes.

Q. Before the completion of the first back-to-back transaction had you not? A. I don't remember if it was before or after the completion of it.

Q. Might the witness be shown Ex. W? Exhibit W provided that shipments were to be made and drafts drawn and negotiated not later than 15th May? A. That is correct. 40

Q. That was some six days or so after the date of the requisition Ex. X? A. Yes.

A. Did you make any attempt to amend the credit issued in response to requisition Ex. W?
A. No.

HIS HONOUR: I am not sure I followed that. I would like to have those questions and answers read. (Previous three questions and answers read).

MR. KENNY: Q. The requisition m.f.i. 8 was filled in at the bank was it? A. Yes, this was not attached to it at the time (indicating slip of white paper).

Q. You went to the bank alone did you not? A. No.

Q. Who went with you? A. Mr. Egan.

Q. You signed the document where? A. I believe I signed it at the bank but I could not be sure. 10

Q. Were you present when Mr. Rowell signed it? A. No.

Q. When did you next see the document? A. When I went into the office of Fell – this particular document or the actual confirmation?

Q. When did you see the confirmation? A. I saw the confirmation in the office of Fell & Starkey when I had to go in pertaining to an extension of time on the letter of credit.

Q you went in for the purpose of arranging an extension of time for negotiation of the credit did you? A. Yes.

Q. May his Honour take it you were aware that the time was running out? A. No, I had had a request from Taiwan to extend the time because the goods could not be completed at the time mentioned in the letter of credit. 20

Q. Did you yourself make a request for the extension of the credit? A. No, I believe Mr. Egan did.

Q. What? A. I believe Mr. Egan did. You mean the actual presentation of the document at the bank? It was done by telephone in the first instance.

Q. Who telephoned? A. I placed the first telephone call because I had noticed the absence of the words "certificate of inspection from Raymond & Company" when I had also seen that I had to extend the date by request from Taiwan.

Q. Was the document later executed requesting the extension of time? A. We sent a letter of confirmation to the bank. 30

Q. Who typed that, do you know? A. I have no idea.

Q. Whose address is 66 King Street, Sydney? A. That is the old address of Fell & Starkey who at the time were Starkey & Starkey.

Q. Was it also the address of Jalsard? A. It was at the time.

Q. When Starkey and Starkey were at 66 King Street? A. Yes.

Q. What interval of time elapsed between the telephone call and the execution of the document? A. The letter of confirmation?

Q. Yes. A. Perhaps one or two days I would think but I cannot be sure.

Q. Did you sign the letter of confirmation? A. I don't recollect.

HIS HONOUR: The letter of confirmation you say?

MR. KENNY: Q. The request? A. Confirmed my telephone request.

Q. That is your signature on that document is it not, appearing twice, once at the foot and once in the margin? A. Yes.

Q. Who prepared the document, who composed it? A. It looks to me as if it is taken from the letter of credit but I don't know.

Q. At any rate you may take it you read it before you signed it? A. I did not maintain that but I have signed it. I said I could not quite remember but obviously I have signed it, yes.

Q. Not only have you signed it, I suppose you read it did you? A. Yes.

Q. Did you read it? A. I have no recollection of signing it or reading it.

Q. However, your signature is on it? A. Yes, quite definitely.

Q. So it was put on it within a day or so or two days after your telephone conversation with Mr. Carman? A. Yes.

Q. What was it you said to Mr. Carman? A. On the telephone?

Q. Yes, on the telephone. A. That I needed an extension of time because the goods were not able to be completed to fit in with the letter of credit, and that I was particularly perturbed as I had discovered in reading the letter of credit that there was no requirement for a certificate of inspection.

Q. Is that what you said? A. I would either have said a certificate of inspection or "a certificate of inspection from Raymond & Company". By this time Mr. Carman had told me it was not necessary to use the words "Raymond & Company".

Q. You swore yesterday did you not that you said to Mr. Carman "Please cable through to Taiwan immediately and have with the amendment for time the amended words 'Certificate of inspection from Raymond & Company' also added to the application or letter of credit." A. Yes.

Q. There is not a word in this about a certificate of inspection from Raymond & Company is there? A. No, there is merely "certificate of inspection".

HIS HONOUR: You say there is no word "in this". Are you referring to the document in your hand?

MR. KENNY: Yes. I will have it marked.

HIS HONOUR: How is it identified?

MR. KENNY: It is a letter from Jalsard Trading Company signed by the witness and Mr. Rowell and sent to the manager of the Commercial Banking Company dated 2nd August, 1967.

(Letter dated 2nd August, 1967, marked for identification 13)

Q. So far as you are aware were those instructions you gave to Mr. Carman carried out? A. As far as I am aware. I don't know what the bank does.

Q. What? A. Do you mean the instructions pertaining to my request by telephone?

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Q. "Would you call through to Taiwan immediately and have with the amendment for time the amended words 'certificate of inspection from Raymond & Company' ". Do you know whether that was carried out or not? A. I believe we have a letter of confirmation from the bank.

Q. Since you have got a letter of confirmation, were your instructions carried out? (Objected to).

Q. According to what was in the letter of confirmation were your instructions carried out? A. I did not see the documents when they came through to Australia so I don't know.

Q. Did you see the letter of confirmation? A. At the time no.

Q. Did somebody in the office see the letter of confirmation to your knowledge? A. I don't know who saw what. 10

Q. When did you see the letter of confirmation? A. When I first went to ask advice about the whole matter.

Q. I suggest to you what happened was that you called and saw Mr. Carman at the bank and that you made a request to him at the bank personally? A. To the best of my recollection it was done by phone.

Q. I suggest to you what you asked him to do was to add, in addition to the date on the letter of credit, the requirement "Certificate of inspection"? A. I always used the words "Certificate of inspection from Raymond & Company." It was always crossed out so it is quite conceivable that is why that does not appear on the letter. The bank always crossed it out. 20

Q. It is conceivable you asked for a certificate of inspection in this instance? A. It is written there that is what we did ask for, but my verbal conversation, no.

HIS HONOUR: I think you asked her about what she asked for and the witness was saying, "My verbal conversation . . .".

WITNESS: Would have requested a certificate of inspection by Raymond & Company.

MR. KENNY: Q. It is not possible you said "a certificate of inspection"? A. Not possible.

Q. You asked it be sent by cable did you. Is that the fact, you asked it be sent by cable? A. I am trying to remember.

Q. That is what you swore yesterday, you asked him to cable through? A. Yes, that is correct I am sorry. 30

Q. The letter of confirmation – is that a copy of the letter of confirmation that you got? (Showing document) A. Yes.

Q. And that indicated that the amendment had been sent and by airmail didn't it? A. I am sorry –

Q. That indicated that the bank had sent on the amendment by airmail? A. Yes.

Q. And that was what you requested was it not? A. I am sorry I don't remember. I thought it was a cable request but I have no real recollection. It is very difficult after three years to be absolutely sure.

(Letter dated 3rd August, 1967, marked for identification 14)

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MR. KENNY: Can I have Ex. BB?

Q. I show you the request tendered in evidence and marked Ex. BB. Where was that document prepared? A. In my own home.

Q. I beg your pardon? A. In my own home.

Q. By you? A. Yes.

Q. And it was taken by you to the bank? A. Yes.

Q. Were you alone? A. When I prepared it?

Q. No, when you went to the bank? A. Yes.

Q. How many people did you see at the bank in connection with that requisition, bank officers? A. I only remember seeing Mr. Carman.

Q. Was the writing on the document put on in your presence? A. Certain alterations were made in my presence, yes. 10

Q. In pencil? A. Yes.

Q. You are quite clear about that are you? A. I am as clear as anyone can be after three years.

Q. I suggest to you that there is not a word in that document in Mr. Carman's handwriting? A. I beg your pardon?

Q. I suggest to you there is not a word in that document in Mr. Carman's handwriting? A. I am sure the wording at the top is Mr. Carman's handwriting.

Q. Do you know Mr. Ivorson at the bank? A. No.

Q. What? A. No. 20

Q. Where was this letter prepared, m.f.i. 9? A. In my own home I think.

Q. On the second page of that letter you said, "Your letter of credit for the orders for lights went through yesterday by cable"? A. Yes.

Q. You went on to say, "You may notice some of the special conditions and requests which I will now give you again." Do you see that? A. Yes.

Q. That refers to matters contained in the credit does it not? A. Yes.

Q. Not a word there about certificate of inspection is there? A. I was not interested in making that point to them, the point I wanted to make was how I wanted the things packed.

Q. You referred to packing slips? A. I referred to the fact that Gollin & Company required a packing slip. 30

Q. You referred to customs invoices? A. I referred to the fact we had had forty customs invoices and would they therefore please give details so as we could clear goods without the delay we had once had.

Q. You referred to marking on the invoices, the insurance, is that so? A. I am sorry, I cannot find that — yes.

Q. In fact you referred to every document that is referred to in the letter of requisition and the letter of credit did you not, m.f.i. 8? A. Yes.

Q. But you made no reference whatsoever to any certificate of inspection did you? A. But there was no certificate of inspection, it was forgotten at this point of time.

Q. This was a day after the credit had been established was it not? A. Yes.

Q. Had you still forgotten? A. Yes, I was not interested in discussing that with them. I wanted to get my packing correct. This was Gollin & Company's instruction I was passing on to them.

Q. Where was this letter referred to? (Showing document) A. At home.

Q. That was written on 31st July was it not? A. Yes.

Q. The letter is marked for identification 10. You referred to a number of documents there referred to in the letter of credit? A. It refers to some of the documents, yes.

10

Q. Nowhere is there anything about a certificate of inspection by Raymond & Company? A. I was passing on information from Gollin & Company at all times as to their requirements, they were the agents clearing, I was not.

Q. Was there any reference in the letter at all to a certificate of inspection? A. No, not in this letter to them.

(Mr. Kenny called on subpoena for documents Nos. 31, 32 and 33; documents produced)

Q. You were relying were you not on Raymond & Company to supervise the manufacture of these lights? A. Yes.

Q. And to make tests of them from time to time as the manufacture proceeded? A. Yes.

20

Q. On 14th August in a letter which I show you you made a number of specific requests regarding inspection during the course of manufacture and before the goods were packed for transport? A. Yes.

Q. Who was Mr. Cheng? A. He was the head of the Handicraft Company who manufactured the lights.

(Letter dated 14th August, 1967, marked for identification No. 15.)

Q. That letter was written after you had requested the amendment to the letter of credit was it not? A. I am sorry I did not catch the dates.

Q. 14th August. A. I think the wording in that is yes.

Q. It contains no reference to any certificate of inspection by Raymond & Company does it? A. No, it contains no request for inspection.

30

Q. On 28th August, 1967, did you write a letter of which this is a copy, to Raymond & Company? A. Yes.

Q. Was that letter sent? A. I would imagine, yes.

Q. In that you refer specifically to a number of difficulties with the Christmas lights? A. Yes.

Q. You made no reference in that to any certificate of inspection by Raymond & Company? A. I presumed this was documentation which went through with the bank and that was the only reference I needed to make.

Q. There is no reference there to a certificate of inspection? A. No there is not.

40

(Letter dated 28th August marked for identification 16.)

Q. On 6th September, 1967, did you write that letter, of which this is a copy, to Raymond & Company? (Showing document) A. Yes.

Q. That is written some three days after the first shipment of Christmas lights under the letter of credit of July 1967 had been made? A. Some three days after.

Q. The first shipment was put on the water on 3rd September was it not? A. Yes.

MR. BYERS: In Taiwan.

MR. KENNY: Yes.

HIS HONOUR: Keelung.

MR. KENNY: Q. That letter contained the detail of a number of faults which Union Carbide found in the lamps supplied with the Christmas lights? A. Yes. 10

Q. It contains no reference whatsoever to a certificate of inspection? A. No, it is dealing with faults with Christmas lights.

(Letter dated 6th September, 1967, marked for identification 17.)

MR. KENNY: Q. Would you look at the cheque which is part of Ex. E. Is that your signature on the foot of it and that of Mr. Rowell? A. Yes.

Q. Do you recollect signing that cheque? A. Specifically that cheque, no.

Q. That was the cheque which was given to the bank to enable the first set of documents in relation to the Christmas lights to be uplifted? A. Yes.

Q. That cheque was presented and the documents lifted about 9th October, 1967? A. The cheque is dated 9th October, yes. 20

Q. Do you know who went to the bank to uplift the documents? A. No.

Q. In any event you gave no instructions to anybody regarding the inspection of documents at the bank before the presentation of the cheque? A. No.

Q. And you made no attempt to inspect any documents that were lifted in consequence of the payment of the cheque? A. The documents were taken straight around to Gollin & Company who cleared the goods.

Q. Did you have any communication from Gollin & Company at that time regarding the sufficiency or insufficiency of the documents? A. No, not to my knowledge.

Q. None at all? A. No, not to my memory. 30

Q. Of course the second shipment from Keelung was not made until 3rd October, 1967, is that correct? A. I don't remember the exact date.

Q. They arrived in Sydney some substantial time after payment had been effected for the first shipment? A. Some weeks, I think.

Q. In this instance you made an arrangement with Gollin & Company that they would lift the documents against their cheque? A. Yes.

Q. And that in fact happened? A. To the best of my knowledge.

Q. You gave no instructions to anybody regarding the inspection of documents relating to the second shipment? A. No.

Q. Nor did you at any time seek to inspect any documents after they had been lifted? A. No.

Q. At that time no complaint was made to you or nothing was said to you by anybody regarding the sufficiency or insufficiency of the documents? A. Nothing was said to me at all.

Q. When was it you went away from Sydney – about that time? A. This is the end of 1967 we are discussing now is it?

Q. You were in Taiwan in November as I understand your evidence, 1967? A. October/ November – yes, November. 10

Q. Then towards the end of the year you were making complaints that the lights were not up to suitable quality? A. Yes.

Q. You made complaints to a great many people did you not? A. Yes.

MR. KENNY: Q. You caused, or laid yourself, complaints to the Deputy Director of the Department of Trade & Industry? A. Yes.

Q. The Foreign Exchange and Trade Commission? A. I do not remember.

Q. The Chinese Embassy? A. Yes.

Q. Sir Allan Westerman? A. Yes.

Q. The Secretary General, Taiwan General Chamber of Commerce? A. In Sydney. 20

Q. Pardon? A. In Sydney.

Q. Somewhere; where? A. There was a Taiwanese man in Sydney, yes.

Q. You made a complaint to him? A. I discussed the matter with these people. I am not quite sure if “complaint” is the right word.

Q. When did you first make any complaint to the bank? A. When I found out that most of the credits that I had expected to go through the First National City Bank in fact did not go through this and on my return I discussed it with Sly & Russell and asked to see the documentation from the bank.

Q. When was that? A. At the end of 1967.

Q. Was this put in writing? A. To the bank? 30

Q. Yes, the complaint to the bank. A. I believe Sly & Russell put it in writing when they asked for documentation.

Q. Would it be correct to say that as late as March 1968 you had made no complaint to the bank regarding certificates of inspection? A. It would be correct to say that in March 1968 the matter was under discussion with my solicitors.

Q. And to that stage no complaint had been made to the bank at all regarding the certificates of inspection? A. I had received advice at this point.

Q. Madam, no complaint had been made to the bank by March 1968 in relation to certificates of inspection? A. I am sorry. No. Mr. Kenny.

Q. In fact, on 20th – shortly before 20th March you made a request to the bank to be informed what a certificate of inspection meant, did you not? A. Yes.

Q. You asked the bank to write to you care of your solicitors and explain what a certificate of inspection meant. (no answer.)

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson –
re-examined*

(Mr. Kenny called for a letter dated 20th March 1968 written by the bank to Mrs. R. Davey, care of Messrs. Sly & Russell. Original not immediately available. Photostat copy produced.)

(Photostat copy of letter of 20th March 1968 m.f.i. 18.)

Q. You yourself made no inspection of the goods on arrival? A. No.

Q. Did you suggest to Raymond & Company that they should take any proceedings against the supplier to them? A. Yes. 10

Q. Were they willing to take them? A. It was no use. They had no money to reimburse anyone with.

HIS HONOUR: Q. I am sorry. Would you repeat that answer please. A. It was no use. They had no money to reimburse either Raymond & Company or myself.

MR. KENNY: Q. How did you establish that fact? A. I believed what I was told by Raymond & Company. I am sorry, I did not establish it.

(Mr. Kenny called for a document No. 176 in the plaintiff's list of documents. Produced.)

HIS HONOUR: How do you wish it to be described? Just by that number? 20

MR. KENNY: It is a certificate of inspection – a photostatic copy of a certificate of inspection: Ho Cheng Surveyor Co. Ltd. dated October 4, 1967, bearing across it the words "Original" together with a – –

HIS HONOUR: All right. That is sufficient. It will be m.f.i. 19.

MR. KENNY: It has annexed to it a sheet headed, "Ho Cheng Surveyor Co. Limited." It is a copy of Exs. EE and FF. I would like that one marked.

Q. Do you remember the requisition which you made which is Ex. BB? Just have a look at it would you? (shown) A. Yes.

Q. You are aware, are you not, that when the documents in relation to that transaction were lifted, – by the way, who lifted the documents in relation to that transaction? A. I do not know. 30

Q. You are aware, are you not, that the documents included a certificate of inspection by the Ho Cheng Surveyor Co. Ltd.? A. I am aware now, yes.

RE-EXAMINATION

(Mr. Byers tendered a letter from the defendant to Mrs. R. Davey, dated 20th March 1968, a copy of which is m.f.i. 18. Without objection marked Ex. NN.)

MR. BYERS: Might Mrs. Wilson be shown again Ex. CC and Ex. DD? (shown).

Q. First of all, would you look at Ex. CC? See that? Now can you tell his Honour when, to the best of your memory it was that you first saw the document a photo copy of which is Ex. CC? A. In the office of Sly & Russell. 40

Q. Yes, and approximately when? A. The beginning of 1968.

Q. The beginning of 1968; did you then have some discussions with your solicitor? A. Yes.

Q. In connection with possible proceedings? A. Yes.

Q. Now would you look at Ex. DD? A. Yes.

Q. When was it, to the best of your memory, that you first saw that? A. At the same time.

Q. At the same time, and then you had the discussion that you have mentioned to his Honour? A. Yes.

HIS HONOUR: Is one a copy of the other?

MR. BYERS: Yes, Your Honour.

Q. Was there any mention during the discussions that you had with the solicitor as to the other party to these proceedings, the legal proceedings? (Objected to. Counsel addressed. Allowed. Read.) A. Yes. 10

Q. What person or corporation was mentioned as being the other party? A. The Commercial – (Objected to).

HIS HONOUR: I will take it you have objected to this. I will allow the question.

WITNESS: The Commercial Banking Company of Sydney.

MR. BYERS: When you saw the documents Ex. CC and Ex. DD – in your solicitor's office, did you then have any belief as to whether or not they were the sort of inspection certificates you – A. I am sorry. I missed one word.

Q. Any belief? A. Belief? 20

Q. As to whether or not those documents were the sort of inspection certificates that you and Mr. Carman had discussed in late 1966 and in 1967? A. Yes. I had a very definite belief.

Q. What was that belief? A. That they had nothing to do with a certificate of inspection as I understood it.

(Witness was shown Ex. EE and Ex. FF).

Q. Would you just look at Ex. EE; When was it that you first saw that document? A. At the same time in the office of Sly & Russell.

Q. Would you also look at Ex. FF? A. Yes.

Q. When was it that you first saw that document? A. At the same time in the office of Sly & Russell. 30

Q. Prior to this occasion in the office of Sly & Russell had you seen any document of which Ex. FF is a copy? A. No.

Q. I take it the same is true of Ex. EE and Ex. CC and Ex. DD? A. Exactly the same.

Q. In relation to Ex. EE when you first saw that in the office of Messrs. Sly & Russell had you any belief as to whether that was a certificate of the kind that you and Mr. Carman had discussed? A. Yes. I did have a very definite belief.

Q. What was that belief? A. That it had nothing to do with the certificate of inspection as I understood it from Mr. Carman.

Q. I take it also the same would be true in relation to Ex. FF? A. Exactly the same.

Q. I think prior to 10th July 1968 – that is the date of the writ, if Your Honour pleases – you had had a number of discussions with Messrs. Sly & Russell your solicitors, had you not? A. Yes.

Q. In relation to the present action? A. Yes.

Q. Were you shown amongst other things opinions of counsel? A. Yes.

Q. That is prior to 10th July? A. I cannot remember if it was prior to 10th July or not. I am sorry.

(Mr. Byers called for a letter from the plaintiff's solicitors to the defendant dated 13th June 1968, No.132.)

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MR. BYERS: While that letter is being produced I might go onto another topic, Your Honour.

HIS HONOUR: Yes.

MR. BYERS: Q. You may remember you were asked a number of questions in relation to the situation existing between the plaintiff and Raymond & Company of Taiwan. Now you had told his Honour, I think, that you had, when you first went to Taiwan in 1966, made some enquiries towards the end of that visit about Jackson & Company? A. Raymond & Company.

Q. I am sorry. Raymond & Company. Is that right? A. Yes.

Q. Had those enquiries revealed to you anything as to the reputation of Raymond & Company? A. Yes. 20

Q. Prior to seeing Carman towards the end of 1966, had you also been given any information as to the general reliability of exporters in Taiwan? A. Yes.

Q. First of all, who gave you that information? A. The International Banking Section of the Commercial Banking Company of Sydney.

Q. This was mentioned this morning? (No answer).

HIS HONOUR: I think this is in evidence, is it not?

MR. BYERS: Yes, Your Honour.

Q. That, I think, was the matter you mentioned earlier this morning in answer to some questions by my learned friend? A. Yes. 30

Q. When you went back to Taiwan in November 1966 did you make further enquiries in relation to Raymond & Company? A. Yes

Q. Of whom did you make those enquiries there? A. The Bank of Taiwan, the Bank of America, First National City Bank and a Shangainese Banking Company, the name of which I forget; they were merchant bankers, not a bank as such.

Q. What were these enquiries about? A. As to their standing in Taiwan, their reputation and their reliability.

Q. As a result of these enquiries and the information you received, did you form any view as to the reliability of Raymond & Company? A. Yes.

Q. What was that? A. That as far as the East went they were a reputable firm. 40

Q. Had you had discussions before you first saw Carman — I withdraw that. Had you had discussions before you first saw Carman on 16th December 1966 with Raymond & Company as to a business relationship between the plaintiff and Raymond & Company? A. Yes.

Q. What had you said in those discussions and what had Mr. Wu or Mrs. Wu said to you? (Objected to. Pressed. Counsel addressed. Allowed.)

HIS HONOUR: I allow the question, Mr. Byers. It is limited to the purposes of explaining what you put to me. It is not a general permission to go into the business dealings of these people. I would regard it as possible that it has significance with a view to explaining the answers which the witness gave and the matter of what was said to be, and maybe, of course, an antipathy between one position and another.

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(Question read).

WITNESS: They would be my agents in Taipei — that they would look to my interests — as far as possible would supervise the shipping — also they would be the shipper-outers — my grammer is going to let me down — the shippers of the goods and this was the position, as I understood it totally; agents to my company.

MR. BYERS: Q. Did you, in relation to any goods, exported from Taiwan with which your company was concerned buy direct from the manufacturer? A. No.

Q. Why was that? (Objected to. Rejected.)

Q. Who was the manufacturer of the Christmas lights? A. A handicraft company called Yih Yuan, I believe. 20

Q. Was there a Mr. — I think you did mention in answer to my learned friend a Mr. Chen? A. Yes.

Q. Who was Mr. Chen? A. He was the head of — (Objected to as already given.)

HIS HONOUR: That is in evidence.

MR. BYERS: Q. You may remember being shown by my learned friend two documents which were said to be letters of credit established by Gollin & Company in favour of the plaintiff? A. Yes.

Q. Do you remember? A. Yes.

Q. Those said to be the back-to-back credits relating, I think, to your application of April and your application of May? A. Yes. 30

Q. Did you ever have any discussion with Gollin & Company prior to the end of the year 1967 as to the manner in which they — that is, Gollins — would set up their letter of credit? A. Only that it was first rejected and they demanded from the Commercial Banking Company and A.N.Z. that the words matched up in the first instance.

Q. Who was it that told you this? A. Mr. Carman informed me of it and I informed Gollins who informed the A.N.Z. and it seemed to go around in ever-decreasing circles.

HIS HONOUR: Those two documents are m.f.i. 11 and 12 that you asked about.

MR. BYERS: I am indebted to Your Honour.

HIS HONOUR: The application for requisitions, as Mr. Kenny calls it, the letter of credit is Ex. W. 40

MR. BYERS: Q. Before the back-to-back credit was established by Gollins did you have a conversation with anyone in Gollins about it? A. No.

Q. Were you informed that there was to be such a thing? A. As a back-to-back letter?

Q. Yes. A. We did have that discussion, I am sorry.

Q. Who was it who spoke to you about the back-to-back credit of the firm of Gollin & Company? A. Either it would be Mr. Peachey or Mr. Rabbage.

Q. Can you remember what you were told about the back-to-back credit by whichever of those gentlemen spoke to you? (Objected to. Allowed)' A. Simply that it would save my account from going into overdraft because when my letter of credit was paid out by the bank A.N.Z. would reimburse me.

Q. Were you told by whoever it was who discussed this matter with you about the terms on which Gollins would require the payment of the drafts under the letter of credit? (Objected to as irrelevant. Mr. Byers agreed to withdraw the question and to rephrase it.)

Q. Did you have any discussion with either of those gentlemen, Rabbage or Peachey, I think, as to whether or not Gollin's letter of credit would have in it the reference to a certificate of inspection? A. No. (Objected to as irrelevant. Allowed). (Question and answer read.) A. No, I did not.

MR. BYERS: I think that exhausts all I wish to say in the re-examination.

HIS HONOUR: What are you going to say about this letter of 13th June 1968 which you called for and which, I think, Mr. Kenny could not find.

MR. KENNY: Not produced. We must have lost it. I do not mind my friend using a copy.

HIS HONOUR: We will deal with it in the morning if you like.

(Mr. Byers tendered a copy letter from the plaintiff's solicitors to the General Manager of the defendant dated 13th June 1968.)

(The witness was shown the document m.f.i. 11 and Ex. X.)

HIS HONOUR: The letter of credit from Gollins, May 1967.

MR. BYERS: Q. Would you look at the reference in the letter of credit, which is m.f.i. 11, to the type of currency to which it refers please? (the witness looked at a document). No. (No. answer).

HIS HONOUR: No, Madam, in that folder. Open it up and you will see it.

WITNESS: Sorry. \$654 Australian.

MR. BYERS: Q. Australian currency? (No answer).

Q. And Ex. X – what his Honour just showed you. (No answer).

(Witness retired).

(His Honour informed counsel that all witnesses whose examination is concluded or will hereafter conclude need not remain unless his Honour specifically ordered in the case of a particular witness that that witness should remain. His Honour asked counsel to ask their instructing solicitors to please tell witnesses that they may go.)

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(Mr. Byers tendered the letter dated 13th June from Messrs. Sly & Russell to the General Manager of the defendant. He referred his Honour particularly to the first full paragraph on the second page. Objected to. His Honour informed Mr. Kenny that he would need to read the letter before he could rule on its admissability and said he would do this before 10 a.m. on Wednesday, 11th March, 1970.)

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson
re-examined*

(Further hearing adjourned to 10 a.m. on Wednesday, 11th March, 1970.)

JALSARD PTY. LIMITED v. THE COMMERCIAL BANKING COMPANY
OF SYDNEY LIMITED

THIRD DAY: WEDNESDAY, 11TH MARCH, 1970.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Rabbidge –
examined*

(By agreement the following emendments were made to the transcript:

Page 40, the third answer to read "...would have been what do you mean."

On p.46 the eighth last question to read "...inspection certificate."

Where the word "beneficiaries" appears to read "beneficiary's".

On p.52 the sixth last question "the transaction" to read "any transaction".

On p.64 the date of the document m.f.i. 16 to be altered to 28th August.)

GEOFFREY PARNELL RABBIDGE

sworn, examined as under:

MR. BYERS: Q. I think you spell your name R,a,b,b,i,d,g,e; is that right? A. That is correct.

Q. Your full name is Geoffrey Parnell Rabbidge? A. Yes.

10

Q. You live at 7 The Outlook, Bilgola; is that right? A. Yes.

Q. What is your occupation? A. Company director.

Q. I think you are employed by Gollin Company Limited, are you not? A. I was up until October of last year.

Q. Until October of last year; were you so employed in 1967? A. Yes.

Q. And 1968 too, I suppose? A. Yes.

HIS HONOUR: Speak up, would you please, with your answers Mr. Rabbidge.

MR. BYERS: Q. Do you remember having, or seeing, some Christmas lights – goods called Christmas lights? A. I do.

Q. I think you had had some discussions with other members of your company round about the middle part of 1967 in connection with that type of goods, is that so? A. That is correct.

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Q. Had you seen Mrs. Wilson who was then Mrs. Davey? A. I had.

Q. You remember seeing some Christmas lights in Gollin's storehouse originally; is that so? A. Yes.

Q. Were these discussions that you had had with other members of your company and Mrs. Davey ones that preceded your first seeing the Christmas lights? A. This is so.

Q. When you saw the Christmas lights did you do anything with them? A. Yes. It was my duty for the company to take these out and do a trade sample and start to offer them for sale.

30

Q. Did you do that? A. I did.

Q. Did you obtain a number of orders from retailers for them? A. I did.

Q. Can you remember some of the retailers from whom you obtained orders for their sale;

A. All of the major department stores such as Woolworths, David Jones, this type of store.

Q. I suppose country stores as well? A. Country stores, through the various chains.

Q. Then later in that year do you remember yourself being concerned in relation to the clearing through Customs of two shipments of Christmas decorations? A. I personally, of course, am not concerned with clearing through Customs but I remember the transactions going on at the time.

Q. You were, as it were, the person in control of this from the selling, in any event, in Gollins, were you not? A. Yes.

Q. Were these the second goods you saw – were they decorations? A. Yes.

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Q. Included in these – could you just describe briefly to his Honour – I am talking about what you – talking about what the second shipment was. (No answer).

HIS HONOUR: Second shipment or second batch?

MR. BYERS: Second batch. The two shipments.

MR. BYERS: I suppose I should clear this a little.

Q. First of all you saw, about the middle of 1967, some small number – a comparatively small number of Christmas lights; is that correct? A. This is correct.

Q. About approximately how many was it that you saw? A. The first sample shipment was 200 dozen.

Q. Then later you saw two separate batches of Christmas decorations including Christmas lights; is that right? A. This is correct.

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Q. Take the first batch first: where was it that you saw the first batch? A. 50 Clarence Street, the warehouse of Gollins.

Q. The warehouse of Gollin? A. Yes.

Q. Did you then supervise the despatch of those goods to the retailers? A. I did.

Q. Then, later that year, did you see another batch, a second batch? A. I did.

Q. Did you see them in the same place? A. The same warehouse.

Q. And did you supervise the despatch of those to the retailers? A. I did.

Q. Were those goods which included these Christmas lights? A. They were.

Q. Would you look at this parcel which I show you? (shown) Was that the type of goods that were included in the second batch that you saw and the first batch that you saw? A. Those were, yes.

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Q. Were they packed as that is packed now? A. Identical to that, yes.

Q. The same type of case? A. The same type of carton.

(Carton tendered and without objection marked Ex. PP.)

Q. Then after the goods had been despatched to the retailers did you receive complaints from a number of retailers? A. From practically every sale we made, yes.

HIS HONOUR: Excuse me interrupting Mr. Byers. I have not quite followed one part of the evidence so far. This witness said, speaking of these two batches; that he received, or Gollins received two shipments of Christmas decorations including Christmas lights.

MR. BYERS: Possibly I should clarify that.

HIS HONOUR: When I look at par. 9 in the statement of claim it gives me the impression now, as it gave me right at the beginning of the case, that the only kind of decorations in these two shipments were Christmas lights.

MR. BYERS: Q. You remember the ship, the Taiyuan and the shipment from the George Anson? A. My difficulty of course, I was not responsible for the shipping side of it. There were also decorations from Taiwan which were made by the same manufacturer but they were only in one consignment; what ship this was on I would not know.

Q. All I want to ask you about is the ship – I think I am responsible for this your Honour – is the Christmas lights and you received two batches, did you not, of Christmas lights? A. Three altogether including the first samples.

Q. Including the first? A. Yes.

Q. And the first ones were the ones – the 200 dozen I think it was – is that right? A. Yes.

Q. From which you laid the orders? A. Yes.

MR. BYERS: The first batch, your Honour, is the application for crediting in April.

HIS HONOUR: I know. That is quite clear on the evidence. I have read that.

MR. BYERS: Q. Then after the lights had been sent from Gollins storehouse or warehouse to the retailers I think you received a complaint or a number of complaints, did you? A. We did.

Q. Many or – ? A. Quite numerous, yes; my word.

Q. Did the Christmas lights then come back into Gollins store from the retailers? A. They did.

Q. Did this process of returning the goods continue over a fairly substantial period of time? A. It did, yes.

Q. Can you remember how long? A. Until approximately March the following year.

Q. March of 1968; is that right? (No answer).

Q. Then did you see the Christmas lights after their return from the retailers in Gollins storehouse? A. I certainly did, yes.

Q. Did you, first of all, conduct any tests upon them yourself? A. Yes.

Q. What did you do? A. We tested the lights by examining them and found out why they were claimed faulty – why they did not work.

Q. What did you discover? A. Well, assembly was the main problem with the lights. Starting right from the very switch through to the end globe there was a multiple (sic) of problems.

Q. Could you give his Honour, only by way of illustration, some example of one of the problems that you refer to? A. One of the major problems, each one of these lights comes away from a main lead and these leads, of course, should have been tied together. These were encased in a little plastic – I suppose you would call it insulator, and the – in

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producing these at such a speed for the price, instead of tying the little wires together in quite a number of cases they were only laid alongside each other. When the kiddy or parent was putting the light on to the tree the slightest pull pulled the two wires away and there was no connection and consequently they would not work.

Q. I think you can illustrate by reference to the last exhibit, Ex. PP, that type of defect; is that so, should that be necessary? (No answer).

Q. You are still nodding. I think the answer is "Yes". Would you say "Yes"? A. You could, most certainly.

Q. Then did you also supervise the tests of other of these Christmas lights that were returned from the retailers? A. We did.

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Q. Did you personally? A. I did personally, yes.

Q. Over what period of time approximately was it that these tests were conducted by Gollins? A. Approximately six weeks.

Q. From what you saw yourself were the goods defective or not? (Objected to. His Honour informed Mr. Byers that a further question would need to be asked.)

Q. Could you indicate to his Honour what things you discovered about the Christmas lights as a result of the test? (Objected to. Allowed.)

MR. BYERS: I think there is one misapprehension of my learned friend. Mr. Rabbidge did say he conducted a number of tests himself.

HIS HONOUR: Is that so?

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WITNESS: This is so, yes.

HIS HONOUR: I missed that too, then.

MR. BYERS: Yes, that was the first question I asked.

WITNESS: In order to supervise you must conduct tests in order to tell people how to carry it on.

MR. BYERS: Q. By reference to what you yourself saw and did could you tell his Honour what defects you discovered in relation to the Christmas lights? A. Certainly. First of all the method of testing was you screw the small white adaptor which you will see on the exhibit into the battery and then turn the battery into the "On" position so you could see whether they were functioning. At this point the first defect was struck. We found in many instances the little white terminal had not been glued to the main metal section; consequently this would snap away and with the slightest finger pressure.

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The next point to check was whether the wires had, in fact, been soldered properly on to the metal terminal. In many instances this had not been done. The things were found to have a socket in which the globe was pushed. This socket consists of two brass plates which line up with the small wires on the globe. In quite a number of instances the globe had not been put in with the wires against the brass plates but had been put in sideways and consequently would not work. ~~You must remember these are sold to people who have no electrical knowledge. They are not going to go round checking up. They are going to return them to the store. (Objected to.)~~

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(His Honour directed the last part of the answer to be struck out.)

WITNESS: From that point these were checked, these two little copper assemblies for the wires to sit against were also supposedly soldered but in many instances these were not done correctly. Following the wire back to the insulated piece we had connected to the main joining wire, as we mentioned earlier, these were not tied together – they were purely laid together.

MR. BYERS: Q. You have mentioned, I think, that these were Christmas lights, that is, for the purpose of lighting up Christmas trees, amongst other things, you hung them on to Christmas trees – A. Hung on the Christmas trees, or, decorations for Christmas.

Q. – or around the house? A. Yes.

Q. There had been, prior to the sale of these Christmas lights by Gollins to the stores, some form of publicity about them? A. There had been – quite considerable. 10

Q. Had that been conducted or arranged by Gollin & Company? A. It had been.

Q. Also I think there was the writing on the side of the boxes, one of which is Ex. PP; is that right? A. This is correct.

Q. Then you mentioned these faults that you observed yourself. Could you tell his Honour, taking only for the moment those lights that you yourself tested – I will come to the others later – what percentage of those you tested for either one or more of the defects? A. The actual tests conducted, of course, were of the most economic nature so it is rather hard to give an actual percentage of those but the end result – and this probably would have been – maybe two or three returns of the product was something like 142 gross out of 164, whatever percent that is. 20

Q. Then, having conducted these tests, you set up some procedures by which further tests were conducted under your supervision? A. That is correct.

Q. Can you tell his Honour what procedures you set up? A. Yes. We had a member of Gollins staff put the light on to the battery and check and see if the lights went on. If they did, of course, they were passed as being satisfactory at that particular time. Economy, of course, does not allow of a further test of the internal sections. If they failed a quick search was made to find the cause of failure. If it was one such as the wires which could be tied together this was done. If it was one of soldering this could not be done immediately so these were rejected completely. 30

Q. Were all the goods that were returned to Gollins, in view of the test conducted by Gollins, kept by Gollins? A. They were.

Q. What percentage of the goods that were sold was that? A. The entire shipment was actually sold.

Q. And what came back? A. That I am not too sure on. The exact figures, but I know it was almost the entire shipment or shipments – plural.

Q. Also I think in relation to the work of testing Gollins charged Jalsard the sum of \$1,040? A. This is correct.

Q. That represented a reasonable charge for the time taken up by Gollin's staff in conducting these tests? A. This is overtime, yes. 40

Q. When the tests were concluded, that is the final tests were concluded, what happened to the goods that had come back into Gollin's storehouse from the retailer? A. They were repacked and negotiations immediately started with Jalsard for the return of them to the manufacturer. From that point they were passed into one of the free stores pending shipment.

Q. What were they repacked into? A. In most instances the original cases that they arrived in. I think there was only one case exception to this.

Q. From what you saw yourself were the defects due to packing or matters of that sort? A. I do not think this could be so, no. (Objected to. Allowed.)

Q. When the goods were repacked into the original cases what happened thereafter? A. Once Jalsard advised us these would be returned to Taiwan they were passed back to the free store awaiting the arrival of a vessel for shipment – a bond store, I should say – a bond store.

Q. Rowans, was it? A. Rowans, I think. I am not too sure on that.

Q. Can you remember whether any of the goods that were sold by Gollins to the retailers were not returned? A. Yes. Some were not. 10

Q. Do you remember how many that was? A. That I could not say, no. We would have to check the stock records.

Q. Would you look at this letter dated 26th January, 1968? (shown) Was that a letter signed by you? A. That is correct.

(His Honour asked Mr. Byers whether this document should be marked for identification. Mr. Byers said he proposed to tender the letter.)

Q. Would you look at the documents that I now wish to show you together – I withdraw that. Would you look at the documents which I now show you together with the letter of 26th January, 1968? (Documents shown) Are the documents, other than the letter of 26th January, photocopies of notes, debit notes, received by Gollins from retailers? A. Credit claims; yes, they are. 20

Q. Were they sent by you under cover of your letter of 26th January to Jalsard? A. That I could not be sure of at this point; most possibly, yes.

(Documents tendered. Letter of 26th January and others said to be enclosures tendered. Objected to. Admitted and marked Ex. QQ.)

(Statement dated 30th January, 1968, from Gollin to Jalsard Trading Company No. G13668 tendered. Mr. Kenny had no objection to the statement of claim made by Gollin & Company.)

HIS HONOUR: That is the amount of the claim, is it, for the \$1,040? 30

MR. BYERS: No your Honour. This is the invoice relating to the Taiwanese lights delivered to Rowans' store. Your Honour will remember, purchased by Jalsard, sold to Gollin: this is the delivery docket to Gollin. It is 135 gross, as opposed to 150 which indicates the difference Mr. Rabbidge is unable to remember, in the order – about fourteen gross.

(Tender marked as Ex. RR.)

(Tendered statement of 13th June, No. G13669 again Gollin to Jalsard Trading Company. Mr. Kenny had no objection, as evidence, to a claim. Marked Ex. SS.)

CROSS-EXAMINATION:

MR. KENNY: Q. You first saw lights of this kind, as I understand it, some time in about the middle of the year? A. Correct. 40

Q. At the time at which you saw them they were already in Gollin's premises in Clarence Street? A. This is correct.

Q. You had nothing to do with lifting shipping documents relating to the goods? A. I did not.

Q. Gollin, of course, are importers in a large way? A. This is correct.

Q. They have been importing goods into this country for many years? A. That is right; over 100.

Q. Of course they have, for many years, been importing large quantities of goods from various places in the East? A. This is correct.

Q. I think, in fact, Gollins have offices in some areas in the East, have they not? A. Yes.

Q. Where: Hong Kong? A. In Singapore, just recently; now Tokyo.

Q. They have had representatives up there for some years? A. They have.

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Q. Representatives in the sense of men from their Sydney office, or one of their Australian offices, who have been sent on a tour of duty to the East? A. Correct.

Q. One of whom seems to have had some publicity lately? A. This is right.

Q. I suppose, in the course of this importing business, Gollins would have occasion to lift shipping documents quite frequently? A. They do.

Q. They would, I suppose, have people whose duties exclusively related to the lifting of documents from banks? A. They do.

Q. Let us make it quite clear; they would take up shipping documents from banks against drafts? A. This is correct.

Q. And these would — what department is that called? A. Shipping Department.

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Q. Shipping Department, and you are not an officer of that? A. I have no part of the Shipping Department, no.

Q. You were concerned entirely, in your term with Gollins, with sales? A. Sales only.

Q. Did you see samples of these lights? A. I did do, yes.

Q. When was that? A. This would be approximately in the middle of the year.

Q. When you say “samples” do you refer to the shipment of 200 dozen? A. There were some samples preceding that.

Q. When did you see them? A. That would be approximately June.

Q. Approximately June? A. June, early July.

Q. Then you got a shipment of 200 dozen? A. Yes.

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Q. Then, subsequently, two further shipments? A. We did. We got the first shipment of 200 dozen to test the shipping ability and the packing ability of the supplier.

Q. And was that 200 dozen distributed? A. They were, yes.

Q. To retailers? A. To retailers and wholesalers.

Q. Were they distributed at the same time as the later shipments or — A. No, preceding.

Q. Preceding? A. Yes.

Q. By how much; do you know? A. Approximately six weeks.

Q. Was the method of packaging of the 200 dozen and the later shipments the same? A. Exactly, yes.

Q. Was the style of manufacture of the 200 dozen the same as that of the later shipment? A. In design, yes.

Q. These were goods which you said – I think you made some reference to their having been produced in a hurry: you referred to the speed and price of production, is that right? A. This would be correct.

Q. They were, of course, relatively cheap goods? A. Well, for goods of this nature, not so. In competition to lines of a like nature but they are, of course, a cheap product, yes. 10

Q. Of course there are lines of a similar nature which have been on sale for some years – manufactured in Hong Kong and places like that? A. This is correct.

Q. They were designed to meet this, were they? A. No, they were designed to take a different place to the ones that had been on before. They were designed to be in competition too.

Q. They were designed to be in competition too? A. In actual fact they sold a little dearer.

Q. Then these goods were designed, of course, to be taken out and handled by people and put on trees – Christmas trees? A. Yes.

Q. And otherwise placed in position, hung up, or something of that sort? (No answer.) 30

Q. Of course they had also to be attached to a battery? A. They were designed specifically to be attached to a battery, yes.

Q. The battery, of course, had to be provided by the purchaser? A. They were sold in conjunction. The battery was packed in a box branded of the same nature as the Christmas tree lighting.

Q. But sold separately, was it? A. There were two separate packages but sold in conjunction.

Q. I just want to get that clear; were they sold for one price or was there one price for the lights and another for the battery? A. There were two separate prices but they were sold and advertised accordingly. Of course you must have both to make them function.

Q. Who made the batteries, Eveready, Union Carbide? A. Union Carbide. 30

Q. Yes, they make Eveready batteries? A. Yes.

Q. Of course these samples that came in – Union Carbide were asked to look at the sample, were they not? A. They were. (Objected to.)

Q. Gollin submitted these lights at some stage to Union Carbide, did they? A. In the initial planning Gollins conferred with Union Carbide to have Union Carbide design a battery to suit the light. As this was a product, there were, in this case, yes, conferences went on between Union Carbide and Jalsard and Gollin for this purpose.

Q. This involved, did it not, an examination of the lights by Union Carbide? A. Well, it would have done, yes. The test had been – the test which had been done by Union Carbide, of course, was not for the nature of the lighting itself: it was purely for how this was to be fitted to the battery. They were not interested in the condition of the light. 40

Q. Were there some defects discovered in these 200 dozen lights? A. There were some defects discovered in the initial period.

Q. At any stage did you have complaints from retailers that after leaving the lights burning for approximately three hours where only three out of five bulbs remained burning? A. We did receive these complaints but whether these were from the first 200 dozen or the remainder nobody would be able to say.

Q. Nobody would be able to say? A. An article such as this, you do not leave them burning for any lengthy period of time until Christmas time. By this stage the whole lot of the lights had been distributed in the two or three weeks preceding Christmas day.

Q. So it would be impossible to tell then, would it, whether it was the first 200 dozen to come – that came in: you cannot separate the first 200 dozen out and say that they – A. It is very difficult. The only instance we can is where some firms got deliveries from the first 200 dozen and did not repeat their orders out of the second two shipments. 10

Q. That would be a matter of inference only? A. Yes. We did notice that there were not many of these returned, if any.

Q. Did it come to your notice as early as August there were complaints that after leaving the lights burning for approximately three hours only three out of five bulbs would remain burning? A. This could have been so. I cannot recall it. It is quite a long time ago.

Q. Did Gollin & Company make demand that some bulbs be sent to them at no cost as they had already lost a large number from the first order of 200 dozen? (Objected to.) 20

HIS HONOUR: You are limited to your knowledge on Mr. Byers' objection.

MR. KENNY: Q. To your knowledge did Gollin & Company make a demand that bulbs be sent to them at no cost because they had already lost a great number from the first order of 200 dozen? A. Of my knowledge Gollin did make a demand for globes to be sent as replacement but I doubt very much whether that was for the first 200 dozen. I think that was for the lights as a whole.

Q. This is a matter about which I suppose, quite understandably, memory would have been affected? A. This particular period – would have been a little out of my actual function but I do not recall it in that period, no. Very few sets of lights out of the first 200 dozen would have been used before the next lot were delivered anyway. 30

Q. Which all respect that is conjecture on your part? (No answer.)

Q. That means simply that Christmas had not yet arrived, does it not? A. Yes.

Q. Are you familiar, do you know, that some tests were made at Union Carbide regarding the bulbs supplied with these lights? A. There were some tests conducted.

Q. With regard to the bulbs? A. With bulbs. We were planning on manufacturing locally and Union Carbide were the supplier.

Q. This is manufacturing bulbs? A. Yes.

Q. As opposed to batteries? A. Yes.

Q. I think you told me that the method of manufacture of the first 200 dozen was the same as the method of manufacture of the last? (Objected to.) A. The design of the lights was the same. 40

Q. The design was the same? A. Yes.

Q. So that all of them contained these leads from which wires came off? A. They all did.

Q. They all had the terminals to be connected to the battery the same way? A. Manufactured in the same die.

Q. What? A. Appeared to be on the same die, yes.

Q. They all had these adaptors which had to be screwed into the battery – I suppose that is the same thing? (No answer.)

HIS HONOUR: Speak your answer please.

WITNESS: Yes, they did.

MR. KENNY: Q. They all had terminals which had been attached to metal? A. They all had the same shape of terminal, yes.

Q. They all had wires which required to be soldered? A. They all had the wires which required to be soldered, yes. 10

Q. They all had sockets consisting of two brass plates to which wires had to be attached? A. They all had the same type of socket. The only difference was that they were not all connected.

Q. You made no tests of the lights until after Christmas; is that correct? A. No. Well preceding Christmas.

Q. Preceding Christmas? A. Yes.

Q. What time? A. Approximately the middle of October.

Q. About the middle of October: you yourself made tests from the middle of October did you? A. As soon as complaints first started to come in, yes. 20

Q. How many complaints had you had by the middle of October? A. That, from memory, I would not be able to say.

Q. You would not be able to say: would it be a large number? A. Again, of course, your sales usage does not really start till December. The majority were in December, not October.

Q. You had, in fact had them in by October? A. We had had a few, yes.

Q. You had made tests in October? A. Yes.

Q. In October had you discovered, on the tests you had made then, these faults to which you refer? A. We had noticed minor faults, yes.

Q. You what? A. We had noticed minor faults, yes, at that stage.

Q. Had you noticed the faults which you enumerated? A. We did not go into detail until late November or early December. 30

Q. At any rate by October, by the middle of October, you discovered there were faults in the lights? A. We did.

Q. Had that been communicated, to your knowledge, had that been communicated to Jalsard? A. It would have been, yes.

Q. (With Ex. PP) Perhaps you would take these and you would illustrate to his Honour the faults which the lights contained. Before you do that, may I ask you this: of course, there were Christmas decorations also – A. Coming from Taiwan there were, yes.

(Both senior counsel approached)

That is your basic terminal (indicating) that goes into the battery. This white plastic section, of course, is done on the moulding – the plastic moulding. Your brass is soldered thus on the edge of the copper and the other wire terminal comes up on the inside which is soldered right here on this solder point.

Q. You say your brass is soldered? A. The wires are soldered to the brass, yes.

Q. What do you call the brass? A. This brass covered section: metal section. That, in turn, is glued on to the plastic.

Q. You mean the brass covered section should be glued on to the copper? A. Should be glued on to the copper; in a number of instances this was not so.

HIS HONOUR: Q. The brass section, I though you said, should be glued on to the plastic? 10
A. Yes.

Q. What did you say about plastic? A. That was a mistake.

MR. KENNY: Q. Of course the battery was designed in Australia, was it? A. In Australia. It was an adaption of an old battery that was already manufactured.

Q. It was obviously a battery into which this brass covered section had to be screwed? A. Screwed, yes.

Q. Now you referred to wires coming away? A. Yes, if we follow the main wires down –

Q. Do not, just for the minute. Where was it that the wires – A. There is the junction, on to that little insulator: in many instances instead of those wires being tied, as they are, they were laid across one another and the terminal was pushed on – a fairly tight fit, I should say – and the only thing that held those copper wires together was the insulator but there is no way of detecting the fault, by just looking. 20

Q. So that fault could only be determined – A. By pulling.

Q. By pulling and removing, I suppose, in effect the cover? A. Yes.

Q. So visual inspection would not reveal the fault? A. No.

Q. What was the next thing? A. That then leads up to where the wires go into the socket. There are two small copper plates on the inside to which the wires are soldered.

Q. Two small copper plates? A. Yes. And then they, of course, in turn connect up with the two small copper wires on the base of the globe.

Q. Yes? A. Those two copper wires should sit so that they are connected against the little copper plates. In many instances this was not so and this goes in quite simply sideways which means there is no connection. 30

Q. As I understand you that is a matter of straightening the bulb? A. Just pulling the bulb out and putting it in correctly, yes.

Q. That, of course, is the sort of thing that would be difficult to see from visual inspection? A. Could not see it because that light would not come on.

Q. Could not see it on visual inspection? A. No, could not see it on visual inspection but you would have to connect it.

Q. What else? A. There were some where the socket split – they were forced into the light – consequently there was no connection from the brass plate on the inside and the two little wires. 40

Q. In other words – I see – this plastic appearing substance had been split and there was no contact between the plate and the terminal – if you like – on the globe? A. Yes.

Q. Tell me this: this, of course, is something that is covered by one of these objects, is it? (Indicating) A. Yes.

Q. In this instance it has been removed? A. Yes.

Q. So that in addition, so far as that is concerned, you have not only – Well, you could not see it on visual inspection because the thing would be covered? A. Yes, that is correct.

Q. What else? A. That is about all there is to them that could go wrong.

Q. Of course, you say that in some cases the brass portion had come away from the plastic? A. Yes.

Q. Of course that is something which would be difficult to determine by visual inspection? A. Physically is the only way.

Q. You would have to feel whether the thing was firmly attached or not? A. That is correct.

Q. Have you any association with the making of batteries? A. No. That is Union Carbide.

Q. Union Carbide? A. Yes.

Q. You know, of course, I suppose – it is a matter of general knowledge – that various screws – various companies have various forms of screw thread? A. We do, yes. This is the reason a sample of the Union Carbide socket was sent to Taiwan for making certain that this was screwed in properly.

Q. As I understand your evidence you made – did you keep any record of the tests you made? A. The ones I personally made? 20

Q. Yes. A. Not written ones. Only where these were later transcribed in letters to Jalsard once the knowledge of the problem was known. The rest of it was verbal.

Q. What I want really to know – I just want to know – you do not have any working sheets? A. Time sheets for the amount – we did, yes. This is how we assessed –

Q. I want to deal, first of all, with your testing. Did you keep any record of how many sets, in all, you tested? A. Not the total quantity, no.

Q. Did you keep any record – I suppose you have no record – of how many of the sets you tested were defective and how many were not? A. Not that I personally tested, no. We have a record though of the total number tested. 30

Q. You say the test was done under your supervision? A. That is correct.

Q. When was it done? A. From approximately the end of November into December.

Q. Were you away from Sydney in this period? A. Not during that period, no.

Q. You were not in Taiwan in November? A. No, unfortunately.

Q. Who was employed to do the testing? A. Staff.

Q. What, sales staff? A. A mixture of sales staff, clerical staff, stores staff.

Q. This was done as overtime, was it? A. Again a mixture. Where it could not be done during the daylight hours, or the working hours actually, it was done as overtime, yes.

Q. Was it done for Gollin's purposes or for — as agents, in effect, for Jalsard? (Objected to.)
A. It was done for — (Objected to. Mr. Kenny said he would rephrase the question.)

Q. Did you yourself initiate the test? A. I did, the reason being that Gollin had come to an arrangement with a very large Christmas tree manufacturer to have a little sticker put on all of the Christmas trees: "Danger. Do not use 240 volt Christmas tree lights. Use Gollin's battery-operated lights."

These were exclusive lights and there were some thousands of these trees on the market so to justify our arrangement with the manufacturer we just had to do something about bringing these to a marketable condition. In normal circumstances with this type of product, of course, you would just return it. In this particular instance we were in a rather embarrassing situation.

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Q. You started the tests so you could determine whether or not you could safely let somebody with whom you had dealings who was selling Christmas trees put the sticker on the Christmas tree; is that right? A. Yes, this is correct.

Q. Of course the people making these tests had no particular qualifications? A. The only qualifications they had was to know whether they worked or did not work and they are a rather simple operation so it is only a matter of minutes before people are trained for this purpose.

Q. Let us deal with the faults one by one: so far as the lamps are concerned — (Question not completed).

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MR. BYERS: Lamps or lights?

MR. KENNY: Q. So far as the globes were concerned that were replaced, I suppose that is a question of replacing or putting the bulb in the correct position? A. That is correct.

Q. So far as the wires that had been simply laid together and not spliced — I do not think spliced is the term — but joined together — A. Joined together — tied together.

Q. Tied together; that was a question of tying them instead of — A. This is correct.

Q. Was any detail kept of what particular faults were found in particular sets? A. Not really, no.

Q. Do I take it that what happened was this, that if a fault was found in a set it was described as faulty? A. Correct.

Q. That would be irrespective of what the nature of the fault was? A. No. Only where it is a fault uneconomic to repair. If it was a case of a globe, that is removed and just another globe would be put in its place. If it was soldering, this is not economic to do so it is rejected.

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Q. Of course the only soldering concerned is to attach the brass threaded piece to the plastic holder? A. There is soldering in four places.

Q. Where are the other places? A. In the inside of the socket where the globe goes in there are two points, one on either side and inside the white attachment there are two.

Q. There are two more? A. Yes, two.

Q. Two junctions? A. Yes.

Q. Your supervision then, I suppose, consisted of putting a number of people to work on this project; is that so? A. This is correct.

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Q. And then accepting the results they brought you? A. After having shown them how to go about this and training them, yes.

Q. Accepting the results they brought you? A. Yes.

Q. How many people were engaged in this work? A. Over the period of time I would not be able to give you the exact figure. It was approximately 18-20.

Q. How long did it take? A. The man hours can be given you from the document charging Jalsard for this work.

Q. (With Ex. SS) I show you Ex. SS. Can you tell me how many man hours? (shown) I think it is going to be a little difficult for you, if you do not know whether it is eighteen or twenty, is it not? A. There is somewhere in Gollins a work sheet which shows the number of man hours. I am sorry. That really should have been on the invoice and it is not. 10

Q. I beg your pardon? A. There would be a work sheet to arrive at that figure. They were charged so much per hour for the work.

Q. Who determined the charge for the work? Did you? A. It would be the staff supervisor or the staff employment officer at Gollins.

Q. This was December – November or December these tests were conducted? A. Yes.

Q. Then some sets were rectified? A. Some were, yes.

Q. What happened to those? A. If they were found to be in good condition they were sent back to the client, if he would accept them back.

Q. Were there instances where people refused to accept them back? A. There were, yes. 20

Q. What happened then? (No answer.)

Q. What happened to those sets? A. They were then picked up for return.

Q. So a number of sets that were placed in Rowans' bond would be sets in working order? A. Some of them would have been, yes.

RE-EXAMINATION:

MR. BYERS: Q. In the sales that were made by Gollin to the retailers was there ever a sale of one set of working lights? A. One set only? Only in the case of cash sales to staff or staff friends.

HIS HONOUR: Q. What, staff friends and staff of Gollins? A. Of Gollins or business associates of Gollin. 30

MR. BYERS: Q. I am thinking, rather, in relation to the sales that were made by Gollin of the two shipments – were they sold, for example, to department stores in quantities of one or more than one? A. Oh, more than one, yes.

(Witness retired)

(Short adjournment)

ALLAN HOOPER BROWN
sworn, examined as under:

MR. SHEPPARD: Q. Would you please speak up? What is your full name? A. Allan Hooper Brown.

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Brown — examined*

Q. Could you speak up more than that? A. Yes sir. Allan Hooper Brown.

Q. Where do you live? A. 8 Judith Street, North Seaforth.

Q. Are you by profession a marine surveyor? A. I am.

Q. Are you employed by a company — A. Yes.

Q. — known as Cargo Superintendents Australia Pty. Limited, I think it is? A. Yes.

Q. Have you been so employed for about six years? A. Yes.

Q. Before that were you at sea? A. Yes.

Q. I think you held a Master's Certificate? A. I still do, yes.

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Q. And you still do: you were, in fact, the Master of a 10,000-ton vessel? A. Yes.

Q. At the time when you gave up the sea? A. Yes.

Q. In the course of your employment about 6th, 7th and 8th March, 1968, did you have occasion to inspect some Christmas lights? A. I did.

Q. Where did you do that? A. At Rowans' bond in York Street, Sydney.

Q. What were these lights in? (No answer.)

Q. Were they packed in something? A. Yes. They were in a small cardboard carton packed in a large wooden box.

Q. Were these large wooden boxes — sorry — was there more than one wooden box, or only one? A. No, there were 130-odd.

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Q. Large wooden boxes? A. Large wooden boxes.

Q. Were they marked in some way? A. Yes. "J.T.C." I think it was.

Q. Now you went to look at something. Before you do that, did you make some notes about this inspection? A. Yes, I did.

Q. Did you make them at the time at which you did the inspection? A. Yes.

Q. Are you able to remember all the detail of your inspection without looking at your notes? A. I do not think so, not altogether, no.

MR. SHEPPARD: May he have your Honour's permission to look at his notes?

Q. By looking at your notes could you tell us how the boxes were marked? A. They were marked "J.T.C.3/12341" over "Sydney".

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Q. Were they also numbered? A. With a serial number also.

Q. Do you remember any serial numbers, or not? A. They ran from one to seventy in one shipment and one to eighty on the other shipment.

Q. Do you remember how many boxes of lights there were inside the cases? A. I believe there were 144.

Q. Would you look at Ex. PP? (shown) Do you recognise the box that you see? A. Yes, certainly.

Q. How does that box compare with what you saw inside these cases? (No answer.)

(Exhibit PP was on his Honour's bench adjacent to the witness box.)

HIS HONOUR: Pick it up if you wish.

WITNESS: This appears to be exactly the same as the ones that I inspected.

MR. SHEPPARD: Q. Were they all the same shape as that? A. No. Approximately fifty per cent had a lantern-shaped bulb.

Q. That is a different shape from the shape which you see in the box Ex. PP? A. Yes.

Q. What shape is the lantern shape? Was it a longer shape – was it? A. No, more square.

Q. A squarer shape: I see. How long did this inspection take you? A. I was on it for three days and I think I spent about five hours in each day.

Q. So it was about fifteen hours altogether? A. Yes.

Q. Are you able to tell us what lights you examined? Did you examine them all or only a random selection? A. No, I examined the lights out of four of the boxes which I selected at random.

Q. Do you remember the number of the cases? A. From my notes I examined No. 7, No. 66, No. 53 and No. 19.

Q. So far as the cases were concerned are you able to say whether some were from one shipment and some from another or are you not able to say that? A. I was confident at the time that one case of each type was from each shipment.

Q. Were these cases selected for you by anybody? A. No, no. I selected them myself.

Q. Was anybody with you at the time you made your selection? A. No. An employee of the bond store was occasionally there but he was not engaged in the inspection.

Q. Would you tell his Honour what you found upon the inspection that you made? A. I found that there were a number of defects – if I might indicate with this?

HIS HONOUR: Yes. Take it up if you wish.

WITNESS: This plastic cover around the brass contact was frequently cracked. In many cases it was loose and in several cases when I screwed the brass contact into the battery the plastic cover broke and I had difficulty in getting the lights detached. I found in numerous cases that one or possibly more of the bulbs failed to light up at all.

MR. KENNY: One what?

MR. SHEPPARD: Q. One or more –? One or more: in some cases the flashing would be extremely irregular. The sets which worked correctly flashed for about one second on light – one second on darkness. The irregular ones would flash for possibly a second and then be off for four or five seconds. It continued to flash irregularly. There were a number of crossings such as this which include bare wires. There is one here (indicating).

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Q. With the bare wires coming into contact with each other? A. Yes. This is all I found that I can recall offhand.

Q. Did you have a battery attachment with you? A. Yes.

Q. Who had given you that? A. A representative of Gollin & Company.

Q. Did some sets work? A. Yes, certainly.

Q. For how long did you have them on — the ones that worked? A. For not more than two minutes.

Q. Were some not working at all? A. Yes. Some failed to work entirely.

Q. What? A. Some failed to work completely.

Q. Approximately what time did you spend testing each set? A. I think it would have taken me three or four minutes altogether to screw in the attachment, wait for the warming-up and — 10

Q. In the cases that you have told us about, the numbers that you have told us, did you test every set? A. No, no. I tested fifty from the first case that I selected and forty from the other three.

MR. SHEPPARD: Q. Do you mean by that 40 from each of the other three cases? A. Yes, 40 sets.

Q. So you tested 170 sets altogether? A. Yes.

Q. Are you able to say of those how many appeared to you to be in order and how many appeared to you not to be in order? A. The only one on which I worked out a percentage was the faulty screw connections. These were 13 per cent of the total that I tested, which had faulty connections to the battery. 20

Q. What else? A. I did not calculate any percentages on the other defects. I have no figures readily available for how many of each.

Q. I may have some of your notes. Would you look at the document I show you and tell me if that is a copy of a draft report that you made out on 7th March? A. Yes, this is.

Q. That is in your handwriting, is it? A. Yes, certainly.

Q. Is there anything in that that helps you refresh your recollection of the percentage? A. Yes, I stated here that 36 per cent of the lights were working efficiently, 64 per cent being defective in some way or another. 30

Q. In the course of your duties both as a ship's officer and subsequently as a marine surveyor have you had occasion from time to time to report on whether defects in goods have been due to some fault present at the time of shipment or have been due to some problem that has arisen either because of packing or in shipment or in carriage? A. Yes, I have.

Q. Is that something you are frequently concerned with? A. Yes, certainly.

Q. Did you form any conclusion in relation to these lights as to whether the defects were caused by packing or shipment or something to do with their carriage, or were you present at the time of shipment? (Objected to. Allowed). A. No, I am quite confident these faults were due to manufacture rather than incidental damage. 40

CROSS-EXAMINATION

MR. KENNY: Q. May I see the documents to which you referred? A. Yes.

HIS HONOUR: Q. The blue one is the only one you referred to in your folder, is it not? A. Yes. (Shown to Mr. Kenny).

MR. KENNY: Q. Did you determine what you considered the proper flash? A. Yes.

Q. The proper flash interval? A. Yes.

Q. This was the flash at intervals of one second, was it? A. Yes.

Q. There were a number of other sets which flashed, which flashed at other intervals, were there not? A. That is so.

Q. You referred to 64 per cent as being inefficient? A. That is so.

Q. That 64 per cent I take it, and correct me if I am wrong, includes those sets which flashed at intervals of other than one second? A. That is so, yes. 10

(Witness retired).

JOHN MAXWELL EGAN
sworn, examined, deposed:

MR. SHEPPARD: What is your full name? A. John Maxwell Egan.

Q. Do you live at 32 Greenleaf Road, Wentworthville? A. Yes.

Q. Are you presently employed in a firm of public accountants, Albert Agnew & Co., carrying on practice in Bligh Street, Sydney? A. Yes.

Q. Until September last year had you been doing accountancy work in the office of Messrs. Fell and Starkey? A. Yes. 20

Q. And you had been so employed for some seven years before that, had you? A. Yes.

Q. You are not a qualified accountant yourself, are you? A. That is correct.

Q. But you did do the bulk of the exams of the Chartered Institute while you were with Messrs. Fell and Starkey, did you not? A. Yes, except one exam.

Q. In the course of your duties did you do what amounted to secretarial work for the company Jalsard Pty. Ltd.? A. Yes.

Q. Over what period did you do that type of work? A. I commenced, as I recall, sometime in 1966. It may have been prior to, but it was definitely round about late 1965 – early 1966 that I commenced doing their work.

Q. At some point of time before you left Fell and Starkey, did you cease doing their work? A. Yes, I ceased doing Jalsard's work around September 1967. 30

Q. In the course of your duties did you come to know Mrs. Wilson who was then Mrs. Davey? A. Yes.

Q. She, of course, was the managing director of the company? A. Yes.

Q. And I think Mr. Rowell, a partner in Fell and Starkey, was another director? A. Yes.

Q. In 1966 were you aware that Mrs. Davey had gone overseas? A. Yes.

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Evidence
Brown –
cross-examined
Egan –
examined*

Q. Amongst other places to Taiwan? A. Yes.

Q. And after she returned did you have a conversation with her? A. Yes.

Q. Did you eventually go yourself to the head office of the Commercial Banking Company of Sydney? A. Yes.

Q. Were you alone or accompanied by anybody? A. On the 1st occasion as I recall, I went alone.

Q. Did you take any documents with you? A. I had with me what Mrs. Davey requested . . . (Interrupted).

Q. I want you to describe the document generally. A. Details on a piece of paper for the import of snake skins.

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Q. From where? A. From Taiwan.

Q. Are you able to say when it was that you went on this occasion to the bank? A. As I recall it was a Friday. It was mid December. As I recall it was 16th December.

Q. Have you looked at some document in order to refresh your recollection of that date? A. Yes, the document which I was shown previously.

Q. Whereabouts in the bank did you go? A. I went to the first floor of the Commercial Banking Company of Sydney, the Overseas Import Section, as I recall.

Q. Did you see someone in particular there? A. Yes, Mr. Carman.

Q. Did you have a conversation with him? A. Yes.

Q. Can you remember what he said and what you said? A. I said to him "My name is John Egan. I work for Fell and Starkey, and one of our mutual clients, Jalsard Pty. Ltd., and the managing director, Mrs. Wilson . . ." (Interrupted). 20

Q. Did you say "Mrs. Wilson"? A. I said "Mrs. Davey", now Mrs. Wilson, "is desirous of commencing an import and export business with an emphasis on import. I do not know anything in regard to the necessary documentation or credit restrictions or foreign currency, and I would like you to help me in this regard".

Q. What did he say to that? A. "I will help you all I can".

Q. Did you then continue? A. Yes, I then produced the documents which I had been given so that a letter of credit could be drawn to pay for the import of the snake skins.

Q. What did he do? A. Mr. Carman produced a blue form with black print which was an application for letter of credit. 30

Q. Would you look at Ex. L? Have you seen that document before? A. Yes.

Q. Where did you see it? A. At the bank on the occasion when I first went there on 16th December.

Q. Is that the document Mr. Carman produced? A. It was a blank form and Mr. Carman proceeded to show me how it was to be filled out.

Q. Is that document also the document from which you refreshed your recollection as to the date? A. Yes.

Q. There is a good deal of handwriting and printing on the document? A. Yes.

Q. Is any of that your handwriting? A. No.

Q. Do you know whose handwriting it is? A. Yes, it is Mr. Carman's handwriting.

Q. Was there discussion as he proceeded to fill in the various parts of the form? A. Yes.

Q. Do you remember that discussion? A. To the best of my recollection he started off by saying "naturally it will be Sydney. Do you desire to send this air mail or cable?" I said "Well, Mrs. Davey is anxious that the money be there as soon as possible," and he said "Therefore we will send the letter of credit by cable, because this will be faster than air mail." He then advised me . . . (Interrupted).

Q. He said — A. He said "The supplier of the goods, Raymond & Co. Ltd., we have to fill in on this particular line here, and their address, and also their bankers", who in this case happened to be The First National City Bank. On the paper I had I knew the Australian price of the goods, and Mr. Carman advised me . . . (Interrupted).

Q. Said to you — A. Said to me "That will be \$1035 U.S.". He had some form or table of rate conversion of the amount from Australian to United States dollars. He then said "Will the goods be coming F.O.B., C & F, or C.I.F.?" and there was a brief discussion on this point, but I cannot recollect exactly what was said in regard to these terms; But I said to him "Mrs. Davey will look after insurance and freight in her own right on behalf of the company", and in that case it was to be F.O.B. with a brief description of the goods, which were snake skins, which was inserted. We then moved down the form. They would be of Taiwan origin, and he then said "Will they be coming by boat or by air?" and I said "Mrs. Davey is anxious that they arrive here as soon as possible, therefore it is to be air freight. They will be coming from Taiwan". Then we moved down to Partial Shipments", and Mr. Carman said, "Will you allow Partial Shipments?" and I said "No, I do not think they would want Partial Shipments", and the word "are" was crossed out. There was some discussion on transshipment. I cannot recollect what was said.

Q. There were some words crossed out? A. Yes. We then moved down. Mr. Carman said "You will need commercial invoices and also certified Australian customs invoices, as this will be necessary to get the goods through customs in Australia". We then moved further down the form, and Mr. Carman said "As the goods will be coming by air, bills of lading will be out," and this was deleted accordingly.

Mr. Carman then said "All you will need in this case are air consignment notes, because the goods are coming by air, and they should be consigned to this bank marked Account Jalsard Trading Co." We then moved further down the form and Mr. Carman said "Because the company is looking after its own insurance the words 'insurance policies etc.' will not be required", and that was deleted, together with "acknowledgement of declaration of insurance".

We then moved further down the form and the words "Beneficiary's Inspection Certificate". I cannot recollect whether these words were inserted on the Friday that I first went to the bank, with Mr. Carman, or whether they were inserted on the following Monday when I brought the form back signed.

Q. Do you remember whether they were all inserted together? Did you see them inserted, whenever it was? A. Yes, the whole three words were inserted at once.

Q. Whether it was on the 16th or the 19th? A. Yes.

Q. Whether it was on the 16th or the 19th, was there a conversation about those words? A. Yes.

Q. Between you and Mr. Carman? A. Yes.

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Q. What was said? A. Mr. Carman said "The fact that you require 'a beneficiary's inspection certificate' or 'certificate of inspection' throws the onus on the supplier to ensure that the goods to be supplied are as ordered. In fact the letter of credit cannot be released until that certificate is produced." Mr. Carman further said that he could not guarantee the standard of the check to be performed by the people in Taiwan, nor did he have any knowledge of their degree of competency, because he had not had a great number of dealings in trade with Taiwan.

Q. Was anything else said about the certificate of inspection or beneficiary's inspection certificate? A. I cannot recall whether Mrs. Davey was with me on this occasion.

Q. She was not with you if it was the 16th, according to your recollection, is that right? A. That is true. 10

Q. If this discussion occurred on 19th December and not the 16th who, to the best of your recollection, was present at it? A. To the best of my recollection on the 19th there was Mr. Carman, Mrs. Davey and myself.

Q. I will come to the 19th in a moment. There is some further writing on the form relating to insurance, I think, and to freight. Was there some discussion about those items? A. Mr. Carman said "All we need put here is 'insurance cared for by buyer', which seems to be straight forward, and freight is payable at destination here in Australia".

Q. And some other writing over on the right hand side? A. Yes, "Please advise this credit through First National City Bank, Taipei". 20

Q. Did you see those words inserted? A. To the best of my recollection yes.

Q. Once the form had been filled in, was there any further discussion between you and Mr. Carman? A. I said "Thank you very much". I cannot recollect whether I went back to the office and had this typed and signed, but I did return it to the bank on 19th December.

Q. You came back to the bank on the 19th, which was a Monday, did you? A. Yes.

Q. Who did you go with, if anybody? A. To the best of my recollection I went to the bank with Mrs. Davey. I know . . . (Interrupted).

Q. Did you go to the same part of the bank you had been to when you had seen Mr. Carman? A. To the best of my recollection we first went on to the ground floor of the bank to open up a letter of credit account. 30

Q. In whose name? A. Jalsard Trading Co.

Q. In giving that evidence have you refreshed your recollection from some document? A. Yes.

Q. What was the document you refreshed your recollection from? A. The first Bank pass sheet of the Jalsard Trading Co., letter of credit account.

Q. I will come to that in a moment. Was that account opened that day? A. To the best of my recollection, yes.

Q. Apart from the bank statement to which you have referred was there any other document from which you refreshed your recollection? A. Yes, a cheque butt.

Q. Was that in your handwriting? A. Yes, it was. It was for \$1,300.

Q. After you had finished the business of opening the account did you go somewhere else in the bank? A. Yes, I went to the first floor, the overseas import section. 40

Q. Did you have anything with you when you went there? A. Yes, I had this letter of credit which had been signed.

HIS HONOUR: That is Exhibit L.

MR. SHEPPARD: Q. That then bore Mrs. Davey's signature on it, did it? A. Yes.

Q. Did she accompany you up there or not? A. I cannot recollect whether she was definitely with me on the 19th. I know she was definitely with me downstairs when the letter of credit account was opened, but I cannot recollect if she was definitely with me on the 19th December.

Q. You mean definitely with you upstairs, do you? A. Yes, definitely with me upstairs. She may have been. I cannot recollect.

Q. You left the application, exhibit L, with Mr. Carman, did you? A. Yes, Mr. Carman said "I will take care of this now", and I said "Thank you very much for all your help".

Q. As regards that particular transaction did you have anything more to do with it or not? A. No, I did not.

Q. Did you have occasion to prepare a second application for a letter of credit in respect of a different transaction? A. Yes.

Q. Would you look at Exhibit R? Do you recognise that document? A. Yes.

Q. Is that an application that was prepared in your office? A. Yes.

Q. Who prepared it? A. I drafted it. Mr. Rowell's secretary typed it.

Q. I show you another application for a letter of credit bearing the same date as the one you hold. The document I show you is Exhibit MM. Would you look at that document also? A. Yes.

Q. Can you tell us whether you had anything to do with Exhibit MM? A. Yes, I would say that this was the first one I drafted.

HIS HONOUR: Q. Do you indicate the one in your right hand? A. Yes, Exhibit MM.

Q. That was drafted by you, was it? A. Yes, I drafted that and had Mr. Rowell's secretary type it.

MR. SHEPPARD: Q. Which document came into existence first? A. I would say this document.

Q. That is Exhibit MM, is it? A. Yes.

Q. Having had it typed and signed what did you do with it? A. I then took it to the bank.

Q. Who did you see there? A. I saw Mr. Carman.

Q. Was there a discussion about it? A. Mr. Carman said "There will have to be a few minor alterations", and these were pointed out to me. I had, half-way down where it says "air consignment note", put "your bank", and Mr. Carman said it should be "this bank". I said "Good, I will get that changed". There was insufficient space on the cover as regards certain details, and when I originally had it drafted I said "type it on the back because I would like it to be clear". Mr. Carman said "It will probably be preferable if you change this just slightly".

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Q. These are the words on the back he was referring to, are they? A. Yes. I said "I will go along with whatever you say", and he suggested I should have had the words "insurance cared for by buyer", and these words were then deleted.

Q. What words were deleted? A. I had "to be cared for by Raymond and Co. Ltd. and collect destination", and Mr. Carman advised me it should be "insurance cared for by buyer", as Jalsard were looking after their own insurance.

Q. Was there any discussion that you can remember? A. Only with the alterations which appear on this form. I then took back . . . (Interrupted).

Q. On this occasion? A. No, I cannot recollect any other details.

Q. Did you take the document away? A. Yes, I took this document away.

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Q. That is Exhibit MM? A. That is Exhibit MM.

Q. And had Exhibit R then prepared, did you? A. Yes.

Q. Was it prepared in accordance with the alterations suggested by Mr. Carman? A. To the best of my recollection, yes.

Q. What did you do with it when it had been typed? A. I took it to the bank.

Q. Did you have anything done to it first? A. I had it signed, and to the best of my recollection there was a typing error in here, and I had that deleted and initialled by Mrs. Davey and Mr. Rowell.

Q. Did you have any discussion with Mr. Carman when you took it back on the second occasion? A. To the best of my recollection, no.

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Q. Was that application subsequently cancelled? A. I cannot recollect whether it was cancelled or not.

Q. Did you leave only one document or both documents with the bank? A. To the best of my recollection I only left the one document with the bank.

Q. Which was that? A. That would be Exhibit R.

Q. Were you alone with Mr. Carman at both the interviews that you have mentioned? A. For this letter of credit, yes.

Q. To go back to something I asked you a little earlier about 19th December, look at the documents I show you and tell me if they are the bank statements which refreshed your recollection about 19th December? A. Yes, this is the document.

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Q. The one you are looking at is the document? A. Yes.

HIS HONOUR: Q. The last one on that file? A. Yes.

(Bank statement in the name of Jalsard Trading Co., letter of credit account, m.f.i. 20.)

MR. SHEPPARD: Q. Is the document I show you now the cheque butt from which you refreshed your recollection? A. Yes.

(Cheque butt, m.f.i. 21.)

Q. Do you remember there being a third application for a letter of credit? A. Yes.

Q. Do you recollect when that application was made? A. February 1967 as I recall.

Q. Is it your recollection there was a document first of all prepared in your office before any contact was made with the bank or not? A. Yes.

Q. Would you look at Exhibit T and tell me whether that is the application that you remember? A. Yes.

Q. Where was that document prepared initially? A. In the office of Fell and Starkey.

Q. Did you have it typed? A. Yes.

Q. Having had it typed what next happened to it as you recall? A. I took it to the bank, and Mrs. Davey accompanied me.

Q. At the time you left for the bank was there any handwriting on the document? A. No.

Q. Where did you go when you got to the bank? A. We went to the first floor of the Commercial Banking Co., of Sydney. 10

Q. And you saw Mr. Carman again? A. Yes.

Q. Was there a discussion amongst the three of you about the document? A. Yes.

Q. Do you remember what was said at that discussion? A. Mr. Carman said "It is not necessary to have all the words which you have inserted in the centre part of the form, and 'certificate of inspection' should be under the heading 'and the following additional documents', and not below where you have it." With that Mr. Carman deleted the words "to be" and also "freight to be paid by buyer and collect destination. Letter of credit to be released upon Raymond and Co. Ltd., certificate of inspection" which left — he then said "certificate of inspection should be up the top", and wrote the words "certificate of inspection" in, and he also wrote in "freight is payable at destination." He then said "It is not necessary to write all the other words". 20

Q. Did anybody then say anything to him? A. Mrs. Davey said "What is this certificate of inspection?" and Mr. Carman said "As I previously pointed out to John . . ." (Interrupted).

Q. To John? A. Yes.

Q. You were on first name terms by that time, were you? A. Yes, I appreciated Mr. Carman's courteous service and it was done in a rather friendly fashion.

Q. I am sorry, I interrupted you. You said something about "as I previously pointed out to John"? A. "The fact that a certificate of inspection is required throws the onus on the supplier to ensure that the goods to be supplied are as ordered. I do not know whether Raymond and Co., have their own inspection department or whether they have agents to do their work." He said "As I also pointed out to John the letter of credit cannot be released until that certificate is given, but at the same time I cannot give any guarantee as to the check that they perform, or their competency". Mrs. Davey said "At least I know a check is done. That is good". 30

Q. Was anything else said about it that you remember? A. In relation to the letter of credit?

Q. Yes. A. No.

Q. Had the document been signed at that time or not? A. To the best of my recollection the copy I took to the bank, the one I originally took to the bank, yes. This one here.

HIS HONOUR: Q. The one you have in your hand, Exhibit T? A. Yes. 40

MR. SHEPPARD: Q. What was done with it when this conversation finished? A. I cannot recollect if I took it back to the office and had it re-typed and resigned, and then took it back to Mr. Carman.

Q. I do not know whether it assists you, but the one in your hand does have Mr. Carman's handwriting on it, doesn't it? A. Yes.

Q. Having been reminded of that, what is your recollection as to whether you left it or took it back to the office? A. I am sorry, I cannot recollect.

Q. Did you have anything further to do with that transaction yourself? A. No.

Q. Do you remember you told us a little while ago that Mrs. Davey may or may not have been present with you when you saw Mr. Carman on 19th December? A. Yes.

Q. You cannot remember whether she was or not, as I understand you. Is that so? A. That is so.

Q. You remember giving that evidence, do you? A. Yes.

Q. What is the best of your recollection as to whether the conversation you have just re-counted — I will withdraw that. What is the best of your recollection as to when the conversation you have just recounted about exhibit T, which is in your hand, took place? (Objected to. Allowed.) A. If this conversation was not on the 19th December 1966 it was definitely on the 15th February 1967. 10

Q. What conversation are you talking about? A. In regard to the certificate of inspection.

Q. Have you some reservation in your mind as to when that conversation about certificate of inspection took place? (Objected to. Rejected.)

MR. SHEPPARD: Perhaps in case of comment at some later time, may what I have said be noted.

HIS HONOUR: It will be noted. Mr. Kenny objected to the question being asked. 20

MR. SHEPPARD: The purpose of my asking the question was to place before the court the best of the witnesses recollection in fairness to him and indeed in fairness to Mr. Kenny.

Q. Do you remember a fourth application for a letter of credit? A. Yes.

Q. Before I show this document, do you remember whether this one, the fourth one, was prepared in Fell and Starkey's office or not? A. As I recall, yes.

Q. Would you look at Exhibit W? Have you seen that document before? A. Yes.

Q. Where did you see it? A. When it was prepared in the office of Fell and Starkey.

Q. Who had it prepared? A. I did.

Q. Do you have any recollection as to whether there was something different about this one from the others? A. This was the first one which became a back-to-back letter of credit. 30

Q. After it had been prepared what did you have done with it? A. I had it signed and took it to the bank.

Q. When you say you had it signed, was it signed by both Mrs. Davey and Mr. Rowell? A. Yes.

Q. Did you go to the bank alone or with anybody? A. I cannot recall.

Q. Who did you see at the bank? A. Mr. Carman.

Q. Was there a discussion about it? A. As I recall I said to Mr. Carman that Jalsard, Mrs. Davey, had joined with Gollin and Co., in importing these particular Christmas lights as a test shipment, and this is when Mr. Carman advised me on this back-to-back letter of credit.

Q. Said to me – A. Said to me about this back-to-back letter of credit, which, as I understood it . . . (Interrupted.)

Q. Only tell us what he said to you, if anything, at least at this stage? A. As I recall, Mr. Carman said “It means that virtually the Commercial Banking Co. of Sydney can look to the A.N.Z. Bank for funds in the event of this particular letter of credit not being honoured. It is virtually a guarantee that it will be met”.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Brown –
cross-examined
Egan –
examined*

Q. Was anything else said about this application or this transaction that you can remember?
A. Mr. Carman pointed out . . . (Interrupted.)

Q. He said – A. Mr. Carman said “It is preferable to have your letter of credit in the same or similar terms as Gollin and Co., have their letter of credit, because this saves any delay”. 10

Q. Did you say anything to that? A. I said “Very well”.

Q. Do you recall whether you saw any other document at this time? A. Yes, as I recall it was a pinkish document which I understood was Gollin and Co.’s letter of credit, the back-to-back letter of credit.

Q. Do you recall any other discussion about this one, exhibit W? A. No, I cannot recall any further discussion.

Q. Did you have anything else to do with that transaction? A. As I recall, no, apart from the ordinary book-keeping entries attached thereto.

Q. You did not see the bank again about it or see any of the shipping documents or anything like that? A. As I recall, no. 20

Q. Was there a further application for a letter of credit in May 1967? A. Yes.

Q. Look at Exhibit X. Is that the application? A. Yes, it is.

Q. Where was that prepared? A. In the office of Fell and Starkey.

Q. Did you have it signed after it had been prepared? A. Yes.

Q. By whom? A. By Mrs. Davey and Mr. Rowell.

Q. Did you take it somewhere? A. Yes, I took it to the bank.

Q. And saw Mr. Carman again? A. Yes.

Q. Did you go alone or with anybody? A. As I recall I went alone.

Q. Did you have a discussion with him about this one? A. Yes.

Q. So far as you recollect it, what was said? A. I said “This is another back-to-back letter of credit, and I have tried to keep it in the same terms as Gollin and Co.’s letter of credit, but there is one difference; whilst Gollin and Co. do not require a certificate of inspection, Mrs. Davey wants one, and the words ‘Certificate of Inspection’, there was not sufficient room to type them in in the part set aside, so I had it typed in the margin, which served the purpose”. 30

Q. Did he say anything when you said that? A. Mr. Carman said “It could possibly cause a delay, the fact that Gollin and Co.’s letter of credit is not exactly the same as Jalsard’s”.

Q. Was anything else said either about the certificate of inspection or the letter of credit generally on that occasion? A. As I recall, no.

Q. Did you have anything further to do with that transaction? A. No.

(Luncheon Adjournment.)

ON RESUMPTION.

HIS HONOUR: You are on your former oath.

(Mr. Sheppard asked to see the documents produced on subpoena from Gollin and Co., and also requested Mr. Kenny to produce to him m.f.i. 11 and m.f.i. 12. Mr. Kenny produced these documents.)

MR. SHEPPARD: Q. I show you a document which is m.f.i. 11. Would you tell me if you remember seeing a document which was either that document or a document like that? A. Yes, I can recall seeing a document like this.

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Q. Where did you see it? A. It was either at the bank or at our office.

Q. When you say at the Bank, do you mean the Commercial Banking Company of Sydney? A. Yes.

Q. On what occasion did you see it, or in connection with what transaction? A. I cannot recall which letter of credit it referred to just by looking at it but by reading... (Interrupted.)

Q. Do you wish to have in front of you any of the documents I showed you this morning? Would that help you? A. As I recall this could well be the first back-to-back letter of credit, but I could not be sure.

Q. Would you look at Exhibit X? Does that document assist you to recollect the occasion or the circumstances in which you saw the document m.f.i. 11? A. As I recall I used this document... (Interrupted.)

20

Q. That is to say m.f.i. 11? A. M.f.i. 11, to complete this document.

Q. Exhibit X? A. Exhibit X.

(M.f.i. 11, being irrevocable letter of credit No. B7982, tendered and marked Exhibit TT.)

MR. SHEPPARD: I think the only part that is marked is the actual irrevocable letter of credit. My tender is limited to that. I do not think the other documents were marked.

Q. Would you look at the document I now show you, which is m.f.i. 12, and tell me if you have seen that document or a document like it on some other occasion? A. Yes, I have.

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Q. Where did you see it? A. It was either in our office or at the Commercial Banking Co. of Sydney.

Q. In respect of what transaction or matter did you see it? A. In respect of a letter of credit to be drawn by Jalsard.

Q. Would you look at Exhibit W? Does that help you refresh your recollection as to what use you made of the document on some other occasion? A. Yes. Here again I used this document.

Q. That is m.f.i. 12? A. To complete this document here.

Q. Exhibit W? A. Yes.

(Mr. Sheppard tendered copy of irrevocable letter of credit No. B7974, dated 28th March, 1967, issued by the A.N.Z. Bank, which was marked Ex. UU.)

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Brown —
cross-examined
Egan —
examined*

Q. Before lunch I had asked you about Exhibit X; which is dated 9th May, 1967, and you might look at that again if you would. I think you had given an account of a conversation you had with Mr. Carman concerning some of the wording on that document. A. Yes.

Q. I think you had said he accepted the form but told you it might cause some delay, is that right? A. Yes, that is right.

Q. Was there any other discussion that you can recall? A. No, that I can recall.

Q. You left the form with him, did you? A. Yes.

Q. Did you have anything further to do with that transaction? A. No.

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Q. The next transaction about which I want to ask you is in respect of an application for a letter of credit made on 11th July 1967, in respect of some Christmas lights in an amount of some \$16,920 U.S. Do you remember that? A. Yes.

Q. Did you have something to do with that application? A. Yes.

Q. What did you do in relation to it? A. I had a letter of credit drafted in our office.

Q. An application for a letter of credit? A. An application for a letter of credit. I then took it to the bank, and Mrs. Davey accompanied me on this occasion.

Q. And there was some discussion with Mr. Carman on that day, was there? A. Yes.

Q. Without asking you the detail of that, was anything said on that occasion about a certificate of inspection? A. As I recollect, no.

20

Q. Did you have other visits to the bank in connection with that application? A. Yes, as I recall I was at the bank at least three times with this particular letter of credit.

Q. Once with Mrs. Davey, was it? A. Yes.

Q. And the other occasions, was she there? A. As I recall, no.

Q. Was more than one draft of it prepared? A. Yes.

Q. Or was the same document altered? A. As I recall there were two drafts prepared.

Q. On any of the occasions at which you were present at the bank was there any discussion about a certificate of inspection? A. In regard to this particular letter of credit, as I recall, no.

Q. Eventually a final draft of it was lodged, and as far as you know the transaction went ahead, is that right? A. No, after I had taken it to the bank, as I remember, my third or fourth attempt to get this letter of credit correct, Mr. Carman said "It is still not quite correct", and I said "Well, look George, how about you prepare it the way it should be?"

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Q. Eventually that was done, was it? A. Yes.

Q. And it did go through? A. As I recollect, yes.

Q. I think you are aware that on 2nd August 1967 Jalsard Trading Co. wrote a letter to the bank making certain amendments. A. I cannot recall having anything to do with that letter.

Q. You did not have anything to do with its preparation? A. No.

Q. Did you have anything more to do with the transaction which was commenced with this application on 11th July 1967? A. No.

Q. I think you have told us that sometime in September you ceased to be concerned with Jalsard's affairs. A. Yes.

Q. Although you remained with Fell and Starkey? A. That is correct.

Q. There was a further application for a letter of credit on 6th August, 1967, exhibit BB, but you did not have anything to do with that? A. As I recall, no.

CROSS-EXAMINATION

MR. KENNY: Q. You have not had anything to do with the affairs of Jalsard between 1967 and the present time, is that so? A. That is correct.

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Q. You have thrown your memory back and given the best of your recollection, have you? A. Yes.

Q. You had the aid of some documents apparently to assist in your recollection. A. Could you repeat that?

Q. Did you have the aid of some documents in assisting your recollection? Were some documents shown to you? A. Yes.

Q. What were they? Were they these documents that have been shown to you in the witness box today? A. Yes. They were photostat copies, yes.

Q. Of course, you were attending at the bank fairly frequently throughout this period, weren't you? A. Yes.

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Q. I think that after the first letter of credit, after the first requisition, the following transactions were generally initiated by requisition which you had prepared yourself in the office. Is that correct? A. Yes, that is correct.

Q. These were typed by Mr. Rowell's secretary, were they? A. Not all.

Q. Or by a variety of girls? A. Yes. In the main Mr. Rowell's secretary.

Q. Do you recollect, and I think it is the fact, all the requisitions after the first one were signed both by Mrs. Davey and Mr. Rowell. A. That is correct.

Q. The first one was signed by Mrs. Davey only? A. Yes.

Q. On the subsequent occasions what generally happened, I think, and correct me if I am wrong, was this; you would have a draft prepared, you would go to the bank, sometimes accompanied by Mrs. Davey, her signature would be put on the requisition, you would then take it back to Fell and Starkey's office, and Mr. Rowell's signature would be put on it, and you would then take it back to the bank, is that right? A. Yes.

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Q. So it is correct to say with regard to all the subsequent requisitions after the first, there involved at least two visits to the bank? A. Yes.

Q. You had no experience in drawing these documents before, had you? A. None whatever.

Q. The first requisition, Exhibit L, was made out in Mr. Carman's handwriting, was it? A. Yes.

Q. And there is no doubt, is there — you tell me — on some occasion in relation to that requisition Mrs. Davey and you and Mr. Carman were together at the bank? I want your

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recollection. Is it your recollection on some occasions in relation to the first requisition you and Mrs. Davey and Mr. Carman were together at the bank? A. Cannot be sure Mrs. Davey was with me on this occasion. I could not be 100 per cent sure. She was with me at the bank to establish the letter of credit current account, but I cannot recollect whether she was with me upstairs on the first floor.

Q. What I am proposing to suggest to you is this, that the letter of credit was made out by Mr. Carman on the date which it bears, 16th December 1966, and that the whole of the transaction involving the letter of credit was completed on that day, and that then you subsequently attended at the bank on the following day, or the 19th, I think you said. A. Yes.

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Q. Purely for the purpose of opening up the bank account? A. I could not be 100 per cent sure that was the only reason we went to the bank.

Q. I suggest to you it is a possibility. A. It is a possibility, yes.

Q. And I suggest to you that you went to the bank to open the letter of credit account on the 19th. You went to the bank on the 19th because on the 16th there had been some discussion about whether Jalsard Trading Co., had an account with the bank. A. That is correct.

Q. And there was then some discussion about whether it had the account, and subsequently you got a message from some source, either Mrs. Davey or the bank; a message came to you to the effect that there was no account at the bank and it would be necessary to open one or something to that effect? A. Yes.

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Q. And it was in consequence of that you went there on the 19th? A. That is correct, yes.

Q. Look at this letter. Have you seen that letter before, as far as you can recollect? It is part of Exhibit E. A. I cannot recollect having had anything to do with its preparation, but possibly in tidying up operations after I was transferred from the Jalsard job I may have seen the letter in the file, purely just for filing, or skipping through a file.

Q. Would you look at the cheque which is also part of Exhibit E? A. Yes.

Q. Are you able to say whose handwriting the body of that cheque is in? A. The printing is that of Mr. Hay.

Q. Who is Mr. Hay? A. He is the man who took the job over from me.

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Q. When you say "took the job over", you mean the job of carrying on the Jalsard affairs, do you? A. Yes.

Q. After you ceased? A. Yes.

Q. In September, was it? A. As I recall it was September, yes.

Q. Round about that time? September 1967? A. Yes.

Q. Look at these two cheques, both of which appear to be m.f.i. 2. The first one is dated 22nd February 1968. Look at that one first. Can you say whose handwriting that cheque is made out in? A. The first one dated 21st February 1968 is in the printing and writing of Mr. Hay.

Q. That is the same Mr. Hay you mentioned before, is it? A. That is correct, and the next cheque on 16th May 1968 was also in his writing.

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HIS HONOUR: The second cheque is in fact m.f.i. 3.

(Witness retired).

(Mr. Byers sought and was granted leave to recall Mrs. Wilson.)

ROBIN DIANA WILSON
Recalled – on former oath.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Wilson – recalled
further examined*

HIS HONOUR: Q. You are still bound by the same oath to tell the truth. Do you understand that? A. Yes.

MR. BYERS: Q. Did you receive at any stage before 11th July 1967 any sample of the Christmas lights from Taiwan? A. Yes, I did.

Q. Can you remember when it was that you received the sample? A. The first made up set I would have brought back with me in I think March, then the completed sample sets were parcel post, I believe, to me, from Raymond and Co. When I say to me I mean Jalsard. In early April. 10

Q. 1967? A. Yes.

Q. Take the one you brought back. Did you test that yourself to see if it worked? A. With Gollin and Co., yes.

Q. Did it? A. yes.

Q. What about the ones you received in April? A. They worked perfectly.

Q. The second set in April, you say you got by parcel post, do you? A. I believe it was.

Q. From whom in Taiwan? A. From Raymond and Co.

Q. The first one that you picked up yourself in Taiwan, from whom in Taiwan was it? A. I picked it up from Raymond and Co. 20

MR. KENNY: No questions.

(Witness retired).

(Case for the plaintiff closed.)

CASE FOR THE DEFENDANT

WILLIAM GEORGE CARMAN
sworn, examined, deposed:

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Carman — examined*

MR. KENNY: Q. What is your full name? A. William George Carman.

Q. Where do you reside? A. 33 Grigg Avenue, Epping.

Q. You are an officer of the Commercial Banking Co., of Sydney, are you not? A. Yes.

Q. You are assigned to duties in the Overseas Department, are you not? A. That is correct.

Q. How long have you been carrying out work in that Department? A. Almost eight years.

Q. What does the work of that department consist of? A. Handling documents, issuing letters of credit, cashing travellers cheques.

Q. When, according to your recollection, did you first meet Mrs. Davey? A. In December 1966. 10

Q. Are you able to say what time in December it was? A. 16th December.

Q. On that day what happened? A. She was brought down from our International Division and introduced to me at the counter of our Overseas Department.

Q. Who brought her down? A. Mr. Stevens.

Q. What was said? Do you recollect? A. He told me that Mrs. Davey was importing some goods from Taiwan, and wished to establish a letter of credit.

Q. What was said after that? A. I got a form out from under the counter, and we had general discussion on what it was, and she said she was importing snake skin, so we proceeded to fill in the form. 20

Q. What about Mr. Stevens, did he stay or depart? A. He stayed for a few moments, but he did not stay all the time.

Q. Have you seen that document Exhibit L before? A. Yes.

Q. Was that document made out on 16th December 1966? A. Yes.

Q. Was it made out after Mrs. Davey had been brought down to the counter? A. Yes.

Q. In the circumstances in which you have told us? A. That is correct.

Q. What conversation was there relating to it in the course of filling out the document?

HIS HONOUR: So that I can be clear on it, I would like to know who was present at this conversation.

MR. KENNY: Q. Was Mrs. Davey accompanied by anybody there? A. Only Mr. Stevens who brought her down. 30

Q. What about Mr. Egan? A. No, he was not there.

Q. When did you first meet Mr. Egan? A. On the 19th December, 1966.

Q. In what circumstances? A. He came in to open a letter of credit account to cover this transaction.

Q. On the 16th what happened? What was said? A. I asked Mrs. Davey was there any sale for snakeskins, and she told me this order had been sold, and that the purchasers were Grace Bros., so I then proceeded to fill out the form.

Q. What was said after that in the course of filling out the form? A. I asked her how she wanted the letter of credit established, and she said she would like it done by cable. We went through the form then.

Q. What did you ask her after you asked her how she would like it established? A. I asked her who was the beneficiary of the credit.

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Q. What did she say? A. Raymond and Co. Ltd.

Q. What was the next thing you said? A. "What is their address?" and she replied "No. 4 Lane, 42 Chung Shan, North Road, Section 2, Taipei".

Q. And you wrote that down, I suppose? A. Yes.

Q. What was the next thing? A. I asked her then the amount that was to be utilised under the credit, and she replied \$1035 United States currency.

Q. Did she specify the amount of the currency in United States dollars? A. She did.

Q. What was said then? A. I asked her the basis of shipment, whether F.O.B., C & F, or C.I.F., and she replied it would be an F.O.B. shipment.

Q. What was the next matter you went to? A. I knew the commodity was snakeskins, so I inserted "snakeskins" in the requisition, and asked her the country of origin of the goods, to which she replied "Taiwan", and then I asked her the port or country of shipment, and she said "Taiwan", and then the destination of the merchandise, and she replied "Sydney".

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Q. What was the next matter? A. I asked her how they were coming, whether they would be coming by sea or what other method of transportation, and she told me they would be coming by air, so I altered this form and deleted the word "ship" and substituted "despatch by air freight".

Q. Where is that? A. That is between the "Country of origin" and the "port of shipment".

Q. Then what was the next said? A. Then I asked her whether part shipments were allowed or whether the whole lot were to come forward in one shipment, and she indicated it was all to come in one shipment.

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Q. What was said after that? A. I asked her after that whether transshipment would be allowed, and I indicated it was unlikely she would get a through plane from Taiwan, and she agreed transshipment should be allowed.

Q. And you noted that on the form? A. Yes, I amended the form to read "transshipment is allowed".

Q. What was the next thing? A. We ran through the list of documents she would require. Commercial invoices and certified Australian customs invoices, and as it was to come by air I deleted the clause "full sets clean on board or shipped, negotiable bills of lading to the order of shippers, and endorsed to your bank or in blank". Then I also deleted the next line "three bills of lading may be accepted for shipments from North American continent". (Reading from Exhibit L).

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Q. What was the next thing? A. It had already been established the goods were to come by air freight, and it was one shipment, so I then deleted the clause "parcel post receipts" and completed the sentence to read "to this bank marked account Jalsard Trading Co.". I deleted "acceptable in lieu of bills of lading", because it did not apply. Then we discussed the insurance position.

Q. What did you say? A. I asked Mrs. Davey who would be looking after the insurance, and she said that she would, so I inserted the clause then "Insurance cared for by buyer", and then I asked her about the freight, whether or not she would pay it at this end, and she indicated she would pay it, so I then inserted "freight is payable at destination".

Q. What is the next thing that was discussed? A. Then I asked her when would be the expiry date of the letter of credit. She did not quite understand that, so I told her that would be the latest date for negotiation of documents in Taiwan, and she told me 14th January 1967. Then I asked her whether there were any other additional documents she wanted to call for, and she said she wanted an inspection certificate. I asked her was there anyone she wanted to issue it, and she said "Raymond and Co.". I indicated to her . . . (Interrupted). 10

Q. What did you say to her? A. It was not recommended that the beneficiary of the letter of credit issue an inspection certificate but it would be preferable for some independent authority to do so, but she insisted that Raymond and Co. . . . (Interrupted).

Q. What did she say as far as you can recollect? A. She said that Raymond and Co. were her agents and she was on first name terms with them, and that they would not let her down. 20

Q. Did she say anything else that you can recollect about Raymond and Co., and her association with them? A. No, I do not think so.

Q. Look at the words "beneficiary's inspection certificate". Were those words written in the order in which they appear, or some other order? A. No, they were written "Inspection Certificate" first, and after our discussion she insisted it be done by the beneficiary — (Objected to.) I inserted the "beneficiary's".

Q. Have you given us the discussion you had with her to the best of your recollection? A. Yes.

Q. At what stage was the word "beneficiary's" written? A. It was written after the words "inspection certificate". 30

Q. Before or after the discussion you had? A. After.

Q. What was the next thing that was said that you can recollect? A. Mrs. Davey said she would like the credit to be established through the First National City Bank in Taiwan, that the manager there was a personal friend of hers, and that he would steer it through.

HIS HONOUR: Q. Did you say anything when she said that? A. No, I was quite happy at that stage.

Q. You did not? A. No.

MR. KENNY: Q. What was the next matter after she said about the bank? A. I asked her on whose account the letter of credit was to be established, and she told me "Jalsard Trading Co.". I asked her was the account opened, and she said "Yes". I asked her who controlled the account, and she told me "Mr. Wall". I asked her had she seen Mr. Wall in connection with establishing letters of credit, and she said she had seen Mr. Wall. 40

Q. Who was Mr. Wall? A. Mr. Wall was assistant manager at head office.

Q. Was anything else said that you can recollect? A. I asked her was the firm registered under the Business Names Act, and she said "yes".

Q. What happened after that on the 16th? A. I got Mrs. Davey to sign the requisition, and then she left it with me, and later on when I went to check it out I found that we could not send this credit by cable to the First National City Bank at a reasonable cost.

Q. Would you tell us about that? Is the First National City Bank an agent of the Commercial Banking Co., of Sydney, Taipei? A. Yes.

Q. It is? A. Yes.

Q. What was the difficulty about sending it to them? A. It does not hold our template for Form 3 letters of credit.

Q. What is a template? A. In this case it is a form which contains all the relevant details in connection with this letter of credit, except the basic items as to beneficiary, address, amount, and the basis of shipment, and those sorts of things. It has all the basic elements that are typed in this form. 10

Q. If you have an agent with a template for Form 3 letter of credit, how much of the document do you have to send by cable? A. Very little. Just the basic elements. In this case possibly most of the things I have written here by hand.

Q. If you have an agent who has not a template, what have you got to do? A. We endeavour to use one if there is one in the same town or city. We endeavour to use them.

Q. If you wanted to use an agent who did not have a template, what would be the mechanics of it? How much of this requisition would you have to send? A. You would have to send what we would term brief details, which would contain very little information. 20

Q. I am dealing with the case of an agent to whom you are sending a requisition for a letter of credit who has not got your template. Do you follow me? A. Yes.

Q. Can you send brief details only or have you got to send more? A. It is possible to send brief details only.

Q. You did not send this to the First National City Bank? A. No.

Q. Why was that? A. Mrs. Davey was in a hurry for it to be despatched . . . (Objected to.)

MR. BYERS: I object to that question.

MR. KENNY: Q. Did you have any subsequent communication with Mrs. Davey about the agent to be used in this case? A. I telephoned Mrs. Davey.

Q. When was that? A. On the Friday afternoon. 30

Q. What did you say to her? A. I told her it would cost too much to put this letter of credit out to the First National City Bank, Taipei, and asked her would it be satisfactory if we despatched it to another bank for advice to the First National City Bank.

Q. What did she say? A. She agreed to it.

Q. What did she say? A. She said "Yes, that will be all right".

Q. Do you see the words written on the side of the document, about the middle? On the right hand side, "please advise this credit through First National City Bank, Taipei"? A. Yes.

Q. When were those words written on the document? A. I am not sure, but I think when Mrs. Davey was there in the afternoon.

Q. Do you see the words up above, "Or agents in Taipei"? A. Yes. 40

Q. And it is followed by "Reimburse First National City Bank, New York". When was that put there? A. Later on in the afternoon.

HIS HONOUR: Q. After what? A. After I had finished interviewing Mrs. Davey.

MR. KENNY: Q. Did you make any other inquiries that afternoon after Mrs. Davey had gone? A. Yes, I saw Mr. Wall, and he informed me that the account was not open. (Objected to.)

Q. You saw Mr. Wall, did you? A. Yes.

Q. Did you ring up Mrs. Davey or speak to Mrs. Davey, after you had seen Mr. Wall? A. Yes.

Q. Was this on the same occasion as you spoke to her about the bank or some other occasion? A. The same time.

Q. What did you say to her about Mr. Wall? A. I told her that the account was not open, and Mr. Wall would like cover on the letter of credit account before the letter was established.

Q. What did she say to that? A. She said "Righto", she would have it fixed up.

Q. Did you make any further inquiries at the bank as regards the letter of credit account? A. No. I did not. Mr. Egan called in on Monday to open a credit account.

Q. Was that the first time you had met Mr. Egan? A. The first time.

Q. I take you back a little. Do you see in the 5th line of the body of the form, commencing "we hereby request" — do you see there is a blank underneath, and some ticks? A. Yes.

Q. Appearing in the blank? A. Yes.

Q. Did you speak to Mrs. Davey at any time about that? A. Yes, when I was filling in the requisition I asked her the basis of payment to the beneficiary. 20

Q. What did you say? A. I asked her would the draft drawn by the beneficiary be drawn at sight, and she said "Yes", it would.

Q. Was there any further discussion you recollect about that topic? A. About it being at sight?

Q. Yes. A. No, I do not recollect anything.

Q. Did you say to Mrs. Davey on the day of 16th December 1966, whatever time it was you saw her — first of all did Mrs. Davey say to you on that day "My company want to go ahead with import-export; that I had an order for some snakeskins; that I was totally ignorant of every facet of importing and exporting and I looked to the bank to look after me and protect me in every conceivable fashion"? A. No. 30

Q. Did she say anything resembling that? A. She said the first half of it, that she was entering an importing and exporting business, and she wanted to establish letters of credit.

Q. Was that the whole of what she said? A. Yes.

Q. Did you say to her "Do not worry, Mrs. Davey. This is my job and I will look after you and protect you and advise you — help you fill in all documents pertaining to overseas import-export". A. No.

Q. Did you say any portion of that? A. I do not think so.

MR. KENNY: Q. Page 7 your Honour: Mr. Carman, when you took out the form and proceeded to fill it in at the beginning did you say to Mrs. Davey, "Who are your agents?"? A. No. 40

Q. When you asked her about the amount did you say to her that the money would have to be in United States dollars because money could not be remitted in Australian dollars? A. No. I have no recollection of that.

Q. Did she say to you, on this occasion — again at p.8 your Honour — “I have been led to believe in Taipei that the First National City Bank of New York is a reliable bank”. A. She mentioned something about the First National City Bank.

Q. Did she say, “I have been told in Taipei that this is a reliable bank on which I may depend”. A. Yes.

Q. Talking about conversion into American currency, you see, are there ready reckoners that convert from Australian to American currency or is that something that varies from day to day? A. The rate varies from day to day. 10

Q. At p.10: when you were filling in this form on 16th December, 1966, and there was a reference to the certificate of inspection did Mrs. Davey ask you this: “Is it not correct a certificate of inspection from my agents is the best method of protecting myself to be sure that the goods that arrive in Australia are similar to the sample I have seen — up to the standard of the sample I have seen and of an acceptable quality”. (Objected to. Counsel addressed.)

HIS HONOUR: Thank you. The substantial ground is that you wish to argue that this passage was not challenged?

MR. BYERS: That is so. 20

HIS HONOUR: In cross-examination.

MR. BYERS: That is so.

(Mr. Byers addressed his Honour further.)

HIS HONOUR: Thank you Mr. Byers. I allow the question.

MR. KENNY: Q. On this occasion on 16th December, 1966, while the form was being filled out and after there had been a reference to certificates of inspection did Mrs. Davey say to you, “Is it not correct that a certificate of inspection from my agents is the best method of protecting myself to be sure that the goods that arrive in Australia are similar to the sample I have seen — up to the standard of the samples I have seen and of an acceptable quality”. A. No. 30

Q. Did she say any portion of that? A. No.

Q. Did you say to her: “It is the best method of protecting yourself.” Did you say to her, “An agent’s inspection certificate is the best method of protecting yourself”. A. No, I did not.

Q. Did you say, “It is your agent’s inspection certificate that will verify the condition, quality and standard of the goods”. A. No.

Q. (Exhibit T shown to witness) (Page 18 of transcript). When Ex. T, that you have in front of you, was under — Was that document before you and Mrs. Carman on one occasion — Mrs. Davey? A. I am sorry?

Q. When that document was completed was Mrs. Davey present? do you recollect? A. Yes, I think so. 40

Q. On that occasion did she ask you why you had crossed out “Raymond & Company”, do you recollect her asking that? A. No.

Q. Did she say, “Why did you cross out ‘Raymond & Company’ ” particularly bearing in mind that you had, in earlier letters — did she say to you, “Why did you cross out ‘Raymond & Company?’ ” particularly bearing in mind that in earlier letters of credit that Raymond & Company, the beneficiary, had been in? A. No, I do not know.

Q. What? A. I do not know. I do not recollect it.

Q. Did you say, “Who but your agents are qualified to give a certificate of standard and quality of the goods?”? A. No.

Q. Did you say, “Who but your agents are qualified to give a certificate of inspection of the standard of quality of the goods, other than your agents who are looking after the matter?”? A. No.

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Q. Did she ask you whether you were quite satisfied with it — I suppose that means that writing — is the certificate of inspection in your writing? A. Yes.

Q. Did Mrs. Davey on the occasion when she was present when Ex. T was being completed say to you, “Are you quite satisfied with that?” meaning the words “certificate of inspection” deleting “Raymond & Company” and leaving only “certificate of inspection”? A. I do not remember that detail.

Q. Whilst you were going through Ex. T, p.19 your Honour, did Mrs. Davey say to you that she could not comprehend the document — that, in fact, she was a complete bunny at the game of export-import — that she had no idea on even seeing this second or third letter of credit and she looked to the bank to totally protect her in every sense: did she say that? A. No.

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Q. Did she say any part of that? A. Could you repeat the early part of it again please?

Q. Did she say, “I do not comprehend the document. I am a complete bunny at the game of import-export. I have no idea, even on seeing this second or third letter of credit, and I look to the bank to totally protect me in every sense”. Did she say that? A. No.

Q. Did she say any portion of it? A. Not as far as I recall.

Q. On this occasion did she ask you what was expected of an agent when he inspected the goods? A. No.

Q. Did she ask you what was expected of a person inspecting the goods? A. No.

Q. Did you say to her that it was an accepted practice to inspect ten percent of the goods — if this ten percent came up to standard and quality it was reasonable to assume that the entire shipment would be as desired and inspected by the company? A. No.

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Q. Do you remember on this occasion when Form T was being made out whether Mrs. Davey showed you a piece of snakeskin? A. She did not show me snakeskin.

(Ex. W shown to witness)

Q. Did Mrs. Carman see you in relation to that, Ex. W — Mrs. Davey? A. No, I do not think so.

Q. Did you say to her in relation to that letter of credit that — or did she say to you, as far as you recollect, that it was a back-to-back credit? A. That was before this was lodged.

Q. That was before that was lodged: did you have an interview with Mrs. Davey some time before that was lodged. A. She called in one afternoon and said that she would be establishing some back-to-back credits.

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Q. Did you have any discussion with her about that subject? A. Not at length.

Q. Did you say to her that you knew of back-to-back credit? A. Yes.

Q. Did you say that the wording on both credits had to match up, one with the other? A. Yes.

Q. On that occasion, or at any time prior to Ex. W being completed, was anything said to you about — by anybody — that is to say, either by Mrs. Davey or Mr. Egan about whether one party in a back-to-back credit might call for a certificate of inspection if the other party did not? A. No. It was never mentioned.

Q. Is there anything to prevent one party to a back-to-back credit calling for a certificate of inspection where the other party does not call for a certificate of inspection? (Objected to; counsel addressed. Objection withdrawn.) 10

HIS HONOUR: If it is about banking practice I think you can ask this witness.

MR. KENNY: Q. As a matter of banking practice is there anything to prevent one party to a back-to-back credit calling for a certificate of inspection where the other party does not? A. No.

Q. There has been some talk here about the wording of one credit having to match up to the other credit: as a matter of banking practice what does that mean? A. It means that the set of documents — (Objected to. His Honour ruled that a question as to banking practice would be allowed. Mr. Kenny addressed.)

Q. Is there a banking practice in relation to back-to-back credits about what documents must match up? A. The documents called for in one credit, namely your basic documents, your Certified Australian Customs invoices, your bill of lading, possibly your insurance certificate, must match in the two credits. 20

(Witness shown Ex. X.)

Q. Can I take you back to Ex. W? (shown) Correct me if I am wrong, did you say that you did not see Mrs. Carman in relation to — at the time Ex. W was completed? (No answer.)

MR. BYERS: You mean Mrs. Davey.

MR. KENNY: Yes.

WITNESS: Yes. As far as I recall I did not see Mrs. Davey.

MR. KENNY: Q. I beg your pardon? A. As far as I recall I did not see Mrs. Davey in connection with that letter of credit. 30

Q. Prior to, or at the time of, execution of that credit did you have any conversation with her in which she asked you what did — “provided on through Bills of Lading” mean? A. No. I think that question was put to me by Mr. Egan.

Q. When? A. At the time of this first letter of credit in this Ex. W, in April 1967.

Q. In relation to that document, Ex. W, did Mrs. Davey at any time say to you what “transshipment is allowed provided on through Bills of Lading” mean? A. No, that is the one I think Mr. Egan put to me.

Q. (Page 21) Did she say to you in relation to that document, Ex. W, at any time — ask you what was the meaning of the words occurring on the right hand side “in same currency as credit covering marine and war risks with c.i.f. value of the shipment,” have you any recollection of discussing that? A. No. 40

Q. Did you discuss it with anybody? A. It would be with Mr. Egan.

HIS HONOUR: I am not quite sure of the meaning of that answer Mr. Kenny.

Does it mean the witness recollects discussing it with Mr. Egan or does it mean if it were discussed —

MR. KENNY: I see what your Honour means. I will clear it up.

Q. Do you recollect whether that was discussed with Mr. Egan or not? A. No, I cannot say definitely.

Q. Did Mrs. Davey say to you at any time in relation to Ex. W that Gollin & Company had not called for a certificate of inspection, "I am not happy about it but I had no option but to follow the wording as it is a back-to-back letter of credit that they have nominated". A. No. 10

Q. Did anybody, in relation to that requisition, say to you that there was no option but to — not to call for a certificate of inspection, or anything to that effect? A. No.

Q. (Page 22) In July 1967 did you see Mrs. Davey at the Overseas Department of the bank in connection with the letter of credit? A. Yes.

Q. Would you look at the document m.f.i. 8 (shown); is that a requisition for a letter of credit made on behalf of the plaintiff in July? A. Yes.

Q. Is that the one in connection with which you saw Mrs. Davey? A. Yes.

Q. How often did you see her in connection with that; do you recollect? Once or more than once? A. Once. 20

Q. Subsequent to the execution of that requisition did you have a conversation with Mrs. Davey about it — about the time for completion of the credit — for negotiation of the bills for extension of the credit? A. Yes. I would ask her that in the course of preparation.

Q. Yes, but subsequently to the preparation of the document — after the document had been sent — some time later? A. Some time later the letter of credit was amended.

Q. Yes? A. Yes.

HIS HONOUR: This is m.f.i. 8 still?

MR. KENNY: Yes.

Q. Where was the conversation you had? A. At the counter of the Overseas Department.

Q. Who was present? A. Mrs. Davey. 30

Q. Do you remember the date? (No answer.)

Q. What was the conversation? A. She indicated that she wanted — (Interrupted).

Q. What did she say? A. She said that she wanted this letter of credit amended. The basis of shipment altered and the expiry date had to be extended and she wanted a certificate of inspection.

Q. Anything else she said? A. No.

Q. Did she say anything about the method of notification of the amendment of the credit? A. Only it was to be done by airmail.

Q. What did you say? A. I said that if she instructed us accordingly we would effect the amendments.

Q. If she what? A. If she instructed us we would effect the amendments for her.

Q. Did you say what form the instructions should take? A. In the form of a letter.

Q. In the form of a letter: then, subsequently, did you receive this document m.f.i. 13? (shown) A. Yes.

Q. Did you send an acknowledgment of which m.f.i. 14 is a copy? (shown) A. Yes.

(Mr. Kenny tendered the documents m.f.i. 13 and m.f.i. 14.)

HIS HONOUR: Q. Up to this time Mr. Kenny is now asking you about you have given evidence that you have spoken to Mrs. Davey, as she then was, several times? A. Yes.

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Q. As far as I recollect your evidence — correct me please if I am wrong — you have only referred to one telephone conversation with her; is that right? Is my recollection right? A. Yes. There had only been one telephone conversation.

Q. Up to this point of time then did you ever have more than one telephone conversation with her? A. It is quite likely.

(Mr. Kenny tendered the document m.f.i. 8 as well)

MR. BYERS: These documents, as I understand, are admitted on pleading.

HIS HONOUR: The second letter is not, is it? It is admitted on the pleadings but it is not stated in the pleadings — it is referred to.

MR. BYERS: The second letter is not; that is so.

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(Mr. Byers addressed further and objected to the tenders. Admitted. M.f.i. 8 marked as Ex. 1. M.f.i. 13 and m.f.i. 14 marked as Ex. 2.)

MR. KENNY: Q. On the occasion when Mrs. Davey came to the counter and said that she wanted to extend the term of the credit and amend the letter of credit with regard to the certificate of inspection did she say to you that she had noticed the absence of the words “certificate of inspection” — that she was extremely perturbed about it and especially as she understood, from you, that this was such a protection? A. No.

Q. Did she say any part of that? A. No.

Q. Did she say to you, “I understood from you this is my protection. Therefore please will you cable through to Taiwan immediately and have, with the amendment for time, the amended words ‘certificate of inspection from Raymond & Company’ also added to the application or the letter of credit”. A. No.

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Q. Were Raymond & Company mentioned during this conversation about extension of credit? A. Only as the beneficiary.

HIS HONOUR: Q. They were mentioned at this conversation? A. Yes, as the beneficiary of the letter of credit.

(Mr. Byers spoke with his Honour about his Honour’s intentions concerning addresses at the conclusion of the hearing of evidence in this case. His Honour asked senior counsel to confer and advise him of their wishes and stated that he was always prepared to meet the wishes of counsel where possible.)

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(Further hearing adjourned to 10 a.m. on Thursday, 12th March, 1970.)

JALSARD PTY. LIMITED v. THE COMMERCIAL BANKING COMPANY
OF SYDNEY LIMITED

FOURTH DAY: THURSDAY, 12TH MARCH, 1970

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Stevens –
examined*

(Mr. Kenny directed his Honour's attention to the 3rd last question on p.93 and suggested the quotation should conclude following the words "Certificate of Inspection".

Counsel addressed.

His Honour ruled that he would not make this emendment but that this matter could remain a subject for addresses by counsel.

p.111 the 6th question to read: "Is it not correct . . ."

Mr. Kenny submitted that on p.112 the 3rd & 4th questions should be emended to read, "Who but your agents . . ."

His Honour said he would note that Mr. Kenny drew attention to these questions.) 10

MR. KENNY: Your Honour I would seek leave, if I may, to interpose Mr. Stevens.

(Mr. Byers did not object to this proposal. Mr. Carman retired from the Court.)

ROBERT BRUCE STEVENS

Interposed: sworn, examined as under:

MR. KENNY: Q. Your name is Robert Bruce Stevens? A. That is correct.

Q. You live at 113 Livingstone Avenue, Pymble, and you are now a merchant banker? A. That is right.

Q. I think you were formerly in the employment of the Commercial Banking Company of Sydney Limited, the defendant? A. That is correct.

Q. I think in 1966 you were carrying out duties in the International Division of the bank? 20
A. I was.

Q. You met Mrs. Davey as she then was, did you? A. Yes.

Q. Under what circumstances did you meet her? A. I was introduced to her in the manager's office, the manager of the International Division and –

Q. Who was that? A. Mr. Parker. Mr. John Parker.

Q. Had you and Mr. Parker shortly before this been somewhere? A. We had been to Taiwan and to the Far East, Japan, Hong Kong.

Q. Do you recollect what conversation there was in Mr. Parker's office on this occasion? A. It is a long while ago but vaguely I recollect that the conversation centred mainly around Taiwan – at that particular time, – conditions, trading conditions and so forth. 30

Q. Do you remember if anything was said about the trading conditions? A. Not really. It was just general, as far as I was concerned – general conversation, nothing specific that I can recall.

Q. Was anything given to Mrs. Davey during this conversation? A. Not to my recollection, no.

Q. After the conversation – how did the conversation terminate? A. How?

Q. Yes? A. Mr. Parker asked me if I would take Mrs. Davey down to our Overseas Department where she wanted to establish a letter of credit in favour of a beneficiary in Taiwan. I did this and introduced her to officers in the Overseas Department.

Q. Who, in particular, did you introduce her to; do you recollect? A. Mr. Carman.

Q. You introduced her to Mr. Carman. What happened after that? A. Well, I stayed with Mr. Carman and Mrs. Davey for a short period and then left and went back to my own division having effected an introduction, this was all that was necessary.

Q. During that period did you see Mr. Carman or Mrs. Davey do anything or do you remember anything that they said to each other? A. Not to my recollection, no.

Q. While you were in Mr. Parker's office was the subject of certificates of inspection mentioned? A. No. 10

Q. On the way – is Mr. Parker's office on the same floor as the Overseas Department? A. No, at that stage it was on the third floor.

Q. Where is the Overseas office? A. On the 5th.

Q. During your passage from the 3rd floor to the 1st floor was anything said about certificates of inspection? A. No.

Q. While you were with Mrs. Davey and Mr. Carman in the Overseas Department did you hear any reference to certificates of inspection? A. Not to my recollection.

Q. Did you say to Mrs. Davey or did anybody in your presence say to Mrs. Davey, on this occasion – can you hear me? A. Yes. (Objected to as ambiguous.) 20

MR. KENNY: I will ask two questions.

Q. On that day at any time did you say to Mrs. Davey that a Certificate of Inspection was the best method of protecting yourself? A. No.

Q. On that day did anybody in your presence say to Mrs. Davey that a Certificate of Inspection is the best method of protecting yourself? A. No.

Q. What was said? Who first mentioned Mr. Carman on that day? A. Could you repeat that question?

Q. Who first mentioned – was Mr. Carman's name mentioned in Mr. Parker's office? A. I – (Objected to.)

Q. Well, you cannot recollect whether the name was mentioned or not? (No answer.) 30

(His Honour directed that the answer be struck out as it was not an answer to the question.)

Q. I gather that you say that you cannot recollect that a Mr. Carman's name was mentioned in Mr. Parker's office or not? A. Yes.

Q. Did you, on that day, say to Mrs. Davey, "Mr. Carman is the man who is in charge of putting up funds overseas. He is the person to rely on. He is the person to ask advice of. He is the person you can trust". A. I do not recall being as verbose as all that about it.

Q. Do you recollect saying anything to that effect? A. No, just a normal – I introduced – he was a normal officer. He was in charge of establishing import letters of credit in the bank. He was not in charge of the overseas department but he was with that section and naturally he was the officer that I was most likely to take Mrs. Davey to meet. 40

Q. Did anybody in your presence say of Mr. Carman, “Mr. Carman is the man who is in charge of putting up funds overseas. He is the person to rely on. He is the person to ask advice of. He is the person you can trust”? A. No.

HIS HONOUR: I think you said, Mr. Kenny, “Did anybody in your presence say to Mr. Carman –”

MR. KENNY: I said, “of Mr. Carman”. I think I did.

HIS HONOUR: It is clear.

MR. KENNY: Q. Did Mrs. Davey say to you that she was a complete idiot at the game of import and export from Taiwan – she had no idea about it – she had never done it and would you advise her what to do? A. On recall I would think she mentioned something along these lines. The exact words I cannot remember but that she was not used to importing from overseas. 10

Q. Did you say to her that to be very careful of Taiwan – that it was an area where the greatest protection possible was needed on any goods that came in: did you say that to her? A. No.

Q. Anybody say that to her in your presence? A. Not in my presence, no.

Q. Did Mrs. Davey say to you, or to anybody in your presence, that she had come to the bank for advice and assistance? A. Yes, this was –

Q. Did you say to her that she should protect herself because Taiwan was an area of very under-quality goods? A. No. 20

Q. What? A. No.

Q. Was that said in your presence? A. I do not recollect it being said.

Q. Did Mrs. Davey ask what protection did one have, meaning, I think what protection did one have in relation to the import of goods from Taiwan? A. No. Could you repeat that again. I did not –

Q. Did Mrs. Davey say to you, “What protection does one have?” or words to that effect, meaning, I think, thereby – how can you protect yourself in relation to the quality of goods imported from Taiwan? A. Well, the fact that you establish a letter of credit. (Objected to.)

HIS HONOUR: Mr. Stevens, I think Mr. Kenny just asked you did Mrs. Davey, as she then was, say that. 30

WITNESS: No.

MR. KENNY: Q. Did she say it to anyone else in your presence? A. No.

Q. Did you say to her that one of the requirements was a Certificate of Inspection? A. No.

Q. Did Mr. Parker in your presence, or anyone else in your presence say to Mrs. Davey, “One of the requirements for protection is a Certificate of Inspection”. A. No. I cannot recall. I cannot recall that this was spoken of. It may have been said in general terms but it – I just cannot say definitely whether it was or not.

Q. What do you mean by that, Mr. – (Objected to.)

HIS HONOUR: I suppose what he means is what he says. The witness has answered, may I say, generally but specifically: generally, is it not. 40

MR. KENNY: I beg your pardon, your Honour.

HIS HONOUR: He has answered specifically generally.

Do you remember the answer?

MR. KENNY: Yes, your Honour. It seemed to me it was capable of two interpretations, I merely wanted to give him the opportunity of explaining which interpretation it was.

HIS HONOUR: I do not want to stop examination but subject to any objection Mr. Byers takes I would be inclined to think you might ask this witness, "Can you tell me what were any of the general terms that you remember being said?"

MR. KENNY: Well, Mr. Stevens, what were any of the general terms that you remember being said? A. Firstly, as I recall – all this happened, as we all know, three years ago. The letter of credit would be necessary. This was required, I imagine by the exporter and also for the protection of the importing company. Certain documents are always called for in a letter of credit, but not necessarily –

Q. I know: but what was the conversation? What was said about documents that you recollect? A. General, general conversation on the – protection that a letter of credit would offer.

Q. Do you remember anything that was said with regard to the nature of protection that a letter of credit would offer? A. Well, that before money was paid over, documents in accordance with the letter of credit would have to be presented to our agents in Taiwan.

Q. Do you remember anything else that was said on that subject or allied subjects? A. No.

Q. Do you remember whether there was any reference to specific documents? A. No, I do not remember.

Q. Was there some general discussion about importing on that occasion? A. Yes.

Q. Do you remember anything in particular that was said during the course of that discussion? A. No.

Q. Do you remember any reference to the United Kingdom? A. No. Not to my recollection.

CROSS-EXAMINATION

MR. BYERS: Q. I take it from what you have said that your recollection of what occurred on this morning is fairly vague? A. That would be correct.

Q. That would be correct: by the way, how long ago was it that you left the bank? A. Last September.

Q. Last September? A. The end of last August or –

Q. To take up your present position? A. That is so.

Q. I suppose you had been told, had you, before you left the bank that there was an action being brought by Jalsard Pty. Limited in relation to a letter of credit against the bank? A. I was aware that something was happening.

Q. Had you discussed that with – I do not want to know what you said – but had you discussed that action with Mr. Carman before you left the bank? A. We had spoken of it.

Q. Had spoken of it? A. Yes.

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Q. Had you? A. Yes.

Q. You and Mr. Parker, I suppose, had spoken of it, had you? A. Just in passing reference.

Q. In passing reference, I see. I suppose you discussed with Mr. Parker, did you, what your memory was of the visit that was paid by Mrs. Davey, as she then was, to Mr. Parker's office? A. No.

Q. Did you discuss anything about that visit with Mr. Parker? A. No.

Q. I suppose you would discuss something about your introduction of Mrs. Davey to Mr. Carman with Mr. Carman? A. Could you repeat that again?

Q. You discussed with Mr. Carman, did you not, the fact that there was, to your understanding, an action being brought by Jalsard against the bank? A. Yes.

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Q. When you had this discussion you realised, of course, that it was – the action was – about a letter of credit? A. Yes.

Q. And you realised the action was about letters of credit the bank had issued relating to the import of goods from Taiwan? A. Yes.

Q. I suppose you discussed all those things with Mr. Carman, did you? A. Yes.

Q. You did and you discussed with Mr. Carman your recollection of the introduction by you of Mrs. Davey to him? A. Yes, in general terms; nothing specific.

Q. In general terms: when do you think would that discussion that you had with Mr. Carman have taken place? A. Oh, something – I cannot be sure of this. It would be perhaps in excess of 12 months ago.

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Q. About 12 months ago? A. Yes.

Q. Did you discuss it again with Mr. Carman before you left the bank last September? A. No.

Q. Then before you left the bank in September I suppose you had been informed, had you, that the dispute between Mrs. Davey's company and the bank related to certificates of inspection? A. Not particularly dealing with certificates of inspection. I knew that Mrs. Davey was taking some action.

Q. Yes. A. But it was just in general terms.

Q. About a letter of credit? A. About a letter of credit.

Q. I suggest to you that in relation to a – I withdraw that. You knew, did you, that the action related in particular to certificates of inspection that the bank had received? A. No, I did not. Not particularly certificates of inspection. A letter of credit. The transaction as a whole but not specifically certificates of inspection.

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Q. So what you did know was that there was a dispute between the bank and the plaintiff company about letters of credit relating to the import of goods from Taiwan? A. That is correct.

Q. That is correct, and in particular I suppose relating to an import of some Christmas lights from Taiwan? A. Yes.

Q. You knew that: and you knew, of course, did you not, that one of the documents the bank had received under the letter of credit was a certificate of inspection? A. I was not fully conversant with what documents were called for in the letter of credit.

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Q. I did not ask you that. I asked you, you knew one of the documents the bank received was a certificate of inspection? A. No.

Q. You did not know that. (No answer.)

Q. You did not know that, do you say? A. That is true.

HIS HONOUR: Wait a minute. I think the witness was going to give a longer answer.

Q. Had you finished your answer? (No answer.)

MR. BYERS: I am sorry Mr. Stevens.

WITNESS: I was not aware that a certificate of inspection had been specifically requested in this particular letter of credit, but I did know that documents had been received.

MR. BYERS: Q. And that there was a dispute about those documents? A. That is correct. 10

Q. Then when were you – I withdraw that. You were, at some stage, of course, asked to give evidence in this case, were you not? A. Yes.

Q. When was that? A. Three or four days ago.

Q. Three or four days ago? A. Thursday, yes.

Q. Then is it right to say that your discussions about the interview with Mrs. Davey and yourself and Parker and your introduction of her to Carman – that you had with members of the bank occurred about a year ago, firstly? (Objected to. Counsel addressed. Question withdrawn.)

Q. At any rate you did discuss with Mr. Parker what had occurred in his office about a year ago? I am sorry. Do you understand what I am saying? A. Yes. 20

Q. What I mean to ask you is that you had that discussion with Mr. Parker about a year ago? A. About the introduction and what previously had –

Q. No. It is ambiguous. I realise that. (No answer.)

MR. BYERS: Might I withdraw all those questions, your Honour?

HIS HONOUR: Yes.

MR. BYERS: Or some of them anyway.

Q. You did speak to Mr. Parker about a year ago in connection with this case, did you not? A. Passing comment but not in detail.

Q. And you did speak about a year ago to Mr. Carman about this case? A. Yes.

Q. You were next asked to remember – I withdraw that. You were next asked about this case about 3 or 4 days ago? A. That is correct. 30

Q. During the meantime, that is, between the year and we will say three days ago had you discussed this case with anyone else? A. In the bank, you mean?

Q. Yes? A. No.

Q. I take it that it had gone through your mind, had it not – you were not thinking about it? A. That is correct.

Q. When you spoke to Mr. Parker had you been shown a letter from the plaintiff company's solicitors to the bank? A. No.

Q. Something occurred however, that led you to have this discussion with Mr. Parker. (Objected to.) (Counsel addressed.)

HIS HONOUR: Let us call it a talk.

MR. KENNY: He made a passing remark.

HIS HONOUR: He said, "a passing reference".

MR. KENNY: A passing comment.

HIS HONOUR: We will call it a talk.

MR. BYERS: Q. You had a talk with Mr. Parker, you see? A. Yes.

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Q. And the talk was a talk you had with him after you became aware of this case? A. The action being taken?

Q. Yes? A. Yes.

Q. I take it it was your awareness of the action being taken that prompted you to speak to Mr. Parker? A. Yes.

Q. And again it was your awareness that the action had been taken that prompted you to speak to Mr. Carman? A. Yes.

Q. Of course before you spoke to Mr. Parker you remembered that Mrs. Davey had been introduced to you, had she, in Mr. Parker's office? A. Yes.

Q. She was already there, was she, before you came in; is that right? A. Yes.

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Q. What exactly was Mr. Parker's position at the time you saw Mrs. Davey in his office? A. Manager of International Division.

Q. Were you second in command to Mr. Parker? A. No.

Q. At that time Mr. Carman was the man in charge of the issuing of letters of credit by the bank? A. Yes. You could put it in that way.

Q. Would you prefer to put it in a different way? A. Yes, I would.

HIS HONOUR: You did put it in a different way.

MR. BYERS: Q. How would you describe your then understanding of Mr. Carman's position in the bank? A. Well, he did the preliminary work to establish the letter of credit.

Q. That involved showing the customer the form of application for the letter of credit? A. This is correct.

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Q. That was part of his duty? A. Yes.

HIS HONOUR: I think you said before that Mr. Carman was in charge of a section in that department.

Q. Is that not right? (No answer.)

Q. You used the word "section" as being what he was in charge of, did you not? A. It could have been that. That would be right, your Honour.

HIS HONOUR: I think you did.

MR. BYERS: Q. When you used the expression, "The section" it was the section that dealt with the initiating steps for the setting up by the bank of letters of credit for the import of goods? A. That is correct.

Q. That involved, of course, obtaining the execution by the customer of the appropriate forms that the bank used? A. Yes.

Q. Included in those forms, of course, was the application for a credit? A. Yes.

Q. A blue form, is that right? A. That is correct. A requisition.

Q. A requisition? A. A requisition for a documentary letter of credit.

(Witness shown Ex. L.)

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Q. Just look at the form, would you? That is the type of form, is it not, which it was Mr. Carman's duty to see was properly filled in; would you agree with that? A. The type of form?

Q. Yes. Forms such as that? A. Yes.

Q. As you understood it it was his function then to assist the customer in making the appropriate entries on forms of that type? A. Yes.

Q. And to give the customer the benefit of his experience in that regard? A. Yes.

Q. And the benefit of his experience generally in relation to the import of goods? A. Yes.

Q. You regarded it also – I will withdraw that. You regarded it, did you not, as part of your duty as an officer of the bank then to give to the customer the benefit of your experience, in relation to the import of goods? A. Yes.

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Q. It was your understanding of Mr. Parker's position that that likewise was his duty? A. Yes.

Q. Of course that you yourself did from time to time, did you not? (No answer.)

Q. Would you mind answering the question rather than nodding. (No answer.)

HIS HONOUR: He did answer it, but rather softly, he said, "Yes".

MR. BYERS: Q. Of course, from what you say Mr. Parker did that from time to time round about 1966 and 1967? A. Yes.

Q. You and Mr. Parker had been shortly before the end of 1966 abroad to Taiwan and Hong Kong? A. Yes.

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Q. No doubt amongst other places? A. That is correct.

Q. You had been to Japan probably? A. Yes.

Q. This was a visit you made about the bank's business, was it not? A. Yes.

Q. It was not a private trip? A. No.

Q. You were sent abroad, I presume by the bank, on that visit to acquaint yourselves with trading conditions in Hong Kong; would you agree with that? A. Yes.

Q. And in Taiwan? A. Yes.

Q. And in Japan? A. Yes.

Q. And probably in the Phillipines as well? A. Yes.

Q. How long before you saw Mrs. Davey round about November, or December, 1966, had you returned from that trip? A. August.

Q. In August; had you spent much time in Taiwan? A. Four days.

Q. You had called on various banks there, had you? A. Yes.

Q. Banks that were your agents there, presumably? A. Yes.

Q. By "agents" I mean the bank's agents? A. Yes, the bank's agents.

Q. And what – various State authorities? A. No. Banks and businesses.

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Q. And - ? A. Business connections.

Q. Business connections? A. Yes.

Q. I see. I suppose you received in Taiwan, you and Mr. Parker, written information relating to, for example, traders in Taiwan. (No answer.)

HIS HONOUR: Traders?

MR. BYERS: Traders, your Honour.

WITNESS: No. Written information?

MR. BYERS: Q. Catalogues? A. No.

Q. No? A. No.

Q. Well did you have catalogues on traders, for example, in Hong Kong? A. No.

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Q. Some documentary statement about traders in Hong Kong? A. Nothing was given to us by our agents there. We made these assumptions on our own by speaking with them, interviewing them and then writing a report.

Q. I suppose you had some lists as to who were the banks, for example, in Taiwan – which bank had branches in Taiwan? A. This is so.

Q. That is so, and you probably had some lists setting out the names of traders in Taiwan? A. Would you repeat that again?

Q. You had some lists in the bank, did you not, in December, setting out the names of traders in Taiwan? A. No. No specific list.

Q. I am not asking you about a specific list. General lists? A. No.

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Q. And in Hong Kong? A. No.

Q. You had some list, did you not, in relation to, for example, the Customs requirements for Taiwan? A. Customs requirements?

Q. Yes? A. For –?

Q. Taiwan? A. For Taiwan?

Q. Yes? A. I have never seen one.

Q. What did you do on this trip; did you get any documentary information at all? A. No.

Q. None at all? A. Balance sheets.

Q. Balance sheets? A. Of banks, trading companies.

Q. Banks, yes; trading companies, yes; what-else? A. That would have been all.

Q. Balance sheets of trading companies would include, no doubt, balance sheets of exporters in Taiwan? A. No, mainly banks.

Q. Trading companies; you did use the expression, did you not? A. In Japan this was.

Q. What about Taiwan? A. We were there to see –

Q. I am not asking you that. Did you get balance sheets of trading companies in Taiwan? A. 10
No.

Q. You did not? A. No.

Q. You have got a positive recollection about that? A. Quite positive.

Q. Have you? You spent four days in Taiwan, is that right? A. Yes.

Q. Did you make any note of what you did in Taiwan? (Objected to as irrelevant. Allowed.)

Q. Did you make a note of what you had done in Taiwan? A. Yes.

Q. You made a note, no doubt, of the banks you had seen? A. Yes.

Q. You made a note of the traders you had seen? A. Yes.

Q. And of what their standing was in Taiwan? A. No, not at that stage.

Q. Well, at some stage you made notes about standing of traders in Taiwan, did you not? A. 20
When we returned to Australia.

Q. At some stage, Mr. Stevens? A. Yes. This could have –

Q. You made that for the purpose of the bank's business did you not? (No answer.)

Q. You made those notes for the purpose of assisting the bank's customers? A. Yes.

Q. So that you might know about the status of trading companies in Taiwan? A. Some of them, yes.

Q. Yes; and I suppose none of the matters you took into consideration was the reputation of various trading companies in Taiwan? A. Yes.

Q. Whether their word could be relied on? A. Yes.

Q. Whether they had a good trading reputation? A. Yes. 30

Q. You agree with that. I suppose you also noticed when you were in Taiwan, did you, whether or not there were some traders whose word you could not take? A. Do I have to answer Yes or No to that?

HIS HONOUR: No, you do not have to answer Yes or No, but you must answer it if you can, but answer it in your own way.

If you cannot answer it, say you cannot answer it.

A. Well, I cannot answer that question.

MR. BYERS: Q. Could you just tell me what the difficulty is? A. Well, as I understand the question you want me to answer whether some of the companies that we were introduced to during that visit were reputable – others were not quite so reputable.

Q. That you made notes to that effect: did you? A. No.

Q. Did you make inquiries about their reputation – I withdraw that. You did make inquiries, of course, about the standing of some of the trading companies? A. Yes.

Q. I suppose that involved some assessment by you, and no doubt by Mr. Parker, as to the reliability of the trading companies about which you inquired? A. Yes.

Q. That involved also the question of whether, for example, when they said they would send goods of a certain quality, whether you could rely on their statement? A. I cannot answer that question.

Q. Did not you and Mr. Parker in Taiwan, and after your return, discuss that question? A. No.

Q. I suppose you were aware, were you not – I withdraw that. One of the reasons why you called at Taiwan was in connection with the export trade between Taiwan and Australia? A. Yes.

Q. When I say “export trade” that is the import of goods into Australia from Taiwan? A. Yes.

Q. That was growing; was it? A. Well, it was at a certain level, yes.

Q. A certain level? A. Yes.

Q. It was of sufficient interest for you to be sent there by your bank? A. Yes.

Q. I suppose you had customers in your bank, did you, who were importing goods from Taiwan round about 1966? A. Yes.

Q. No doubt they were importing them under letters of credit established by the bank? A. This could have been so.

Q. Could have been so; one of the things you did bear in mind when you went to Taiwan was the protection that your customers might get from documents forwarded to them by Taiwanese traders? A. Yes.

Q. Of course one of the documents that were forwarded at this time was a certificate of inspection? A. I am sorry but I am not clear on – are we talking about this particular letter of credit from Jalsard?

Q. No, just generally? A. Generally?

Q. Yes? A. Well, this would not necessarily be so unless the particular letter of credit asked for a certificate of inspection.

Q. A certificate of inspection, in your understanding of the matter at that time was a certificate about the quality of the goods? A. It could incorporate something about the quality of the goods, but not necessarily.

Q. Well, a certificate that the goods had been inspected of course? A. That is –

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Q. That is so? A. That is so.

Q. And hence, a certificate that the goods answered or possessed some particular attribute?
A. That they were in accordance with the request in their letter of credit, from the description in the letter of credit.

Q. That the goods were up to standard, if I may use that expression? A. Not necessarily, no. I would not say –

Q. But, at least it would – (Question not completed.)

HIS HONOUR: Just a minute. I think the witness had not finished.

“That is not necessarily so.”

Q. What was the whole of your answer? A. Not necessarily would be specifically so, that they were up to standard. 10

MR. BYERS: Q. Yes. A. A certificate of inspection could mention this but not necessarily.

Q. I see. No doubt one of the things you had in mind was the reliability of the trading companies in Taiwan to give accurate certificates of inspection? A. We were not – do you want a direct answer, “Yes or No, or can I make a statement?”

HIS HONOUR: You make a statement if it is an answer to the question. All you are entitled to do is to answer the question and you are obliged to do that.

WITNESS: Yes.

HIS HONOUR: You may choose your own words to do it.

WITNESS: We did not go to Taiwan particularly to find out about certificates of inspection. This was a first visit and we went there to establish better connections with banking agents, but not necessarily trading houses. 20

MR. BYERS: Q. I did not quite ask you this. One of the things you had in mind when you went to Taiwan was the reliability of the trading houses in Taiwan? A. In a general sense, yes.

Q. Mrs. Davey was introduced to you some time in November or December, was it, in Mr. Parker’s office? A. This is correct.

Q. No doubt Mr. Parker said something to you when you went into his office? He introduced you to Mrs. Davey and he said why she was there, I take it? A. Yes.

Q. That she was interested in importing goods from Taiwan? A. Yes. 30

Q. Through a company? A. Yes.

Q. And that she had come there – I withdraw that. She had come to the bank for advice and assistance? A. Yes.

Q. And in connection with letters of credit? A. Yes.

Q. The whole field, as it were, generally; is that right? A. Yes.

Q. I suppose you and Mr. Parker and Mrs. Davey discussed the question of importing goods from Taiwan? A. Yes.

Q. I suppose you were together for some – what, 10 or 15 minutes or so, or longer? A. This would be about a quarter of an hour.

Q. And the quarter of an hour was taken up with the discussion about the import into Australia of Taiwanese goods? A. Partly, yes.

Q. Or mostly? A. Partly.

Q. What were the other parts? A. Well, generally, Taipei in particular. My recollection is that Mrs. Davey had recently been; we had been. We talked of places of interest in Taipei, naturally – a short conversation.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Stevens –
cross-examined*

Q. I suppose you talked about what, banks in Taipei or Taiwan? A. Yes.

Q. And traders in Taiwan? A. No, I would not say – you are talking of traders generally, or –

Q. Traders generally: traders? A. Traders, yes.

Q. I suppose the type of goods you would get in – I withdraw that. And the type of goods one could import from Taiwan into Australia? A. Yes. 10

Q. You discussed, no doubt, various types of goods? A. Yes.

Q. And I imagine, did she mention snakeskins, that you remember? A. Yes.

Q. Then you mentioned, I think, traders generally in Taipei? A. Yes.

Q. Taipei is the capital, is it not? A. That is correct.

Q. I think the harbour port is Keelung; is that right? A. Correct.

Q. I suppose you discussed the shipping facilities? A. There may have been passing reference to it. I just cannot recall this.

Q. And whether one could get goods out by air; matters of that sort; A. I do not recall this – that part of the conversation. 20

**Q. I suppose you and Mr. Parker looked at your notes that you had made, did you about Taiwan generally? A. I do not think we referred specifically to the report that we had given to our bank.

**Q. I know that? A. Notes –

HIS HONOUR: Wait a minute. You excuse me. You said the word “notes” then, Mr. Stevens, did you? A. Yes.

HIS HONOUR: I do not think Mr. Byers or Mr. Kenny heard it. What do you say about notes . . .

(Questions and answers marked with asterisks above ** read.)

HIS HONOUR: I only mentioned you might want to ask something more about it. 30

MR. BYERS: Did you wish to complete that answer Mr. Stevens? A. No. That was not – I am sorry – I did not. The reporter – I thought Mr. Byers mentioned the word “notes”. I said “bank report”.

HIS HONOUR: Yes.

MR. BYERS: Q. That is your recollection? A. Yes. We did not refer to the bank report in relation to traders in Taipei.

Q. Tell me, did Mr. Parker have in his office at that stage, I suppose, various books about trading? A. Yes.

Q. And catalogues on traders? A. Yes.

Q. Mrs. Davey did tell you, did she not – I am sorry. I withdraw that. Mrs. Davey did tell you that she had not engaged in any import from Taiwan before? A. Yes.

Q. She did tell you she had not engaged in any importing transactions before? A. I do not recall that statement.

Q. She told you, I suppose, that she was ignorant of what a letter of credit was? A. Yes.

Q. Either you or Mr. Parker said to her that there was – Mr. Carman was a man whose job it was to look after the details that went into the letters of credit application form? A. Yes. 10

Q. She told you at some stage, did she not, that the company proposed importing goods from Taiwan by means of a letter of credit? A. Yes.

Q. She told you that she wanted the bank's advice and guidance about a letter of credit? A. Yes.

Q. And the documents that she should call for under the letter of credit? A. Yes.

Q. Some question was raised, was it not, about the protection that the importer would receive under a letter of credit? A. Yes.

Q. Either Mrs. Davey or Mr. Parker presumably mentioned that? A. Yes.

Q. Yes? A. Yes.

Q. Then I suppose there was some discussion as to whether the importer could be protected in relation to the quality of the goods by documents called for by the letter of credit? A. I do not recall that specific part of the conversation. 20

Q. I see. Your recollection is that there was certainly discussion about the protection that the buyer got, the importer got, under the letter of credit? A. Yes.

Q. That was certainly mentioned? A. Yes.

Q. I suppose it was your understanding at the time that the protection the buyer got under the letter of credit were the documents the letter of credit called for? A. I do not think this was specifically discussed.

Q. I did not quite ask you that. It was your understanding at the time – at the time this discussion took place – that the measure of the buyer's protection under a letter of credit was the documents the letter of credit called for? A. I do not recall that. 30

Q. It was your understanding, was it not? That is what you believed? A. That is, yes.

Q. You believed that at the time of this interview between yourself and Parker and Mrs. Davey? A. Yes.

Q. You realised, of course, that when the goods were shipped a letter of credit would call for documents of title such as bills of lading and matters of that sort? A. Yes.

Q. When the goods were brought by air airway bills and matters of that type would be called for by the letter of credit? A. Yes.

Q. It was your understanding that these documents were documents for the protection of the buyer? A. My understanding, did you say? 40

Q. Yes, it was your understanding? A. Yes.

Q. That is right: and it was your understanding that the commercial invoice was a document for the protection of the buyer? A. Yes.

Q. It was your understanding at the time that a certificate of inspection was a document for the protection of the buyer? A. It could have been, yes.

Q. It was, was it not? A. Yes. We are talking in general terms?

Q. In general? A. In general terms?

Q. Yes? A. Yes.

Q. Of course it is right to say that your recollection of the precise details of the conversation that took place in Parker's office is a little vague? A. Yes.

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Q. But you can remember quite clearly the question was raised of the protection afforded to the buyer under a letter of credit? A. Yes, but –

Q. Yes? (No answer.)

MR. BYERS: I am sorry.

HIS HONOUR: Finish your answer.

WITNESS: I would like to clarify that and say it is also protection for the seller and it is usually the seller that requests a letter of credit be issued.

MR. BYERS: Q. You have a clear recollection that there was discussed the protection that could be given to the buyer by the documents specified in the authority establishing the letter of credit? A. Yes.

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Q. I suppose it was your understanding at this time that an importer importing goods from the East, should take steps in his own interest to ensure that the quality of the goods was what the contract called for? A. Yes, yes, but – could I be more detailed than that?

HIS HONOUR: You can say anything you like that is an answer to the question.

WITNESS: All right. This is hardly a bank – a matter of banking. Whilst it might be the concern of the importer what quality, the bank is purchasing documents, not goods, in accordance with the letter of credit.

**Q. Of course the bank was, in your view at this time, advising people to get the best protection its customers – the best protection they could get, by reference to letters of credit? (Objected to unless the nature of the protection is specified. Allowed subject to this. His Honour stated that it appeared the witness was going to make some query about the question.)

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HIS HONOUR: Q. Did you understand that question Mr. Stevens? (No answer.)

(Question read. Mr. Byers withdrew the question.)

HIS HONOUR: It is a completely new question Mr. Stevens.

MR. BYERS: Q. Mrs. Davey, so she told you, had come to the bank for advice and assistance; you have told us that? A. Yes.

Q. You regarded it as your duty to give her advice and assistance? A. Yes.

Q. Within the limits of your duty to the bank; is that right? A. Yes.

Q. She had mentioned to you a question of the protection the buyer will get when goods were being imported under a letter of credit? A. She had mentioned to me?

Q. Yes? A. Yes.

Q. That was, of course, in Mr. Parker's presence? A. Yes.

Q. Then I suppose it is your recollection that something was said, either by you — by you or Parker — about the protection the buyer could get when goods were imported under a letter of credit? (Objected to. Allowed.) A. Yes.

Q. Then something presumably was said by Mr. Parker towards the end of the discussion that led you to take Mrs. Davey down to Mr. Carman's floor — I am sorry — was it the same floor or a different floor? A. No, the first floor.

Q. Down to the first floor? A. Yes.

Q. Mr. Parker said to you, did he, that you should take Mrs. Davey down — would you introduce her to Mr. Carman? A. Yes.

Q. So that he, Mr. Carman, could assist Mrs. Davey in relation to the drawing up of an authority for a credit? A. Yes.

Q. Requisition for a credit? A. Yes.

Q. That is right. It was for that purpose that you took Mrs. Davey from Parker's office down and introduced her to Mr. Carman? A. Yes.

Q. You did introduce her, of course, to Mr. Carman? A. Yes.

Q. You did tell Mr. Carman that Mr. Davey was interested in the import of goods from Taiwan? A. Yes.

Q. You did tell Mr. Carman to assist Mrs. Davey in relation to the drawing up of the requisition for a letter of credit? A. Yes.

Q. I suppose you told Carman, did you, that Mrs. Davey would require his advice as well as his assistance? A. I do not recall that.

Q. But it was your then belief, was it not, that she had come to the bank for the bank's advice and assistance? A. Yes.

Q. It would be natural enough for you to tell Carman that Mrs. Davey wishes his assistance and advice in the establishment of a letter of credit? A. It would have been natural enough, yes.

Q. I suppose before you got to Mr. Carman's floor you had mentioned to Mrs. Davey — you or Mr. Parker, that Mr. Carman was the man who could give her assistance in the drawing up of a requisition for a letter of credit? A. Yes.

Q. Naturally you had mentioned to her that Mr. Carman could give her advice in the drawing up of a requisition for a letter of credit? A. Yes.

RE-EXAMINATION

MR. KENNY: Q. You were asked about your understanding about the protection afforded by a letter of credit, do you see? A. Yes.

Q. What was your understanding of the protection afforded by a letter of credit to a purchaser? (Objected to as not arising out of cross-examination. Allowed.)

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Q. Do you remember the question? A. Would you repeat it please?

(Question read.)

WITNESS: Briefly that if an irrevocable letter of credit is established then payment is not effected to the seller unless the documents comply with the request contained in the letter of credit, or in accordance with the letter of credit documents and this is the protection.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Stevens –
cross-examined*

MR. KENNY: Q. What are the documents you had in mind as being specified in the letter of credit? (Objected to.) A. What are they?

Q. Did you have any particular documents in mind as being these which would be specified in a letter of credit? A. In a general sense?

Q. Yes? A. No. It is normal for a commercial invoice, Customs Invoice, insurance certificate or policy and a bill of lading. 10

Q. You were asked about it being your belief – was it your belief – that Mrs. Davey had come to the bank for the bank's advice and assistance; do you remember that? A. Yes.

Q. What was the nature of the advice and assistance which you believed Mrs. Davey had come to the bank for? A. To be helped to complete a documentary requisition form.

Q. You were asked some questions about how the buyer might protect himself against defect in quality of goods supplied; do you see? A. Yes.

Q. Does the bank give assistance or protection in relation to the quality of the goods supplied under an irrevocable credit? (Objected to. Pressed. Question to be rephrased.)

Q. Does the bank give advice or assistance to purchasers of goods for the purpose of enabling them to ensure that the quality of goods is supplied – (Interrupted). A. No. (Objected to.) (Mr. Kenny stated that he had not yet finished his question). 20

HIS HONOUR: (To witness) You have to wait till these questions are finished please.

WITNESS: Sorry.

MR. KENNY: Q. Does the bank give advice or assistance to customers in relation to their ensuring that the quality of goods supplied under a letter of credit will be up to the standard specified in their contracts? (Objected to.) – with the supplier? (Objected to. Pressed. Mr. Byers addressed. Mr. Kenny addressed and pressed the question. His Honour said he would adjourn and consider this objection.)

(Short adjournment.)

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HIS HONOUR: (To witness). You are still bound by your oath to tell the truth Mr. Stevens.

Q. Do you understand? A. Yes.

HIS HONOUR: Does anyone wish to say anything more to me about this?

(Mr. Kenny addressed)

HIS HONOUR: This question, I am quite clear, is not a matter of re-examination. I am prepared, somewhat reluctantly I am afraid though, to consider any application Mr. Kenny may make to have the question asked on examination in chief.

MR. KENNY: I am grateful to your Honour. I do not feel there is any necessity to do that. I will ask another question.

HIS HONOUR: I am offering you the chance to do it though. I wish to make that plain. (Pause). But you do not make the application?

MR. KENNY: Your Honour. I will ask a further question first, if I may. I may wish to make an application at a later stage.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Carman –
examination
continued*

**Q. You were asked whether or not at some stage there was a discussion about the protection which the importer would receive under a letter of credit; do you remember that? A. Yes.

**Q. And you said, "Yes, there was". A. Yes.

**Q. What was the discussion about that matter. (Objected to. Counsel addressed. Questions marked with asterisks above ** read. Allowed.)

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HIS HONOUR: (To witness). Take your time and then answer it.

WITNESS: May I have the questions again please?

(Questions and answers marked with asterisks ** read.)

~~As I recall the protection that we referred to or that was referred to in that conversation was normal banking protection of our agents making payment against a letter of credit providing the documents presented were in accordance with the documents called for under the particular credit.~~

(Mr. Byers objected and asked that this answer be struck out. His Honour directed the answer to be struck out.)

HIS HONOUR: Mr. Stevens, Mr. Kenny asked you to tell him the discussion; what was said? A. I could not – I cannot recall specifically in detail, the actual words.

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Q. To the best of your recollection, Mr. Kenny wants. A. To the best of my recollection, as I have stated before, the protection that would be offered under a letter of credit is that documents – as I repeated again – documents would have to be presented in accordance with the letter of credit before payment is effected. This is the protection, as I recall, that is referred to. (Objected to as not an answer. His Honour ruled that he would allow this answer to stand but said that it can be a matter for argument later.)

MR. KENNY: Q. You were asked in cross-examination hadn't Mrs. Davey come to the bank for the purpose of seeking advice and assistance? A. Yes.

Q. And you answered Yes to that question? A. Yes.

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Q. In what terms did she seek the advice and assistance that you refer to? (Objected to; withdrawn) (Witness retired and excused.)

WILLIAM GEORGE CARMAN,
examination continued on former oath:

MR. KENNY: Q. Between April and July 1967 did you say to Mrs. Davey: "In this instance could we please use Nippon Kangyo Bank; we have cabling arrangements with Nippon Kangyo Bank and we don't have them with First National City"? A. No, not in those words.

Q. Did you make any reference to that matter between April and July 1967? A. No, your Honour.

Q. Was that matter raised or did you make a request similar to that at some time? A. The only time that was raised was in December 1966.

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Q. When was it raised then? A. In a telephone conversation I had with Mrs. Davey.

Q. Was that the telephone conversation you told us about yesterday? A. Yes.

Q. You told his Honour yesterday, I think, that you first met Mr. Egan on 19th December 1966? A. Yes.

Q. When after that did you next see him, as far as you recollect? A. Some time afterwards the end of December or perhaps early January.

Q. In what circumstances? A. He came in to discuss the method of filling in a requisition for a letter of credit.

Q. What happened on this occasion? A. I took some blue requisition forms out of the cupboard, and I went through it with him and showed him how it was to be completed.

Q. When he left on that occasion did you give him anything? A. Yes.

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Q. What was that? A. I gave him a copy of the Practice for uniform Customs — a booklet for uniform practice and customs for documentary letters of credit. (Objected to.)

Q. Would you look at this document? Is that a copy of the document which you gave to Mr. Egan? A. Yes.

(Booklet marked for identification 22)

Q. Did you have a conversation with Mr. Egan on 16th or 19th December, 1966 in which you said “The fact that you require a beneficiary’s inspection certificate” — or you may have said, “A certificate of inspection” — “throws the onus on the supplier to ensure that the goods to be supplied are as ordered. In fact a letter of credit cannot be released until that certificate is produced”? A. No.

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Q. Did you have a conversation about certificates of inspection with Mr. Egan at any time? A. Yes, the day we went through the requisition later on in the end of December or early January.

Q. Do you remember what was said about certificates of inspection on that occasion? A. I said to him if they just called for a certificate of inspection that the beneficiary of the credit could issue it, but it could also be issued by anyone else.

Q. Did you say anything further, do you recollect? A. No.

Q. Did you say to him on that occasion, “In fact the letter of credit cannot be released until that certificate is produced?” A. No.

Q. Is it a fact that a letter of credit cannot be released until a certificate of inspection is produced, if the certificate is called for? (Objected to.)

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Q. According to banking practice? (Objected to.)

Q. Would you have a look at Ex. T. On the day when that requisition was made did Mrs. Davey say to you, “What is this certificate of inspection?” Do you recollect? A. No.

Q. Did you say — you were on first name terms, or you called Mr. Egan “John”? A. That is right.

Q. Did you say to him and Mrs. Davey, “As I previously pointed out to John, the fact the certificate of inspection is required throws the onus on the supplier to ensure the goods to be supplied are as ordered.” Did you say that? A. No, I have no recollection of that.

Q. Did you say, “I don’t know whether Raymond & Co. have their own inspection department or whether they have agents to do their work”? A. Yes, it is possible.

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Q. Did you say, "As I also pointed out to John the letter of credit cannot be released until that certificate is given?" A. No.

Q. Did you say at the same time, "I cannot give any guarantee as to the check they perform, or their competency"? A. No, I can't recall that.

Q. Did you say anything like that on that occasion? A. No, not so far as I remember.

Q. Did you say it on any other occasion that you recollect? A. No.

Q. Do you remember Mrs. Davey saying, "At least I know a check is done. That is good"? A. No, I can't recall.

Q. Would you look at Ex. X? Do you remember Mr. Egan producing that document, that requisition? A. Yes.

Q. Did he say to you "This is another back-to-back letter of credit, I have tried to keep it in the same term as Gollin & Company's letter of credit, but there is one difference. While Gollin & Co. do not require a certificate of inspection Mrs. Davey wants one"? A. Yes, largely that, largely in those words, yes.

Q. Did you say to him, "It could possibly cause a delay, the fact that Gollin & Company's letter of credit is not exactly the same as Jalsard's"? A. No.

Q. Did you say anything you recollect when he made the reference to the requirement of the certificate of inspection? A. No, I told him it would not make any difference.

Q. Do you remember some occasion when John Egan came to the bank with a piece of paper other than the requisition, or as well as the requisition – with some piece of paper not the requisition in his hand? A. That was early 1967 or the end of 1966, whenever we went through the requisition.

Q. It was on that occasion, was it? A. Yes.

Q. I show you Ex. DD. Have you, so far as you recollect, seen that particular document before? A. No.

Q. Have you seen documents of the same type? A. Yes.

Q. What is the nature of the document? (Objected to. Allowed.)

Q. What is the nature of that document? What could it be described as? A. It is headed up "Survey Report".

Q. Would you look at this document, Ex. 1? A. Yes.

Q. I show you also Ex. 2. You will note that Ex. 2, you told us yesterday, adds to the documents required under Ex. 1 a certificate of inspection? A. Yes.

Q. Would the document Ex. DD, according to banking practice, be acceptable as a certificate of inspection for the purposes of the credit established by Ex. 1 as varied by Ex. 2? (Objected to. Allowed subject to objection.)

Q. (Previous question read) A. Yes.

Q. I show you Exhibits EE and FF. Have you seen those documents before? A. No.

Q. Have you seen documents of a similar type? A. Yes.

Q. What is the nature of the document? A. It is an inspection certificate.

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HIS HONOUR: Q. You say it is. Do you mean both are, or one is? A. They would both be accepted as inspection certificates. (Objected to. Allowed subject to objection.)

MR. KENNY: Q. Can I draw your attention to Ex. DD, the document headed, "Inspection Certificate"? You see on there the words "attachments", "detailed description as per sheet"? A. That is not on that one.

Q. I show you Ex. EE. Do you see on there, on the side note "Attachments", "detailed description as per sheet"? A. Yes.

Q. When those documents in that form are received by the bank have they a sheet attached to them? (Objected to.)

MR. KENNY: I will ask my friend to admit the documents were originally attached at the time of receipt by the person who uplifted them from the bank. 10

MR. BYERS: I am not prepared to admit that.

MR. KENNY: From the Commercial Banking Company in Sydney, head office.

MR. BYERS: They were both produced by my learned friend, and I tendered them separately, mainly because I understood it was your Honour's practice to accept the documents, in view of what I had earlier done, separate documents as separate exhibits, and because these were two documents I tendered them separately. That was the only reason.

MR. KENNY: If they came from our custody I would ask for the admission that the original documents when uplifted by the plaintiff company from the Commercial Banking Company in Sydney were attached. 20

MR. BYERS: I do not think there would be any problem about it. I am not prepared at the moment to make an admission. I will try and find out by two o'clock.

(Luncheon adjournment.)

At 2 p.m.:

MR. KENNY: I understand my friend is prepared to admit on behalf of the plaintiff company that at the time the documents the originals of Exhibits EE and FF were uplifted from the Commercial Banking Company of Sydney on behalf of the plaintiff they were attached to each other.

MR. BYERS: Yes, I will make that admission.

HIS HONOUR: I disallow the question you asked. 30

(Inspection Certificate of Ho Cheng dated 4th October 1967 tendered and marked Ex. 3.)

MR. KENNY: Q. I ask you to look at this document, Ex. BB. You see some handwriting on that document? A. Yes.

Q. Is any of it yours? A. No.

Q. Did you see Mrs. Davey in connection with the credit which is requisitioned by that document? A. No.

Q. Are you able to recognise the writing on it? A. Yes.

Q. Whose is it? A. It belongs to Mr. Iverach.

Q. Was he for a short period in 1967 in the Overseas Department of the Bank? A. Yes. 40

(Document m.f.i. 22, tendered. Objected to.)

MR. KENNY: I call Mr. Rowell on subpoena duces tecum. (No appearance.)

MR. BYERS: I have told my learned friend if he wishes to pursue it, Mr. Hay of Mr. Rowell's office is present in Court to answer the subpoena duces tecum. The subpoena, I imagine, was returnable for Monday, at which stage Mr. Rowell was in the High Court on subpoena before Mr. Justice Menzies.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Carmen —
examination
continued*

MR. KENNY: I call Mr. Hay.

(Winston Francis Wilfred Dalrymple-Hay, of 11 Bellevue Hill Road, Rose Bay, attended in answer to a subpoena addressed to Mr. Rowell. He informed the Court there are no documents to produce. He produced the copy of the subpoena.)

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(Document m.f.i. 22 tendered. Objected to. Admitted and marked Ex. 4.)

(Two cheques previously m.f.i. 2 and 3 tendered and marked Exhibit 5.)

Q. You saw Mrs. Davey in connection with the requisition which was originally made on 11th July 1967 and which was Ex. 1, and the amendment subsequently made by virtue of exhibits 2 and 3? A. Yes.

Q. After that, about August 1967 onwards when, so far as you now recollect, did you next see Mrs. Davey? A. I have no idea.

Q. Do you recollect any conversation by telephone or otherwise that you had with her after that date? A. She phoned me on two occasions.

Q. When was the first? A. I think it was about March 1968.

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Q. What did she say to you on that occasion? A. She said she would like me to provide her with the definition of a certificate of inspection.

Q. What did you say? A. I said it was not my place to provide that certificate.

Q. Provide the certificate? A. The definition, I am sorry, and so I told her I would have her transferred to another extension, who would fix it up for her.

Q. Then you had her transferred, did you? A. Yes.

Q. Where was that? A. I had her transferred to the International Division.

Q. When after that did you have a conversation with her? A. We had another telephone conversation in May, I think it was, in 1968.

Q. What was that about? A. She phoned and said that she wanted me to put I think it was \$1200-odd back into her account, that we had without authority allowed a local documentary letter of credit to be overdrawn, and that we had paid against that without her authority, and that she wanted the refund. And I said the item had come in on a collection basis and as she had paid for it by cheque she had given us a discharge and I would not arrange for the refund to be effected, and she then said she wanted it back in her account within 48 hours, and I again told her we would not refund money for cheques that had been drawn and that I would not arrange for a refund.

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Q. Anything else said? A. I think that was the lot.

Q. Do you remember anything about goods? A. Oh yes, she asked me what goods were covered by that amount of \$1217, and I said that the bank did not hold any documents but she would have invoices relating to that, and they would provide the information she required, and she said she had certain documents but did not know whether or not they were invoices.

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MR BYERS: Documents are produced in answer to a subpoena my friend served on the plaintiff. I have no objection to them being seen.

HIS HONOUR: They may be seen by both sides.

CROSS-EXAMINATION:

MR. BYERS: Q. Would you look at Exhibit L? The handwriting in the body of that document is yours, is it not? A. Yes.

Q. And that includes all of it? A. Yes.

Q. Would you look at Exhibit T? The handwriting in the body of that document is yours, isn't it? A. Yes.

Q. And all of it? A. Yes.

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Q. The handwriting up at the top, "First National City Bank", is also yours? A. Yes.

Q. And "Taipei"? A. Yes.

Q. You see about a third of the way down the page there is crossed out the typewritten word "your"? A. Yes.

Q. Did you cross that out? A. I did.

Q. And then you wrote in, "this", did you, in place of it? A. Yes.

Q. About the middle of the document, Exhibit T, there has been crossed out a number of words beginning with the word "freight" and concluding with the word "inspection"? A. Yes.

Q. That crossing out is yours? A. Yes.

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Q. There is also some crossing further up on Exhibit T, the printed words, "Negotiable in lieu of Bills of Lading"? A. "Acceptable in lieu of Bills of Lading".

Q. That is your writing too, is it? A. Yes.

Q. The crossing out of the words towards the right-hand side and immediately below the last crossing out, beginning with the words, "In same currency" and concluding with the words "per cent" is also your crossing out? A. Yes.

Q. There is also crossed out on Exhibit T the printed words beginning with the word "insurance" and ending with the word "blank"? A. Yes.

Q. That is not yours, is it? A. No.

Q. And again the crossing out of the words beginning with the word "acknowledgement" and ending with the word "with" is also not yours? A. That is right.

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Q. Would you look at Exhibit R? On the back of Exhibit R there have been crossed out a number of typewritten words. You see that? A. Yes.

Q. The crossing out begins with the word "detail" and concludes with the figures "1967"? See that? A. Yes.

Q. That is not yours, is that right? A. That is right.

Q. Would you look at Exhibit MM, on the back? There is some handwriting in pencil above words crossed out in type. You see that? A. No.

Q. You mean no it is not there? A. There is nothing crossed out in type.

Q. There is handwriting in pencil above typewritten words? A. Yes.

Q. That handwriting is yours, isn't it? A. Yes.

Q. You wrote in "Cared for by Buyer"? A. That is correct.

Q. I suppose you also crossed out the typewritten sentence beginning with the word "please" and concluding with the word "Taipei"? A. I did.

Q. And you also crossed out the typewritten words "Raymond & Co. Ltd."? A. Yes.

Q. You crossed that out in pencil? A. Yes.

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Q. And in your hand you wrote above those words the word "beneficiary"? A. Yes.

Q. Then on the second last line of the typing on the back of the page you crossed out the word "them" that was typed? A. Yes.

Q. And you wrote in, didn't you, "Raymond & Co. Limited"? A. Yes.

Q. And you crossed out the word "on"? A. Yes.

Q. And you substituted the word, "dated"? A. Yes.

Q. I suppose it would be right to say, would it, that it is your memory of the events that Ex. MM, that is the document with the pencil crossing out on the back, preceded Ex. R? Do you understand me? A. Could I have a look at those?

HIS HONOUR: Yes.

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MR. BYERS: Q. Would you just look at Ex. MM? Have you got that? A. Yes.

Q. You saw that exhibit before you saw Ex. R? (shown) A. Yes.

Q. And it is your recollection that you crossed out the words on the back of Ex. MM and gave it to someone to take away? A. Yes.

Q. And there was next seen by you Ex. R? A. Yes.

Q. The crossing out that you did upon Ex. MM on the back was done by you at the bank premises in Sydney? A. Yes.

Q. That is head office? A. Yes.

Q. At the Overseas Department? A. Yes.

Q. You filled in Exhibit L at the Overseas Department of head office? A. Yes.

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Q. It is right to say, I suppose, that in 1966 you were in charge of a section of the Overseas Department? A. No.

Q. It is not right to say that? A. That is right, it is not right.

Q. At any rate you had certain duties to perform, did you not? A. Yes.

Q. In relation to the Overseas Department? A. Yes.

Q. In 1966 and in 1967? A. Yes.

Q. That is duties related to the filling in by customers of the bank of applications for letters of credit? A. Yes.

Q. In 1966 you had been in that department of the bank for some six years? A. Four years.

Q. In that work, the work of filling in the form, you were the superior? A. No.

Q. Who was superior to you, if anyone? A. In that department there are two.

Q. Who were doing the same type of work, were they? A. They were superior.

Q. In relation to the work of ensuring that the application forms were correctly filled in, you were superior? A. No, there is one senior to me.

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Q. Who was that? A. Mr. Gillespie.

Q. There was Mr. Gillespie, and next yourself? A. Yes.

Q. And then there were people presumably under your control? A. Typists and –

Q. You did see Mrs. Davey on 16th December 1966? A. Yes.

Q. And you did see her in relation to the preparation of Exhibit L? A. Yes.

Q. Would you like with his Honour's permission to see Ex. L (shown). Mrs. Davey had been brought to you, had she not, by Mr. Stevens? A. Yes.

Q. And Mr. Stevens told you, did he not, that Mrs. Davey was contemplating, through her company, importing goods from Taiwan? A. Yes.

Q. Mrs. Davey, as she then was, told you that too? A. Yes.

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Q. You produced the form, as I understand you, and put it on the counter? A. Yes.

Q. Was Mr. Stevens still there? A. Yes.

Q. Stevens had told you, had he not, that Mrs. Davey wanted a letter of credit in relation to the import of goods from Taiwan? A. Yes.

Q. And he asked you to assist her in the preparation of a requisition? A. Yes.

Q. Which you did? A. Yes.

Q. She told you she knew nothing about letters of credit, didn't she? A. She told me she did not know anything about making requisitions for letters of credit.

Q. And she asked you to help her in making out the requisition? A. Yes.

Q. And you knew the purpose of the requisition was the establishment of a credit? A. Yes.

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Q. And you knew that the purpose of the credit was payment for goods? A. Yes.

MR. BYERS: Q. And you knew also did you not that the requisition was for an irrecoverable credit? A. Yes.

Q. It was your understanding that once an irrecoverable credit had been established your customer could not cancel it? A. Not without the consent of the beneficiary.

Q. And I suppose you considered did you not that one of the purposes for the establishment of the credit was the protection of the buyer? (Objected to.)

Q. It was your understanding at the time was it not that the beneficiary could claim against the credit upon production of the documents the requisition required? A. Yes.

Q. And it was your understanding at the time that the buyer could state what documents should be produced by the seller before credit was paid? A. By the beneficiary, yes.

Q. By the beneficiary? A. Yes.

Q. And you had a discussion with Mrs. Davey as she then was, about the documents the beneficiary should produce to claim on the credit? A. Yes.

Q. And when you had that discussion you realised that you knew more about that topic than she said she knew? A. Yes. 10

Q. She did tell you did she not she knew nothing about filling in of requisitions for letters of credit? A. Yes.

Q. And you believed her? A. Yes.

Q. You had spent a number of years familiarising yourself with that very thing have you not? A. Yes.

Q. You believed did you not when you saw her in December that you knew more about the documents that could be required to meet the credit than she did? A. No, Mrs. Davey knew what documents she wanted.

Q. That was your belief was it? A. Yes. 20

Q. And you believed that did you not notwithstanding the fact that Stevens had said to you that you were to assist her in the filling out of a requisition? A. That is right.

Q. You realised that the requisition would state the documents required before the credit could be drawn on by the beneficiary? A. Yes.

Q. Mrs. Davey, as she then was, said to you that she had not imported any goods before didn't she? A. Yes.

Q. And Stevens had told you, as you have already mentioned, that you were expected to assist her in obtaining a credit? A. Yes.

Q. At some stage during the course of that day – (withdrawn).

Q. At some stage when she was there the words “inspection certificate” were mentioned? A. Yes. 30

Q. No doubt about that? A. None whatsoever.

Q. It is your recollection that there was about the time the words “inspection certificate” were mentioned, some mention made by her of the words “Raymond and Company Limited”? A. Yes.

Q. And she said to you did she not that Raymond and Company were her agents? A. Yes.

Q. There is no doubt in your mind about that is there? A. None at all.

Q. She told you that she wanted an inspection certificate prepared by Raymond and Company didn't she? A. Yes.

Q. There is no doubt in your mind about that? A. None at all.

Q. Indeed, as I understand you, you had written into the form the words “inspection certificate”? A. Yes.

Q. And at her insistence you added the word “beneficiary’s”? A. Yes.

Q. Did you discuss whether the beneficiary of the credit was the seller of the goods? A. No.

HIS HONOUR: Would you repeat that.

MR. BYERS: Q. Did you discuss whether the beneficiary of the credit was the seller of the goods. Mr. Carman said no.

Q. You did not? A. No.

Q. It was your understanding from what she told you that Raymond and Company were her agents in Taiwan? A. Yes. 10

Q. And that it was their certificate of inspection she wanted? A. Yes.

Q. And no one else? A. That is right.

Q. I suppose there was some discussion between you about what the words “inspection certificate” meant? A. No.

Q. You did tell her did you not that it was recommended that the inspection certificate should not be that of the beneficiary? A. I did.

Q. I suppose you had in mind did you not what the inspection certificate was? A. No, I had in mind who should issue it.

Q. You had in mind what it was too? A. No. 20

Q. You did not know what it was, is that right? A. I knew what it was.

Q. You knew it was an inspection certificate about the goods? A. Yes.

Q. And a certificate stating that the goods were up to standard? A. No.

Q. Or saying something about the quality of the goods? A. No.

Q. Saying anything about the goods? A. Yes.

Q. Saying what? A. It is to identify the goods.

Q. In what way on your understanding? A. A brief description, just to show the marks.

Q. Marks of what? A. Shipping marks.

Q. On what? A. On the merchandise.

Q. On the cases? A. On the cases. 30

Q. What did you think the inspection certificate that you were talking about had to say about the goods? A. I didn’t think about it.

Q. You didn’t think about it? A. No.

Q. Are you sure? A. Yes.

Q. Do I understand you to say you just had no idea what there was to be contained in the certificate of inspection? A. In this one, yes.

Q. Is that right? A. Yes.

Q. You had no idea. You see, it was your understanding then was it not that the bank, your bank, had to be satisfied that there was produced to it an inspection certificate of the type required by the requisition? A. No, they just had to produce an inspection certificate.

Q. Just had to produce an inspection certificate? A. Yes.

Q. In order to recover over against this customer? A. I beg your pardon.

Q. In order to recover over against this customer, is that what you are saying? A. What do you mean by "over"? 10

Q. I will withdraw it. In order to recover against a customer for the credit? A. Yes.

Q. And you had no idea as I understand you what sort of document the inspection certificate had to be? A. Yes, I knew what sort it had to be.

Q. You knew it had to be a certificate stating the inspector's view of the quality of the goods did you not? A. No.

Q. Was it your view at the time that it had to state anything about the goods? A. Simply that they had been inspected.

Q. Simply that they had been inspected? Was it your understanding that a document which said "I have inspected the goods and they are not up to standard" was an inspection certificate? A. No. 20

Q. Was it your view that a document which said, "I have inspected the goods and they are up to standard" was an inspection certificate? A. Yes.

Q. And do I understand you to say that it was also your view that a document which said "I have inspected the goods" was also one which was an inspection certificate? A. Yes.

Q. Although it said no more? A. That is right.

Q. Did you point that out, your belief, to Mrs. Davey? A. No.

Q. You did realise of course that if your belief was correct the inspection certificate conferred upon the buyer of the goods no protection whatever? A. Would you repeat that?

Q. You realise that if your belief as to what an inspection certificate was then, if that was correct, the production of an inspection certificate conferred no protection whatever upon the buyer? A. That is right. 30

Q. And that was then your belief was it? A. Yes.

Q. Do you say that entertaining that belief you did not communicate it to Mrs. Wilson? A. I did not.

Q. Do you say that in failing to communicate that belief you were assisting Mrs. Wilson? A. No.

Q. Stevens also told you did he not that you should not only assist Mrs. Wilson but also advise her? A. No, he told me to assist her.

Q. And advise her I suggest to you? A. I have no recollection of being told to advise her.

Q. You would not deny that Stevens told you to advise Mrs. Davey? A. He told me to assist her.

Q. Would you deny he told you to advise her as well? A. Yes.

Q. You would? A. Yes.

Q. You draw a distinction between “assistance” and “advice” do you? A. Yes.

Q. Did your idea of assistance extend to giving her advice as to how to fill in the letter of credit – the application? A. I assisted her to fill in the application.

Q. Did your understanding of assisting Mrs. Davey extend to giving her advice as to how to fill in the requisition? A. Yes.

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Q. And you did, didn't you, give her advice? A. Yes.

Q. In fact you advised her as to the words that should go into the body of Exhibit L did you not? A. By the words you mean “beneficiary's inspection certificate”?

Q. All the words? A. Yes.

Q. You told her for example that she should put in “Raymond and Company” after the word “authorising”? A. Yes, I said that.

Q. And you asked her as I understand you who was the beneficiary of the credit? A. Yes.

Q. Did you explain to her what the word “beneficiary” meant? A. No.

Q. You indicated to her I suppose that it meant the person entitled to draw upon the credit? A. Yes.

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Q. And you said, “who is that?” “who is entitled to draw on the credit”, didn't you? A. No, I asked her who was the beneficiary of the credit.

Q. Are you certain you used that phrase? A. Yes.

Q. What makes you so certain about it? A. There are certain phrases we use all the time.

Q. This is the only reason you say you used it on this occasion? A. Yes.

Q. I suppose over the years, over the last eight years, you have helped people to fill in many thousands of these applications? A. I would not say that many.

Q. Very very many indeed? A. Yes.

Q. You would not be prepared to deny would you that you asked Mrs. Davey words to the effect “who was entitled to draw against the credit?” and she told you “Raymond and Company”? A. She told me Raymond and Company were the beneficiaries.

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HIS HONOUR: Q. She told you Raymond and Company was the beneficiary? A. Yes.

MR. BYERS: Q. She did not use those words did she? A. No, she said “Raymond and Company Limited”.

Q. Then you also had a discussion with Mrs. Davey as to the words to strike out where you have the series of words beginning “f.o.b.”? A. Yes.

Q. Did she tell you that she had been informed recently about the meaning of the words “free onboard” or f.o.b.? A. She said that was f.o.b.

Q. She told you she had been informed recently about it didn't she? A. Yes.

Q. Then there was later some discussion as to insurance in relation to an f.o.b. contract? A. Yes.

Q. You told her that it was the buyer's responsibility? A. Yes.

Q. And you wrote in “insurance cared for by buyer”? A. Yes.

Q. And of course naturally after you had had a discussion about the word “f.o.b.” you struck out “c. & f.” and “c.i.f.”? A. Yes.

Q. Then you came to talk about the documents that the beneficiary should produce in order to draw upon the credit didn't you? A. Yes. 10

Q. When you discussed this you took yourself to be advising Mrs. Davey did you not? A. Yes.

Q. And the first thing that was mentioned was commercial invoices? A. Yes.

Q. I suppose you told her what a commercial invoice was? A. No.

Q. You told her it was not an invoice, it was not an ordinary invoice, didn't you? A. No.

Q. You didn't? A. No.

Q. Then you came to the expression “certified Australian customs invoice”? A. Yes.

HIS HONOUR: Q. Was there any discussion at all between you and Mrs. Davey about commercial invoices? A. No, I don't think so. 20

MR. BYERS: Q. Then the next thing you discussed was Bills of Lading? A. Yes.

Q. And you told her that because the contract was one for the shipment by air you would not need bills of lading? A. That is correct.

Q. And having told her that you struck out the words “full set etc”? A. Yes.

Q. You also struck out the next sentence as well? A. Yes.

Q. Then you told her because it was a consignment by air she would need air consignment notes? A. Yes.

Q. And you said because it was a consignment by air you would strike out “parcel post receipts”? A. Yes.

Q. Then there was some discussion about the air consignment notes showing whether the goods should be consigned to the bank? A. Yes. 30

Q. You suggested to her did you not that the air consignment notes she should obtain should be ones showing that the goods were consigned to the bank and marked to the company's account? A. That is normal procedure.

Q. That is what you told her did you not? A. Yes.

Q. And she said, “very well” or words to that effect? A. Yes.

Q. And then you told her, "the next matter is whether any additional documents are required"? A. Yes.

Q. Of course it was your belief was it not that these were documents that were required by the buyer? A. Yes.

Q. For his protection (Objected to).

HIS HONOUR: Are you asking the witness about his belief?

MR. BYERS: At the moment.

HIS HONOUR: I did not think your question was pointed to that. If it is I will allow it.

MR. BYERS: Q. To your belief required for the buyers protection. (Objected to. Allowed.)

HIS HONOUR: Q. Did you follow that, Mr. Carman? A. I follow it, Your Honour. It is only as good as the person who gives it. 10

MR. BYERS: Q. What is only as good as the person who gives it? A. The inspection certificate.

Q. And the Bill of Lading too I suppose? A. Yes.

Q. And the inspection certificate was something then you regarded as for the buyers protection? A. For the buyers use.

Q. The buyers protection? A. To a degree.

Q. Certainly not for the vendors protection? A. No.

Q. Then I suppose your recollection of what occurred before you wrote down the words "inspection certificate" is not complete is it? A. I cannot recall the whole conversation that day. 20

Q. I beg your pardon? A. I cannot recall the whole of the conversation that day.

Q. It was quite apparent to you during the course of the discussion you had with Mrs. Davey which you can recall that she was attaching importance both to the giving of an inspection certificate and to the identity of the giver? A. Yes.

Q. It was quite obvious to you was it not? A. Yes.

Q. You had explained quite a number of things about this application form to Mrs. Davey had you not? A. Yes.

Q. You would agree it is quite possible that you had a discussion with Mrs. Davey as to what an inspection certificate was? A. No. 30

Q. Why not? What makes you so certain? A. Mrs. Davey knew she wanted an inspection certificate so that is all the discussion there was about it except she wanted it issued by Raymond and Company. I suggested to her it was not a good idea that the beneficiary issue it. She insisted she wanted it done so we arranged for it to be done on that basis.

Q. Why did you suggest to her it was not a good thing that the beneficiary should issue it? A. It is preferable that it be done by some independent body.

Q. What should be done by some independent body? A. The inspection.

Q. The inspection of what? A. Of the merchandise.

Q. Of the goods? A. Yes.

Q. And that the inspection of the goods should be certified to by an independent body? A. Yes.

Q. That was what you believed at the time was it not? A. Yes.

Q. That is what you told Mrs. Davey was it not? A. Yes.

Q. You told her that it would be preferable for a certificate of inspection about the goods to be certified to by an independent body did you not? A. Yes.

Q. You knew very well that the certificate of inspection was one relating to an inspection of the goods? A. Yes.

Q. And you knew it was one related to their inspection for the purpose of ascertaining their quality did you not? A. Their condition. 10

Q. That is their quality is it not? A. Yes.

Q. And you said so to Mrs. Davey didn't you? A. Yes.

Q. She had told you had she not that she wanted to be assured that there was a certificate that the goods were up to standard or words to that effect? A. She said she wanted a certificate of inspection.

Q. That the goods were up to standard? A. A standard of what?

Q. I am asking you? A. No.

Q. She told you she wanted a certificate about the goods didn't she? A. Yes.

Q. That the goods had been inspected? A. Yes. 20

Q. And inspected for the purpose of establishing that the goods were up to standard. She told you that didn't she? A. No.

Q. She told you she wanted a certificate that the goods had been inspected for the purpose of ascertaining their quality? A. Perhaps.

Q. She did didn't she? A. I am not sure.

Q. You are not prepared to deny it? A. I am not sure whether she said it or not.

Q. I beg your pardon? A. I am not sure whether she said it or not.

Q. You are not prepared to deny that she said it are you? A. No.

Q. It was your view at this time that if an independent authority inspected the goods the certificate would be worth more, be more valuable, than if an interested party did? A. Yes. 30

Q. And then that was why you said to her it is better to have an inspection certificate, as I understand you by an independent authority? A. Yes.

Q. There was no doubt in your mind you were talking, as you have mentioned, about a certificate about thy goods? A. Yes.

Q. And their quality? (Objected to.)

Q. Have you forgotten the question? A. Yes, I would like to hear it again.

(Two previous questions read.)

WITNESS: Yes.

MR. BYERS: Q. Mrs. Davey also made some reference to you did she about the First National City Bank? A. She did.

Q. She told you that she had been informed that that was a reputable bank? A. Yes.

Q. And she told you she had been informed that Raymond and Company were reputable people? A. Not that day.

Q. Not that day? Later she told you that did she? A. Yes.

Q. At any rate as I understand you she told you on that day that Raymond and Company in her view would not let her down? A. Yes.

Q. That was her phrase? (Not answered.)

HIS HONOUR: That was on the 16th?

MR. BYERS: Q. On the 16th December? A. Yes.

Q. You gathered from that that Raymond and Company were people whom she trusted? A. Yes.

Q. And you understood from that of course that they were persons who she trusted to give a true certificate about the goods? A. Yes.

Q. And to give a true certificate about the quality? A. Yes.

Q. It was after the discussion you mentioned you wrote in the word "beneficiary's"? A. Yes.

Q. At her insistance? A. Yes.

Q. Do I understand you to tell his Honour that it is your recollection that you saw Exhibit T in Mrs. Davey's presence? (shown document) A. Yes, as far as I know I remember Mrs. Davey was there.

Q. You observed of course that day in February 1967 that there had been written into the application form the words "letter of credit to be released upon Ryamond and Company's certificate of inspection"? A. Yes.

Q. You observed that did you not? A. Yes.

Q. And you remembered no doubt the previous discussion you had had in December with Mrs. Davey? A. Yes.

Q. And it was present to your mind on this occasion in February that the certificate of inspection that she was seeking was one to be given by Raymond and Company? A. That is what it states in the requisition.

Q. That is what you understood it was? A. Yes, when it was lodged.

Q. I beg your pardon? A. When it was lodged.

Q. And there was some discussion was there not between you and Mrs. Davey before you wrote in the words "certificate of inspection" in your own hand? A. Yes.

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Q. And that discussion was about what a certificate of inspection was? A. I cannot recall any of the discussion.

Q. You cannot recall any of it? A. No.

Q. Can't you? You have just got a blank about that have you? A. Yes.

Q. You just don't know one way or the other what was said, that is right, is it not? A. No, I cannot recall any of it.

Q. You did strike out the words "letter of credit to be released upon Raymond and Company Limited certificate of inspection" didn't you? A. Yes.

Q. And it is your recollection that Mrs. Davey was insistent that the certificate of inspection should be given by Raymond and Company? A. That was in December. 10

Q. She told you in December that she could depend upon Raymond and Company? A. Yes.

Q. And she told you in February she trusted Raymond and Company? A. I don't know when she told me.

Q. You said she told you that did you not in February, you said that a few moments ago.

HIS HONOUR: Do you mean February or December?

MR. BYERS: I thought I put it specifically.

HIS HONOUR: You said it just then, carry on Mr. Byers.

MR. BYERS: Q. She undoubtedly said on an occasion later than December that she trusted Raymond and Company? A. Yes.

Q. You have a positive recollection that was said by her have you not? A. Yes. 20

Q. That was said by her was it not in relation to the giving of a certificate of inspection? A. No.

Q. In what context was it said? A. We were talking about generalities one day and we mentioned Raymond and Company. I asked her something about them and she said she trusted them.

Q. Just a little more. Can you remember any more? A. No.

Q. Generalities? A. Yes.

Q. Did she mention Raymond and Company? A. Yes, we were talking about Raymond and Company.

Q. So you were talking specifically about Raymond and Company were you? A. Among other things. 30

Q. And in connection no doubt with her business activities? A. Yes.

Q. Relating to the import of goods by her company from Taiwan? A. That didn't come in to it.

Q. What makes you so certain about that? A. There was no specific mention of importation of goods.

Q. Raymond and Company you knew or you understood at the time you had this discussion about generalities, was her agent in Taiwan? A. Yes.

Q. And you understood at this point of time did you not that it was her agent's certificate of inspection she wanted? A. When was this, when this came up?

Q. When this discussion took place? A. No, we were not discussing certificates.

Q. You cannot remember what you were discussing can you except that you discussed the words "Raymond and Company"? A. Yes, we discussed Raymond and Company.

Q. You are not prepared to deny that it was in connection with a giving by them of a certificate of inspection are you? A. Yes.

Q. You are? A. Yes.

Q. What is it in connection with which Raymond and Company was mentioned? A. I cannot recall that.

Q. You are not prepared to deny it was the giving of a certificate of inspection are you? A. Yes.

Q. You are prepared to deny it? A. Yes.

Q. Can you tell us what it is that persuades you here in the witness box to that degree of certainty that enables you to deny Raymond and Company was mentioned in connection with certificates of inspection? A. I am certain we were not discussing documents.

HIS HONOUR: Q. Repeat that? A. I am certain we were not discussing documents.

MR. BYERS: Q. What were you discussing? A. I cannot recall exactly.

Q. Or at all? A. No.

Q. Can you remember when it was that this discussion took place? A. No.

Q. It was certainly after December as I understand you? A. Yes.

Q. And it could have been in February? A. It could have been.

Q. It took place I suppose in the Overseas Department at the Head Office of the bank? A. Yes.

Q. When Mrs. Davey came to see you? A. Yes.

Q. She only came to see you there upon business? A. She was in the office for business but she did not always have business to transact with me when she called.

Q. You mean she paid you social calls there? A. If you like, yes.

Q. I beg your pardon? A. Yes.

Q. Did she? A. Yes.

Q. How many of these? A. Several.

Q. What is your recollection as to what was discussed on the social calls? (Objected to.)

Q. Give us to the best of your recollection the topic that was discussed at the first of these social calls? A. I cannot say which was the first.

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Q. Can you tell his Honour when the first such social call occurred? A. No.

Q. Or the next? A. No.

Q. Or the next? A. No.

Q. How many? A. I don't know.

Q. Twenty? A. No. There were a few.

Q. Ten? A. Half a dozen approximately.

Q. Do you seriously say to His Honour that Mrs. Davey came down to see you in the bank on half a dozen occasions on social visits? A. Yes.

Q. Are you certain of that? A. Yes.

Q. You say that with full knowledge that you are on your oath do you? (Objected to.) 10

Q. Do you? A. Yes.

Q. Can you remember what was discussed on any one of them? A. On one occasion she wanted to make a phone call to Mr. Peachey at Gollin and Company and on another occasion she asked me to telephone a garage and ask them to bring her car around.

Q. Your memory is improving – some more? A. I cannot recall any others at the moment.

Q. It is clear is it not you cannot recall on any of these social visits Mrs. Davey discussing Raymond and Company? A. No. I think it was one of those.

Q. You think it was on one? A. Yes.

Q. It could well have been could it not that she mentioned Raymond and Company on the occasion she saw you in February of 1967 in connection with the requisition which is Exhibit T? A. It would be mentioned on that discussion. 20

Q. It could well have been that on that occasion she said she trusted them? A. It could have been.

Q. And you recollect why it was that you struck out the words "letter of credit" down to the words "certificate of inspection" in Exhibit T? A. No.

Q. No idea? A. None at all.

Q. Or why it was that you put in their place the words "certificate of inspection"? A. I would insert that in that area on the requisition so that the typist would put it in the correct place.

Q. Can you recollect why it was you struck out the typewritten words and inserted the words "certificate of inspection"? A. No. 30

Q. You have just got no idea on that? A. None at all.

Q. It could well have been I think you have told his Honour that Mrs. Davey said to you in February when this form was presented to you that she trusted Raymond and Company? A. It could have been then.

Q. You would not deny would you that you told her it was unnecessary to insert into the requisition form the identity of the person to give the certificate of inspection? A. No.

Q. You would not deny that would you? A. No.

Q. It was your view was it not in February that the certificate of inspection referred to in Exhibit T was one to be given by Raymond and Company? A. Yes.

Q. And I suggest to you that she said to you, "Why don't you put it in on this occasion that Raymond and Company is to give the certificate of inspection?" and you said, "it was not necessary" A. No.

Q. You would not deny it would you? A. I deny that I would say it is not necessary.

Q. Do you deny you would say "it is not necessary"? A. Yes.

Q. Did you regard it as necessary to specify the giver of the certificate of inspection? A. If it is to be issued by a specific individual, yes.

Q. What do you mean by a specific individual? A. A company, Raymond and Company. 10

Q. I beg your pardon? A. Say "Raymond and Company" instead of "individual".

Q. Do you mean to say that if it was to be given by anyone other than the beneficiary the identity of the giver had to be specified? A. No, as it stands there the certificate of inspection, now it can be given by anyone.

Q. By anyone? A. Yes.

Q. And yet it was your understanding that the bank's recommendation was it should be given, the certificate of inspection, by an independent person? A. Yes (Objected to).

Q. It was your understanding that Mrs. Davey was insisting on a certificate of inspection to be given by Raymond and Company (Objected to).

MR. KENNY: I would ask at what point of time. 20

HIS HONOUR: I think it is reasonably clear you are still asking about this point of time.

MR. BYERS: Q. That is quite clear to you is it not? A. Yes.

Q. And it was clear to you that the beneficiary of the requisition for letter of credit in February 1967 was to be Raymond and Company? A. No, if it had been that way I would have continued to write on after "certificate of inspection" — either "to be issued by Raymond and Company" or I would have inserted the word "beneficiary's" before it.

Q. Would you in the absence of a recollection one way or the other? A. Yes.

Q. You realised that the beneficiary of this credit was to be Raymond and Company? A. Yes.

HIS HONOUR: Beneficiary of what? 30

MR. BYERS: Of the letter of credit.

Q. Was to be Raymond and Company? A. Yes.

Q. You realised that Mrs. Davey was insisting that Raymond and Company was a firm she trusted? A. Yes.

Q. There is no doubt about that is there? A. No doubt.

Q. And you remember that at this time around about February 1967 she had been insisting that the certificate of inspection was to be given by Raymond and Company? A. No, she only really insisted in December 1966.

Q. But you see what she had put down in the document then? A. Yes.

Q. There is no doubt it is the fact she was insisting that the certificate of inspection should be given by Raymond and Company – Exhibit L – (Objected to. Question withdrawn.)

Q. You remember reading Exhibit T in February 1967? A. Yes.

Q. And you realised that Exhibit T has in it an indication that Mrs. Davey wanted a certificate of inspection to be given by Raymond and Company? A. Yes.

Q. There is no doubt about that is there? A. No.

Q. And there is no doubt in your mind that at this time around February 1967 she told you that she trusted Raymond and Company? A. That is right.

Q. There is no doubt in your mind that the beneficiary of the credit was to be Raymond and Company? A. That is correct. 10

Q. And there is no doubt that it was you that crossed out the words “Raymond and Company” relating to the certificate of inspection? A. That is correct.

Q. And that you inserted in their place the words “certificate of inspection”? A. Yes.

Q. You would not be prepared to be deny would you that you told Mrs. Davey that she could get a certificate of inspection by Raymond and Company although the requisition did not mention that fact? A. They would be entitled to issue a certificate of inspection.

Q. Raymond and Company? A. Yes.

Q. And you also told her she would get a certificate of inspection from Raymond and Company although they were not named in the letter of credit as the givers of the certificate? A. No. 20

Q. Do you deny you could have said that? A. Yes I do.

Q. You do? A. Yes, I would not tell her she would get it from Raymond and Company.

Q. HIS HONOUR: I think what you are saying is that the words “certificate of inspection” would justify a certificate of inspection by Raymond and Company but would also justify one by other persons? A. That is correct.

Q. That is what you said? A. Yes.

MR. BYERS: Q. You took that view did you although to your knowledge she was telling you in February she wanted a certificate of inspection from Raymond and Company? (Objected to.) 30

HIS HONOUR: Q. I will ask you these questions but do not answer them until I hear what both counsels say. I think you said that there were two occasions when you saw Mrs. Davey at the bank when you saw her at the counter? A. Yes.

Q. That is correct is it not? A. Yes.

Q. When you saw her on the other occasions when you did see her, where did you see her? A. It would be at the bank counter in the building, the same place.

Q. The bank counter on all occasions? A. Yes.

(Further hearing adjourned until 10.30 a.m. Friday 13th March, 1970.)

(The following amendments were made to the transcript;

p.144 Q.5 to read “. . . before the credit was paid?”

p.144, the 11th question, “Have” to be amended to “had”.

p.126, the last question, to read “So that you might know . . . ”.)

WILLIAM GEORGE CARMAN

On former oath:

HIS HONOUR: Q. Mr. Carman, you are bound by your oath to tell the truth. Do you understand? A. Yes.

CROSS-EXAMINATION (continued):

MR. BYERS: Q. (Ex. T shown to witness)

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(To his Honour) The last question my learned friend objected to on p.157 is quite rightly objected to because it does not even convey what I wished to ask so I am indebted to my learned friend in that respect.

Might I formally withdraw that question, the first question on top of p.157.

(To witness) Now Mr. Carman, when you saw Mrs. Davey in February of 1967 you had some discussion with her about the requisition form that is Ex. T? A. Yes.

Q. You had observed the matter that is typed into the form referring to Raymond & Company's Certificate of inspection? A. Yes.

Q. You took that to be a statement by the requisitioner that what was wanted was a certificate of inspection given by Raymond & Company? A. Yes.

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Q. As I understand you there occurred some conversation between yourself and whoever else was there, Mrs. Davey and Mr. Egan before the words were crossed out to which I have just drawn your attention? A. Yes.

Q. Again, as I understand you, you have no recollection of what that conversation was? A. That is correct.

Q. You have thought about this, have you, on a number of occasions and you just cannot remember? A. Yes.

Q. I take it you would not be prepared to deny, would you, that Mrs. Davey – as she then was – spoke to you before you crossed out the words I have referred to? A. No, I would not deny that.

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Q. Nor would you deny that during that conversation – I withdraw that. Nor would you deny that she mentioned before you struck out the typewritten words that she wanted a certificate of inspection given by Raymond & Company and no one else? A. No.

HIS HONOUR: Q. That means, Mr. Carman, does it that you would not deny? A. I would not deny.

MR. BYERS: Q. Nor, of course, would you be – I withdraw that.

You wrote in, as you have told his Honour, the words, “Certificate of inspection” appearing on Ex. T? A. Yes.

Q. I take it that having no recollection of the conversation you would not be prepared to deny that you told Mrs. Davey words to this effect, "Who else but your agent could give a certificate of inspection?" A. No, I would not say that.

Q. Would you deny it? A. Yes.

Q. You would? A. I would not say it.

Q. You mean that is not the sort of thing you would say; is that what you are saying? A. That is correct.

Q. Why do you say that? A. It is not the type of answer I would give Mrs. Davey if she asked a question.

Q. That is the only reason you have for denying it, is it not? A. Yes. 10

Q. You think it is not the sort of probable thing? A. That is correct.

Q. I suppose it was a probable thing, was it not, that there was some discussion on this occasion about the alteration which you made to Ex. T? A. Yes, there would be a discussion.

Q. There is no doubt about that, is there? A. None at all.

Q. Following that discussion you wrote in the words in your hand, "Certificate of inspection."? A. Yes.

Q. There is no doubt, so far as your recollection extends, that round about this time — that is, February 1967 — it was your understanding that Mrs. Davey wished to have a certificate of inspection given by Raymond & Company? A. If she had insisted on that I would have added that after the words "Certificate of Inspection." 20

Q. That is not quite what I asked you. You see, it is your recollection, is it not, that round about this time Mrs. Davey had indicated to you that she wanted a Certificate of Inspection given by Raymond & Company? A. Yes.

Q. I suppose between December 1966 and July 1967 you saw Mrs. Davey on business on a number of occasions? A. It is quite likely.

Q. It could have been five or six occasions? A. Yes.

Q. The only topic that she saw you about was the establishment, by your bank, on the plaintiff's behalf, of letters of credit? A. Yes.

Q. And in relation to the import of goods into Australia from Taiwan? A. Yes. 30

Q. It is your recollection in each such — I withdraw that. It is your recollection, is it not, that each letter of credit with which you were concerned during that period of time was one the beneficiary of which was Raymond & Company? (No answer.)

MR. BYERS: I am sorry. May I withdraw that Your Honour?

HIS HONOUR: Yes.

MR. BYERS: Q. Mrs Davey during that period of time, saw you as you have indicated to his Honour about the establishment of letters of credit? A. Yes.

Q. Each of the letters of credit that the bank established as a result of your seeing Mrs. Davey were letters of credit of which Raymond & Company was the beneficiary? A. I do not know whether Raymond & Company was the beneficiary in all instances but Raymond & Company was the beneficiary in some cases. 40

Q. And can you recollect any letter of credit between December 1966 and the end of July of 1967 which your bank established as the result of you seeing Mrs. Davey of which Raymond & Company was not the beneficiary? A. No, not off-hand.

Q. It is your recollection, is it not, that all the letters of credit that were established were in relation to the import of goods from Taiwan? A. Yes.

Q. Of course in addition to seeing Mrs. Davey you also saw Mr. Egan? A. Yes.

Q. And you would have – I withdraw that question. You saw him on a number of occasions as well, did you not, between the period commencing in December 1966 and, say, concluding with the end of July 1967? A. Yes.

Q. You would have seen Mr. Egan, say, up to about 9 times? A. Yes, possibly.

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Q. In relation to the July 1967 requisition you saw him on a number of occasions, did you not? A. No.

Q. No? A. No.

Q. Each time you saw Mrs. Davey you saw her at the bank's Overseas – might I withdraw that also, Your Honour?

Each time you saw Mrs. Davey during that period, December 1966 to the end of July 1967, you saw her at the bank's Head Office? A. Yes.

Q. And in the Overseas Department of that branch? A. Yes.

Q. Each time you saw Mr. Egan likewise you saw him in that Department of that branch? A. Yes.

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Q. You saw him also, did you not, in relation to the establishment of letters of credit for the plaintiff company by your bank? A. Yes.

Q. You saw him, in particular, in relation to the phraseology that was to be written into the requisitions for the credit? A. Yes.

Q. Indeed you showed Egan, did you not, how to complete a requisition? A. That is correct.

Q. That would be fairly early in the period, would it? A. Yes, the end of December 1966 or early 1967.

Q. I take it it would accord with your recollection that Egan asked you how he should fill it in? A. Yes.

Q. And that you showed him how to do it? A. That is correct.

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Q. And that you assisted him in filling it in? A. I had a look at it after he filled one in.

Q. I beg your pardon? A. I had a look at a requisition after he filled one in.

Q. You assisted him either in relation to the initial filling in of the requisition or its correctness when brought to you already filled in? A. Yes.

Q. You gave him advice, did you not, upon the phraseology of the requisition? A. Yes.

Q. You told him to alter words that he had previously typed in? A. Yes.

Q. Indeed it is your recollection that that happened, did it not, in February 1967 with Ex. T which you have in front of you? A. Yes.

Q. And also with the requisition which is dated January 1967? Do you remember that one at the moment? A. That was for Easter Novelties, if I recall correctly.

HIS HONOUR: Yes.

(Ex. MM shown to witness).

MR. BYERS: Q. You remember that form now, do you? A. Yes.

Q. Would you turn over to the back of the form? I think you told his Honour at the beginning of the cross-examination yesterday that the pencil writing in the back of the form is in your hand? A. That is correct.

Q. You would agree, looking to that document, that what you told Egan to do was to fill it in in accordance – I withdraw that.

You would agree, having seen that form, that what you told Egan to do was to change the phraseology on the back of the form? A. Yes.

Q. In accordance with the suggestions you had made? A. Yes.

Q. And that was done; do you remember? A. Yes.

Q. You did notice, did you not, that the – (Ex. R shown to witness) – completed requisition that, I think, is Ex. R had on the back of it a reference to Raymond & Company certifying certain matters on the invoice? A. Yes.

Q. I suppose you noticed at the time that the requisitioner was seeking a document from Raymond & Company as a condition of payment of the credit? A. Yes.

Q. And the document was, amongst others, that Raymond & Company was to certify on the invoice that the goods shipped are in accordance with, and the conditions adhered to, as detailed in Jalsard Trading Company's letter to them: I think it is dated, is it 11th January, 1967? A. Yes.

Q. Did you have a discussion with Egan do you remember, as to what that letter of January 1967, 11th January 1967 stated as to the conditions? A. No.

Q. I suppose it was quite apparent to you in January 1967 when you saw this form that the plaintiff was seeking a document from Raymond & Company stating that the goods complied with certain conditions? A. That is correct.

Q. It would be right to say, would it not, that there were some number of attempts in July 1967 on the part of the plaintiff company to fill up a requisition in a form to your satisfaction? A. No, there was only one.

Q. Did not Egan say to you that he gave up the attempt to fill in the requisition – words to this effect – and asked you to complete it? A. No. As I recall I made that requisition out for Mrs. Davey.

Q. That is in July? A. Yes.

Q. But at any rate you made it out? A. Yes.

Q. After attempts had previously been made to fill out the form on the plaintiff's behalf? A. No. I cannot answer that. I do not know.

Q. You do not remember that? A. No.

Q. You do not remember one way or the other? A. No, I do not know that there was any attempt on their behalf to make one up.

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Q. (Page 101 and the top of p. 102) Did Egan say to you, "Well, look George, how about you preparing it?" that is the July requisition, "the way it should be," A. No, I have no recollection of that either.

Q. You would not be prepared to deny that, of course, would you? A. As far as I am aware Mr. Egan was not with Mr. Davey on that occasion.

Q. On an earlier occasion – might I withdraw that?

Would you be prepared to deny that on an occasion earlier than that on which the July requisition was filled up Egan said to you, "look George, how about you preparing it the way it should be?" A. That is possible.

Q. And you knew did you not, when you first saw Egan that he was seeking from you assistance as to the way in which the requisition should be completed? A. Yes. 10

Q. And assistance on the method of establishing a credit? A. Yes.

Q. Including assistance in relation to the statements of the additional documents? A. Yes.

HIS HONOUR: Mr. Byers, I just want to be sure that I followed that. Are your questions referring to the very first time he saw Egan? That is the way I understood it.

MR. KENNY: The way I understood it, Your Honour.

MR. BYERS: As your Honour pleases; I will clarify it.

HIS HONOUR: Clarify it and just make sure the witness understood it if we do take different views about it.

MR. BYERS: Q. First of all that was certainly your view when you first saw Egan? A. Yes. 20

Q. That continued to be your understanding of the situation thereafter? A. Oh no. Once he knew how to do it he did not come seeking assistance after that.

Q. It was, in fact, quite apparent that in February you changed the form, did you not? A. Yes.

Q. So it was quite apparent that in February, at any event, he was still seeking your assistance? A. Yes.

Q. It was quite apparent in February that Mrs. Davey was still seeking your assistance? A. Yes.

Q. In July it was you who filled out the requisition? A. That is correct.

Q. You did it, as I understand you, in Mrs. Davey's presence in the Overseas Department? A. Yes. 30

Q. For her? A. That is correct.

Q. It was apparent to you still in July, was it not, that in the filling of that form – the filling up of that form – you were assisting her? A. That is right.

Q. I suppose from time to time in relation to that form you gave her advice, did you not? A. Only in relation to the completion of it.

Q. In relation to the completion of it. I see. (Ex. 1 shown to witness). Have you Ex. 1? A. Yes, I have it.

Q. It was you who phrased the words "beneficiary to certify on invoices that each box contains ten pieces and that each export case contains twelve dozen boxes." A. Yes.

Q. You did that at Mrs. Davey's request? A. Yes.

Q. She asking you to do it? A. Yes.

Q. In doing that you were assisting her, were you not, on your understanding of the situation, in relation to the obtaining of the credit? A. Yes.

Q. And in relation to the obtaining of a document without which the credit would not be paid? A. It could be paid but it was a document that was required.

Q. That is right; it was a document required before the credit would be paid? A. The bank in Taiwan could pay it but they could not do a clean negotiation under it.

Q. It is your understanding that this was one of the documents that were required, was it not? A. Yes.

Q. By a buyer? A. That is correct.

Q. And that there was also required by the buyer a packing list? A. Yes.

Q. And that the buyer, to your understanding, requesting that there should appear on the invoices the certification that is set out before the credit was paid? A. No. As I said earlier the negotiating bank in Taiwan can negotiate that credit but it would require Mrs. Davey's confirmation when documents were received in Australia but they could pay it but they could not do what we call a clean negotiation.

Q. You mean it was your understanding, was it, that the Bank in Taiwan would pay the beneficiary although the beneficiary had not certified on the invoices the matters the requisition refers to? A. They would pay it under guarantee.

Q. I am asking you would they pay it; was that your understanding? A. I do not know. That is up to the individual bank.

Q. Up to the individual bank? A. Yes.

Q. It is your agent? A. That is correct.

HIS HONOUR: I think, Mr. Byers, you might have been putting to the witness evidence to him but he did say "could" rather than "would".

That was his evidence. Now, of course, you might wish to put something else to him. 30

MR. BYERS: Q. It was your understanding that the bank could pay it; is that right? A. Under the guarantee.

Q. Without the buyer's knowledge or consent? A. Yes.

Q. Under guarantee from whom? A. From the beneficiary.

Q. From the seller of the goods? A. Yes.

Q. In Taiwan? A. Yes.

Q. And the guarantee was, what, a guarantee that he would certify? A. No, guarantee that he would refund to the negotiating bank in Taiwan if the documents as presented were not acceptable to the accountee in Australia.

Q. So that meant, did it, that it was your understanding that the bank in Taiwan had some sort of right to sue the beneficiary if he did not honour his guarantee? (No answer.) (Objected to.)

HIS HONOUR: The witness said, "Yes."

I myself have not followed the question, I must say, but the witness said "Yes."

MR. BYERS: Q. That is what – I withdraw that. Did you tell Mrs. Davey that that was your understanding of the effect of that phrase which you have written down on Ex. 1? A. It does not only apply to the declaration – (Objected to. Question withdrawn).

Q. Did you tell Mrs. Davey that that was your understanding of the effect of putting that phrase in Ex. 1? A. No. It would not have that effect. It need not necessarily apply to the certificate on the invoice. It could apply to any document. 10

Q. What could apply to any document? A. That the negotiating bank in Taiwan would pay under reserve or under guarantee.

Q. You mean without any document? A. Without a particular document.

Q. Without any documents? A. No.

(Mr. Kenny spoke with Mr. Byers).

Q. Without any document? A. No.

Q. Well, without what document? A. Well, without a particular document.

Q. For example, without a commercial invoice which, you see, is written down on Ex. 1? A. No. They would require the basic documents. 20

Q. Is it your understanding that the bank in Taiwan would not pay except against a commercial invoice? A. That is right.

Q. That is right, and would not pay except against a commercial invoice together with a Certified Australian Customs Invoice? A. Yes.

Q. And would not pay except against those two types of invoices and full set of clean "on board" or shipped bills of lading? A. Well, they could do it if the bills of lading were not in order; if they were unclean they could do it.

Q. That was your understanding was it? (No answer.)

Q. Was that your understanding, that the bank in Taiwan could pay the beneficiary without notifying the plaintiff although there was not produced to it a full set of clean "on board" or shipped negotiable bills of lading? A. It is up to them to decide whether they will or they will not. 30

Q. Up to them to decide; I see. Did you tell Mrs. Davey that? A. No.

Q. What is the other Exhibit you have in your hand? A. I have T. MM and R.

HIS HONOUR: And "1".

WITNESS: That is so.

MR. BYERS: Will you look at Ex. T. You have it? A. Yes.

Q. Was it your understanding that the bank in Taiwan could pay the credit without notifying the plaintiff although there was not produced a certificate of inspection? A. Yes.

Q. It was? A. But Mrs. Davey would be notified in writing when the documents were received here that that certificate was not supplied.

Q. Was it your understanding that the bank in Taiwan could pay the beneficiary under the credit without the production of a certificate of inspection? A. Yes, they could pay but it would not be a clean negotiation.

Q. Was it your understanding that the bank in Taiwan could pay the beneficiary although there was no certificate of inspection? (Objected to on the grounds the question had been asked before and that it was irrelevant).

HIS HONOUR: I agree with both propositions of law you have put but I do not think I will stop this cross-examination.

(Last question read).

WITNESS: Yes but not under a clean negotiation.

MR. BYERS: Q. It was your understanding that the bank in Taiwan could pay the beneficiary under the credit although no certificate of inspection was produced? A. Yes.

Q. And was that your understanding from the period December 1966 to the end of August 1967? A. Yes.

Q. Did you tell Mrs. Davey that? A. No.

Q. Then, when you used the expression, "it was not a clean negotiation" what did you mean to convey to his Honour? A. It simply means that the documents as called for under that letter of credit are not presented.

Q. Are not presented and, nonetheless, the beneficiary is paid? A. It depends on the bank. He could be.

Q. He could be paid? A. Yes.

HIS HONOUR: Q. There would not be a negotiation unless he had been paid? A. That is right.

HIS HONOUR: What the witness is saying is that it is an unclean negotiation in drawing on the credit when all the documents he has described are not presented.

I think I follow this but I would be very glad if you would pursue it. I remember what you said earlier too of course.

MR. BYERS: Then I think you have told his Honour you did not tell Mrs. Davey that, did you? A. That is correct.

Q. Nor Egan? A. No.

Q. You nonetheless failed to tell her although you realised in February her reliance, so she was saying to you, upon a certificate of inspection given by Raymond & Company? (Objected to).

HIS HONOUR: Do you mind, gentlemen, if I ask Mr. Carman to withdraw and I say my understanding of the evidence which I do not think I should say in his presence.

(Mr. Carman retired from the Court).

IN THE ABSENCE OF THE WITNESS:

HIS HONOUR: What I understand by the evidence is you have a clean negotiation when all the documents required to be handed over before a negotiation are handed over.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Carman –
cross-examined*

You have an unclean negotiation when all the documents required to be handed over are not handed over but, nevertheless, there must be handed over in an unclean one what the witness had described, and elaborated, as the basic documents; the bank, that is to say, the paying bank has discretion to make an unclean negotiation but it does not do so unless it gets a guarantee from the beneficiary and notifies the drawer or the requisitioner of the letter. As I follow the evidence it is that this unclean negotiation is just not binding on the requisitioner. The object of taking a guarantee from the beneficiary is that the requisitioner says, "No, this is no good to me." Then the paying bank, it can turn around and say to the beneficiary, "You pay up under your guarantee."

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I think that is the evidence that has been given. I may be wrong but that is how I understand it.

MR. BYERS: I would assent, with respect, to Your Honour's exposition of it. Your Honour sees there are other issues involved, of course?

HIS HONOUR: Yes, I see that, of course, but Mr. Kenny's objection, I think, went to this point, I think too, that I have just been explaining, that is, explaining my understanding.

MR. BYERS: I see.

(Question read).

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MR. KENNY: I take a further objection too.

HIS HONOUR: I had better hear you, Mr. Kenny, if you wish to argue.

MR. KENNY: Only to say this; to assume it refers – and this is additional – to a knowledge of her reliance upon a certificate given by Raymond & Company.

I do not know that the witness has said that all times in February he was aware of her reliance upon a certificate of inspection given by Raymond & Company. He said that at some stage in February but he has not, as far as I recollect it, yet been asked whether he knew or thought that she was relying upon a certificate of inspection by Raymond & Company.

(Mr. Kenny addresses further).

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(Mr. Byers withdrew his question).

(The witness William George Carman returned to Court.)

HIS HONOUR: (To witness) You are still bound by the same oath.

MR. BYERS: Q. You did not tell Mrs. Davey, did you, that the Taiwanese Bank could pay the beneficiary under the credit although no certificate of inspection was produced by the beneficiary? A. No.

Q. You did not tell her anything in relation to an unclean negotiation? A. No.

Q. I wish to ask you about your understanding of the period commencing in the beginning of December 1966 and ending at the end of August 1967, do you understand that? A. Yes.

Q. In that period it was your understanding, wasn't it, that the Taiwanese Bank could pay the beneficiary under the credit although no certificate of inspection was produced? A. Yes.

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Q. That in such circumstances it was your understanding that the Taiwanese Bank would require from the beneficiary a guarantee? A. That is their internal procedure, but that is normally what they would take.

Q. Was that your understanding? A. Yes.

Q. And was it your understanding that that procedure held good in Taiwan? A. Held good?

Q. Yes. A. Yes.

Q. It was? A. Yes.

Q. Had you taken any steps yourself to verify that fact? A. No.

Q. What did you have in mind as to the form of the guarantee that would be required in the case of an unclean negotiation? (Objected to as irrelevant; allowed). A. I would not have any idea – that would be for the bank in Taiwan. 10

Q. You did appreciate that if your understanding held good in Taiwan that the beneficiary would receive from the Taiwanese Bank the money under the credit? A. Yes.

Q. He would give in return not the stipulated documents but documents omitting, for example, a certificate of inspection? A. Yes.

Q. And that in return for giving documents short in that respect the Taiwanese Bank would obtain a guarantee from the beneficiary; that was right, was it not? A. Yes.

Q. And I suppose you appreciated that it was a guarantee by the beneficiary to pay money to the Taiwanese Bank? A. Yes. 20

Q. And I suppose it was your understanding that the value of that promise to pay was as good as the wealth of the person who made it? A. Yes.

Q. And you appreciated the result would be that goods would be shipped and the beneficiary paid without the production of the documents stipulated in the requisition? A. Yes.

Q. And stipulated in the letter of credit also? A. Yes.

Q. I take it you told Mrs. Davey during that period none of these things? A. That is correct.

Q. Nor did you tell during this period Mr. Egan any of these things? A. That is correct.

Q. And I suppose it was your understanding that should there be a negotiation of this type – that is an unclean negotiation, the goods no doubt in due course would arrive in Australia? A. Yes. 30

Q. And those goods, of course, you understood in such a situation might not be up to sample? A. No, it is possible.

Q. Was it your understanding then that your customer would be then bound to keep the goods? A. No.

*Q. Whose goods, in your understanding, were they? A. At that time . . . (Objected to).

(Mr. Kenny tenders without objection letter dated 24th September, 1969, from Messrs. Sly & Russell to Messrs. Dibbs, Crowther & Osborne. Marked Ex. 6.)

(The witness retired from the Courtroom during the argument of counsel upon the above objection.)

HIS HONOUR: This objection and argument on it has been on an important but confined point, and I say confined to indicate it is not on the whole scope of the action. I am not going to say at this stage whether I would agree with the substance of Mr. Kenny's argument, or whether I would disagree with it; indeed, were I to express an opinion on it now it might need to be changed at the end of the evidence.

I am not able to hold that this evidence is outside the particulars, although I must hold that it is admissible. The ultimate result may be, of course, when the evidence is completed and I come to weigh up the case I do give effect to some such matters as Mr. Kenny has been urging upon me; in other words, I am trying to emphasise that I am not expressing at this point of time any opinion upon whether this evidence, if accepted on the whole, is going to play any part in the establishment of the duty. At the present time I am simply ruling that it may be so.

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(The witness William George Carman returned to Court.)

HIS HONOUR: (To witness). You are still bound by the same oath.

(The question marked * above read to the witness by the Court Reporter.)

WITNESS: At that time they would be with the bank in Taiwan.

MR. BYERS: Q. Belong to the bank in Taiwan? A. By virtue of the fact that at that stage they are still their documents.

Q. It was your understanding in this period of time that I referred to before, that if the goods were shipped in the circumstances I have mentioned, the goods would belong to the Taiwanese Bank? A. That is correct.

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Q. I understand you to say that if the credit were made without the production of a certificate of inspection, it was your understanding at that period of time that the Taiwanese Bank would be obliged to inform the buyer? (Objected to: question re-phrased.)

Q. So that you may be quite clear, I am limiting these questions to the case where the letter of credit calls for a certificate of inspection in those words; do you follow me? A. Yes.

Q. In such a case it was your understanding in the period that if payment was made by the Taiwanese Bank without production of a certificate of inspection that bank would inform your bank? A. That is correct.

Q. And then you would inform your customer, would that be right? A. Yes.

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Q. That the Taiwanese Bank had paid the beneficiary? A. No, we would advise our customer that documents under a certified letter of credit were held by us but that certain documents were missing.

Q. Were missing? A. Yes.

Q. And was it your understanding at the time that notwithstanding the certificate of inspection was missing that you could recover from your customer the amount the Taiwanese Bank had paid the beneficiary? A. No, our customer is not under any obligation to take up the documents if they are in accordance with the letter of credit.

Q. That was your understanding in that period of time? A. Yes.

Q. And I suppose it was your understanding at the time that you were not obliged to pay your agent either? (Objected to; question withdrawn.)

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Q. It was your understanding, was it, in this period of time that a certificate that said no more than that the goods had been expected was one which was a certificate of inspection? A. Yes.

Q. Did you inform Mrs. Davey during that period of that belief? A. No.

Q. Did you inform Mr. Egan during that period of that belief? A. No.

Q. And was it your understanding that in such a case, namely, if there was a certificate which said no more than that the goods had been inspected, the Taiwanese Bank would be entitled to pay the beneficiary? A. Yes.

Q. And that upon receipt of those documents by your bank, was it your understanding that your bank could recover the amount paid out under the credit from your customer? A. Yes, if the documents were in order, yes.

Q. If there was produced a document which certified only that the goods had been inspected? A. Yes.

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Q. And no more? A. That is correct.

Q. Did you tell Mrs. Davey that your bank could recover from her company if there was produced nothing more than a certificate of inspection stating that the goods had been inspected? A. No.

Q. It was your belief at the time, wasn't it, that what she was asking for was a certificate about the quality of the goods? A. She asked for a certificate of inspection.

Q. You remember giving some evidence yesterday, don't you? A. Yes.

Q. Did you tell her that she should insert in the requisition the words, "a certificaty of inspection certifying that the goods were up to standard"? (Objected to; allowed). A. No.

Q. It was your understanding at the time, was it, that if the requisition called for a certificate of inspection in those terms, that would be the one that the beneficiary would be obliged to give? A. I do not think the beneficiary or anyone would give a certificate in those terms.

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Q. I am asking you if the certificate stated it, it was your understanding at the time that that was the certificate the beneficiary would be obliged to give? A. If it was called for.

Q. That was your understanding, wasn't it? A. If it was called for under the credit they would be obliged to come up to it, yes.

Q. And you realised, didn't you, that the beneficiary, Raymond, had in relation to the early transactions given certificates as to the quality of the goods? A. I did not see the certificates, I do not know what they contained.

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Q. Did you make any attempt to ascertain what the certificate said before your bank sought payment from its customer? (Objected to; rejected).

Q. There was an officer in the bank whose duty it was to send out to the customer documents calling for payment in return for documents? A. That is correct.

Q. But you were not such an officer? A. That is right.

Q. You remember being shown Ex. DD by my learned friend, or have you forgotten that? A. I have forgotten it at the moment, I would like to see it.

Q. (Shown Ex. DD): You remember being asked this question (p.138),

"Q. Would the document Ex. DD, according to banking practice, be acceptable as a certificate of inspection for the purposes of the credit established by Ex. 1 (that is the July requisition) as verified by Ex. 2" (that is the August letter).

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Q. Do you remember being asked that? A. Yes.

Q. And do you remember answering "Yes"? A. Yes.

Q. Do you wish to have another look at Ex. 1 and Ex. 2? A. Ex. 2 is the amendment letter?

Q. Yes. A. No, that is alright.

Q. When you answered that question, what did you understand by the expression "certificate of inspection"? A. Mrs. Davey called for a certificate of inspection.

Q. What did you understand by the expression "certificate of inspection"? A. Certificate that the goods had been inspected.

Q. And no more? A. That is correct.

Q. You have told his Honour that you have been in the overseas department of the defendant bank for some eight years? A. Nearly eight, yes. 10

Q. Is that the extent of your experience of banking practice relating to letters of credit? A. I do not quite follow what you mean by the word "extent".

Q. Have you had experience in your career other than in that position, that is your present position? A. I have.

Q. Of banking practice in relation to letters of credit? A. Yes.

Q. You have? A. Yes.

Q. In what bank? A. The same bank.

Q. And apart from your present experience what aspect of banking practice about letters of credit were you concerned with? A. Negotiating documents under export letters of credit. 20

Q. By "negotiating documents", what do you wish to convey? A. Customers would bring into the office a set of documents relating to a letter of credit and we would have to check the documents against the letter of credit and do the negotiation.

Q. And see that the customer got paid, is that what you mean? A. Yes.

HIS HONOUR: Q. This is dealing with payment for goods shipped or exported from Australia? A. Yes, your Honour.

MR. BYERS: Q. What was the extent in terms of years of that experience? A. It would be about 18 months, I should think.

Q. And when did that occur? A. Somewhere about 1963-1964.

Q. In other words that is in the period of eight years? A. Yes. 30

Q. It is not additional experience, is that right? A. Yes, that is correct.

Q. Then I take it you are not familiar with the practice of other banks? A. No.

Q. (Shown Ex. NN): During the course of your duties in the overseas branch did you read a book called Thomson's Dictionary of Banking? A. No.

Q. Did you ever look at it? A. No.

Q. Would you agree with the definition of a "certificate of inspection" appearing in the letter of 25th March, 1968, which is Ex. NN? A. It covers certain items.

Q. Would you agree with it? A. For perishable goods, yes.

Q. Is it your understanding that a certificate of inspection is a document and only a document relating to perishable goods? A. No.

Q. Then I take it during the period I have mentioned you believed a certificate of inspection was one relating to goods other than perishable goods? A. That is correct.

Q. In relation to perishable goods, was it your belief then that a certificate of inspection which vouched only that the goods had been inspected fell within the expression "certificate of inspection"? A. Yes.

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Q. I take it then you disagree with the dictionary? A. No. they would both be acceptable.

Q. For the view you have expressed as to one of the meanings you attach to the expression you rely on your experience with the defendant bank, do you? A. Yes.

Q. And you realise, don't you, that a certificate of inspection which says no more than that the inspector has inspected the goods is just worthless? A. That is all we are obliged to accept.

Q. I am not asking you that. You realise that a certificate which certifies no more than the fact of the inspection is quite worthless? A. Yes.

Q. You have told his Honour that you have just got no recollection of the discussion that took place in February 1967, in relation to the requisition? A. That is correct.

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Q. Then, I take it that you would not be prepared to deny, would you, that you said to Mr. Egan (p.97), "It is not necessary to have all the words which you have inserted in the centre part of the form"? A. No, I would not say that.

Q. You would not? A. No.

Q. You remember, do you, or do you wish to see again the requisition which was altered by you some time in February 1967? A. I remember it.

Q. What makes you certain that you would not have said that? A. The clause was already there asking for it to be issued by Raymond & Co., so I would not tell him it was not necessary.

Q. But you could well have told him something? A. I could have easily spoken to him in connection with it. 30

Q. Had you expressed the view to Egan some time earlier than this that the words "certificate of inspection" could be satisfied by a certificate from anyone? A. I told him a certificate of inspection could be issued by anyone.

Q. And did you tell him that if the requisition called for no more than a certificate of inspection anyone could give it? A. I did.

Q. And you meant that literally, did you – anyone? A. Yes.

Q. And it was your view, wasn't it, that the prudent course to adopt was to require a certificate of inspection as to the quality of the goods given by an independent authority? A. Yes, that is correct. 40

Q. You did not tell Mrs. Davey, did you, that as the words stood, that is to say if there was no more in the form than the certificate of inspection it was your view that anyone might give the certificate? A. I don't recall, but it is likely.

Q. You do not recall but it is likely, is that right? A. Yes.

Q. Why do you say it is likely? A. It is possible that I could have told her.

Q. You see no distinction between "likely" and "possibly"? A. Very little.

Q. I suppose you would agree, wouldn't you, that you could have said to Egan when you had the application or requisition which is dated February 1967, "certificate of inspection should be up the top", or words to that effect? A. Yes, I would have probably told him that it should be in the additional documents section.

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Q. That is quite likely? A. Yes.

Q. That is quite probable, isn't it? A. Yes.

Q. I suppose it is quite likely that you said to Mrs. Davey, "The fact that a certificate of inspection is required throws the onus on the supplier to ensure that the goods to be supplied are as ordered"? A. No.

Q. It was your belief at the time that if you had a certificate of inspection requiring a certification as to the quality of the goods, that that would throw on the supplier the onus of ensuring that the goods are as ordered? A. If it was called for, that the supplier issue the certificate.

Q. And I suppose it was your belief at the time that the letter of credit could not be released until the certificate of inspection had been given if the letter of credit called for the giving of a certificate of inspection? A. For a clean negotiation it would have to be given.

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Q. And you could have told Egan that, couldn't you, what I have just read out? A. Yes.

Q. And you could have told him that in Mrs. Davey's presence, couldn't you? A. Yes.

RE-EXAMINATION:

MR. KENNY: Q. These shipments for the Christmas lights, do you remember the two shipments came in separate vessels? A. Yes.

Q. How were the documents negotiated in those instances? (Objected to; question re-phrased).

Q. Which was the first negotiation in point of time? A. I think they were September, October shipments, and so the September one would be first.

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Q. With which bank was the first negotiation placed for that shipment? (Objected to; question re-phrased).

Q. Do you know where the draft was negotiated? A. Bangkok Bank Limited.

(Release certificate signed by Mr. Rowell on behalf of the plaintiff company tendered without objection and marked Ex. 7.)

(Witness retired)

BRIAN WILLIAM IVERACH.
sworn, examined as under:

MR. KENNY: Q. Do you live at 7 Livingstone Avenue, Baulkham Hills and are you a bank officer employed by the Commercial Banking Company of Sydney? A. Yes.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Iverach — examined*

Q. At the present time you are stationed at Burwood? A. Yes.

MR. BYERS: Mrs. Wilson is prepared to say that her recollection is that she saw Mr. Carman on the 6th August, now she thinks is incorrect, and insofar as my friend wishes to call Mr. Carman, that won't be necessary as there is no dispute.

MR. KENNY: Q. In August 1967 were you carrying out duties in the overseas department of the head office of the bank? A. Yes.

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Q. How long were you in that department? A. A period of 7 years in all, but on that particular job for about a month.

Q. Do you know Mrs. Davey, now Mrs. Wilson? A. I know Mrs. Davey, yes.

Q. Looking at this document Ex. BB. Does that document bear your handwriting upon it? A. Yes.

Q. Did you see Mrs. Davey in connection with that document? A. I am afraid I cannot swear to that because in view of the time that has elapsed I could not be positive on that point. It could have been handed in at the counter to another party.

Q. How much of the handwriting on that document is yours? A. All the pencil notes is my writing.

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Q. Do you remember any conversation you had with either Mrs. Davey or Mr. Egan. Do you know Mr. Egan? A. I do not recall the name. As far as conversation goes, here again time has elapsed and I deal with many customers every day. It would be very difficult to recall any conversation.

MR. BYERS: No questions.

(Witness retired)

(M.f.i. 4 letter from Mrs. Davey to Raymond & Co. of 25/1/67 tendered and marked Ex. 8)

(M.f.i. 5 letter from Mrs. Davey to Raymond & Co. of 17/2/67 tendered and marked Ex. 9)

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(M.f.i. 6 letter from Mrs. Davey to Raymond & Co. of 14/4/67 tendered and marked Ex. 10)

(M.f.i. 9 letter from Mrs. Davey to Raymond & Co. of 12/7/67 tendered and marked Ex. 11)

(M.f.i. 10 letter from Mrs. Davey to Raymond & Co. of 31/7/67 tendered and marked Ex. 12)

(M.f.i. 15 letter from Mrs. Davey to Raymond & Co. of 14/8/67 tendered and marked Ex. 13)

(M.f.i. 16 letter from Mrs. Davey to Raymond & Co. of 28/8/67 tendered and marked Ex. 14)

(M.f.i. 17 letter from Mrs. Davey to Raymond & Co. of 6/9/67 tendered and marked Ex. 15)

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Cardwell —
examined*

(Luncheon adjournment)

UPON RESUMPTION:

BERTRAM MILTON CARDWELL.

sworn, examined as under:

MR. KENNY: Q. You live at 100 Queens Road, Connell's Point and are you a banker? A. Yes.

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Q. Are you in charge of the import section of the Bills Department of the Commercial Bank of Australia at city? A. Yes.

Q. Have you been in the Bills Department of that bank for 25 years? A. That is correct.

Q. Have you had experience in the Bills Department both on the import side and the export side? A. I have.

Q. Are you familiar with the documentary letters of credit? A. Yes.

Q. You know, of course, that documentary letters of credit normally provide that the drafts must be accompanied by certain documents? A. Yes.

Q. Are you familiar with the types of documents which answer to the specification? A. I am.

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Q. Are you familiar in particular with what are called certificates of inspection? A. I have seen certificates of inspection on a number of occasions.

Q. Are you familiar with what documents are acceptable? (Objected to; pressed; allowed) A. Yes.

Q. Are you familiar with the document described as survey certificates? A. I am.

Q. Is there any distinction between a certificate of inspection and a survey certificate? (Objected to; pressed; allowed; read) A. I would say generally no, no difference at all.

Q. (Shown Exs. 1, 2 and 3) Ex. 1 is a request for an irrevocable letter of credit? A. Yes.

Q. You see it says in the body of it "the draft must be accompanied by the following documents, each at least in duplicate"? A. Yes.

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Q. Do you see below the printed words "and the following additional documents, if any"? A. Yes.

Q. Would you have a look at the document Ex. 2 and you will see that it is a request to amend the letter of credit in a number of ways including the insertion of a requirement for a certificate of inspection? A. Yes.

Q. I want you to assume that the letter of credit was issued in pursuance of the requisition Ex. 1 and has been amended in accordance with the request in Ex. 2 so that the credit requires the protection of the documents specified in Ex. 1 and in addition under the heading additional documents a certificate of inspection. Have I made myself clear? A. Yes.

Q. I show you document Ex. CC. Is that an acceptable certificate of inspection for the purpose of credit established in the way I have suggested? (Objected to; allowed subject to objection; read) A. In my opinion this would be acceptable to practically any bank in the world in that form. Personally I would prefer when I am checking documents myself that they be exactly described, but I must admit as far as the practice of banks go it would be accepted usually by practically any bank. (Answer read).

Q. I show you Ex. EE and FF and I want you to assume that originally these two documents were attached one to the other, and if you look to the first page under the heading attached, you will see "detailed description as per sheet" and you will see the description on the second sheet.

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HIS HONOUR: These questions will be asked subject to the objection raised.

MR. KENNY: Q. I want you to assume that credit was established in the same way as before, calling for some documents calling for essential documents and additional documents, amongst other things, a certificate of inspection. Would those two documents be acceptable as a certificate of inspection for the purposes of that credit? A. Yes, they would be.

Q. Are you familiar with a negotiation which is referred to as a "not clean" negotiation? A. Yes.

Q. What do you understand by that? A. It is a negotiation undertaken by an overseas bank under a letter of credit where the documents do not comply in some particular with the details of the credit. A common practice in that sense is if the shipper is of undoubted character the bank requested to negotiate does so but with reservations – they have recourse, in other words, to the shipper. They pay him the funds as a rule, forward the documents and mention the discrepancies and at the other end the discrepancies are referred to the importer for approval or disapproval.

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Q. In those circumstances is the importer under any obligation to take up the document? A. No.

Q. When the documents are received at the bank which issued the credit are they or are they not available for inspection by the accountee? A. Yes.

Q. And is that prior to payment? A. Well, that is something I had better explain, perhaps. It cannot be answered in a simple way. I will explain our practice, but possibly other banks do the same thing. (Objected to) A large number of this type of thing – (allowed). The practice in our bank because of the fact there are large number of such cases is to debit our customer straight away. It is done from the point of convenience in the office. But the documents are immediately forwarded and written details of the discrepancies, and as far as we are concerned there is absolutely no obligation on the customer to pay. If they do not want the documents we immediately recredit the amount. It is done purely for convenience in the office. If we did not do that we would lose track.

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Q. How do they indicate that they do not want the documents? A. They must advise us in writing as soon as possible.

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Q. What happens to the documents then? A. What we do is this, we forward to the customer the certain various documents such as invoices, perhaps inspection certificates and the like, but we retain the bill of lading so that we still have control of the goods. If they want to see the bill of lading they have to come to the office. If they wish to refuse we are in the position where we can credit them.

Q. What is the practice among bankers in your observation in relation to documents which are received from abroad and which are uplifted by the accountees. You hand the first set over to him, of course. What about the second set? A. They are normally never used.

Q. Are they available if the customer requires them? A. They are, yes.

CROSS-EXAMINATION

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Cardwell —
cross-examined*

MR. BYERS: Q. You have mentioned that when this unclean negotiation — is that the expression? A. It is not the usual term. We talk about a negotiation with discrepancies, or in a case where they have put it through, a negotiation under reserve. It is the same thing, no doubt.

Q. When that happens, as I understand you, your bank on the receipt of the documents debits the customer's account? A. Yes.

Q. So that if the account is in credit to the customer's favour the balance is of course reduced by the amount paid under a letter of credit. Is that right? A. Yes, that is correct.

Q. If the account is in debit the amount of the debit is increased by the amount paid under the credit? A. That is right. 10

Q. Take the case where there is no question of an irregular or deficient negotiation. I suppose it would be your bank's practice in such circumstances also to debit the customer's account upon receipt by it of the documents of the amount paid under the credit? A. That is correct.

Q. And then when a cheque is received by the customer, if the account is in debit, the entries just revert, cancel out? A. You are assuming the documents are refused?

Q. I am assuming the documents are not at the moment. A. If the documents are in order?

Q. Yes. A. I do not quite follow you.

Q. The documents are in order. Upon receipt by your bank of the documents it then debits the customer's account with the amount paid under the letter of credit? A. Correct. 20

Q. And if the account is in credit, that is to say if the bank owes the customer money, the amount of the bank's indebtedness is reduced by the amount of the debit? A. Yes, I follow.

Q. If the account is in debit, that is to say overdrawn, the amount of the payment is added to the debit? A. Yes.

Q. Is it your bank's practice in such cases to require a cheque from it's customer for the amount paid under the credit? A. No, not in the type of credit that you have here. There are some types of credit where that is so, but as far as our bank is concerned it is confined purely to letters of credit established through our London office. We have a little different system, with other letters of credit the authority of debiting the account is contained in the request for the letter of credit. 30

HIS HONOUR: Q. I am just not clear on one thing. When you receive a request from a customer having an account for an irrevocable letter of credit and you see to that requisition and issue a letter of credit for a certain amount payable in a certain number of days, you do not then and there debit the customer's account? A. Not normally. There are some occasions when you may do. We normally do not debit the customer immediately.

MR. BYERS: Q. Normally, as I understand you, the debit is made when the drafts are negotiated? A. When we have advice of a negotiation.

Q. And that in general would occur when your agent bank communicates to you that fact? A. That is right. 40

Q. Usually accompanied by the documents? A. Yes. There are some credits where they receive the documents, they check them and they cable us when they have negotiated. This is an Eastern credit. In the case of Taiwan it would normally be on the receipt of the documents.

Q. Setting aside any unusual circumstances, the bank pays its agent, your bank pays its agent, the amount disbursed by the agent? A. It is not quite as simple as that. Could you tell me whether this credit was in sterling or a particular currency?

Q. There is nothing I want to ask you about that. Could I ask you to assume that you have debited the customer's account for the amount paid under the credit but the account is overdrawn. Now, is it your custom then to seek from the customer some payment from him for the amount disbursed under the letter of credit? A. That is a very broad question. It would be hard to answer in that form without a lot of explanation.

Q. I want you to assume a case where you do not increase the overdraft? A. You mean the customer is at the limit of the arranged agreement with the bank?

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Q. I want you to assume the customer is at the limit of his overdraft before the account is debited with the amount disbursed under the credit? A. Yes.

Q. Then I suppose what your bank would then do normally would be to seek payment from the customer of the amount overdrawn? A. Not necessarily. It depends entirely on the instructions that the manager might give according to the circumstances.

Q. Assume the manager does give instructions to say to the customer "we want payment for the amount disbursed under the credit". Would you then write a letter and say "we hold the documents, give us your cheque for the amount specified in the letter"? A. You have assumed that the amount has already been debited, I think.

Q. Yes. A. Well, there is no purpose in a cheque.

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Q. Well your bank would not do that? A. I cannot say that it would not be done but if it was done it would not achieve very much.

HIS HONOUR: You would have to assume the customer had another account.

MR. BYERS: Q. You were asked a question concerning the certificate of inspection Ex. CC.? A. I have seen only one certificate of inspection and it is labelled that way.

Q. (Shown Ex. DD) Do you remember being asked whether in relation to a particular letter of credit which referred to a certificate of inspection, that document was acceptable? A. Yes.

Q. Now, when you assented to that question, what did you understand the word acceptable to mean? A. It meant that it would be taken by the negotiating bank and the amount paid under the credit, and the documents forwarded to us as being in order, the documents forwarded by the accepting bank to the bank in Australia, being forwarded as acceptance of the credit.

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Q. You had in mind, did you, that some steps would be taken as between the issuing bank and its customer in relation to their liabilities? A. They would normally pass the documents straight on. Of course, they have been forwarded to them as an order. They would be passed straight on to the importing customer in Australia because they are in order.

Q. They are in order because the negotiating bank has paid against them? A. That is right, yes. I do not think the practice – I think what you are getting at is, is it the practice in Australia for the accepting bank to check the documents that they receive?

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Q. Do I understand you to say it is not? A. No, it is not.

Q. What, the issuing bank when it receives the documents from the negotiating bank just does not check them at all against the credit? A. No, they do not normally recheck them to my knowledge. I do not know that it is done anywhere in Australia. The difficulty is one of time mainly. With shipments from the East particularly, the ships are very often here before

the documents, and I am sure none of our customers would be happy if we kept them for one or two days while we checked them.

Q. Is it your understanding that the documents received by the issuing bank from the negotiating bank have been checked by the negotiating bank prior to payment? A. Definitely.

Q. Definitely? What about Taiwan? What do you know about the practice of banks in Taiwan? A. I have never been to Taiwan but I have no reason to suppose that their practice is not the same as others.

Q. You have no reason to suppose that it is the same as others? A. No. Yes, except that we have had a number of documents from Taiwan and we have had no trouble with them.

Q. It would be right to say that you just do not know one way or the other what steps are taken by the Taiwanese banks in relation to checking of the documents? A. Well, I suppose I have no – I have never investigated it.

Q. No? A. No, I will agree with that.

Q. When you gave the answer that you did to his Honour, that is to say that that document would be acceptable under the requisition calling for a certificate of inspection, did you have in mind what a certificate of inspection is? A. I have in mind the uniform custom and practices for documentary credits for which our bank and most of the other banks in the world subscribe.

Q. Would you answer my question. Did you have in mind when you gave that answer what a certificate of inspection is? A. Oh – yes, I suppose you could say so.

Q. What is your understanding of what a certificate of inspection is? A. It is a document which says somebody has inspected something.

Q. Anything else? A. No.

Q. Do you understand it to be a true statement of what a certificate of inspection is if the document were to say no more than “I have inspected the goods” – full-stop? A. I think that is the extreme case but no doubt it is a certificate of inspection.

Q. That is what you understand a certificate of inspection to be? A. It says it is.

Q. I beg your pardon? A. It says goods have been inspected. That is what you asked for.

Q. You gave that answer because and only because in your mind the words certificate of inspection mean that the giver of it only has to say that he has inspected? A. No, it is not a question of being in my mind, it is a question of the uniform customs and practices.

Q. I am asking you about the words certificate of inspection? (Objected to; allowed; read).

Q. I am asking you about the words certificate of inspection. You gave the words you did because and only because you understand those words to mean a certificate that someone, namely the giver, has inspected something. Is that right? (Objected to; allowed; read). A. No, I gave that answer because the uniform custom and practices that a document which says it is a certificate of inspection will be accepted as a certificate of inspection.

Q. You have in mind, do you, a particular article of the uniform custom? A. Yes.

Q. (Shown Ex. 4) Which particular provision have you in mind? A. Article 31 on p.13.

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MR. BYERS: Q. That says nothing about certificate of inspection does it? A. It says “other documents such as” – certificates of weight, of quality, which is very close to “certificate of inspection”.

Q. You would probably rely on the word “etcetra” as well, wouldn’t you? A. If it is there I would, yes.

Q. You did observe, I suppose, that the word “quality” appears there too? A. There is a certificate of quality mentioned here, yes.

Q. Well, that is the same thing in your view, is it, as a certificate of inspection? A. Not necessarily.

Q. It may be? A. It could be. It may not be.

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Q. It may not be? Well, what is a certificate of inspection? A. A certificate of inspection may be an inspection of a number of articles.

Q. But you would agree wouldn’t you, that Article 31 just contains no definition of what a certificate of inspection is? A. No.

Q. Article 31 only relates to responsibility of banks, doesn’t it? A. this is part of the uniform customs, yes.

Q. Are you saying to his Honour that you, in your understanding of banking practice, accept documents that purport to be certificates of origin, for example, and are not merely because it is your view that the bank may do so without responsibility on its part? A. Well, I would like you to repeat that question, if you would. (At his Honour’s direction question read by Court Reporter). A. No, I would not agree to that at all. I would try to stick to Article 31.

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Q. That is precisely what you are doing, isn’t it? A. Well you say that they purport to be certain documents and they are not such documents.

Q. Yes. A. Well, I don’t think Article 31 says that actually.

Q. Can we go back to your understanding of what the words “certificate of inspection” was when you gave the answer which you did. Do you still say that it was your understanding that a certificate of inspection was a document which certifies only to the fact of inspection? A. I must say that that would be correct, yes.

Q. You must say it? I see. What, because of article 31? A. I don’t know. It is a very difficult question. This is a difficult question, really. I would say that you would have difficulty in finding a reason for refusing it.

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Q. You mean refusing it, from whom? A. Well, if it was tendered to you as a document suitable for negotiation under a letter of credit and you have a certificate which says, “We have inspected these goods” and you require a certificate inspection; well, this certificate says that the goods have been inspected, so how can you refuse it?

Q. That is your view is it? A. That is my view.

Q. Let me put this illustration to you: suppose a document said, “I have inspected the goods and they are of inferior quality.” Would you regard that as a certificate of inspection? A. Well, it definitely is, yes. It is a certificate of inspection, certainly. It would be a very unhappy position to be in though.

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Q. Well, would you negotiate the documents, assuming the letter of credit called for a “certificate of inspection” in those terms?

HIS HONOUR: In the terms “letter of inspection” – “certificate of inspection”.

MR. BYERS: Q. Assuming that the letter of credit called for the production of a certificate of inspection, if there was produced to you a certificate of inspection which said that the giver had inspected the goods and they were of inferior quality. A. I think in that case you would be bound to make some further inquiries.

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Cardwell –
cross-examined*

Q. Why do you say that? A. Because I would assume that anybody who is establishing a credit to buy goods would want some goods of value. I have never seen one, of course.

Q. And would want a certificate of inspection which was of some value? A. I beg your pardon?

Q. You would assume that the buyer who stipulated for the production of a certificate of inspection was referring to a certificate of inspection that was of some value? A. I would assume that he would require a certificate which did not say that the goods were no good, but I would not be in a position to know what he regarded as a certificate of some value. 10

Q. Well, where the letter of credit is established for the purchase of goods and it calls for a certificate of inspection it is your understanding, isn't it, that the certificate of inspection has to relate to the goods? A. Well, they don't always perhaps. You might have a certificate of – This is a certificate of inspection, isn't it, that you are speaking of?

Q. Yes. A. Well, it may not do. I have seen many certificates of inspection which have related to the packing of the goods. In some cases that is what is required.

Q. I am putting to you a case where the letter of credit is established for the purchase of goods – A. Yes. 20

Q. – and the letter of credit is one which calls for the production by the beneficiary of a certificate of inspection. A. Yes.

Q. It is your understanding that that is a certificate of inspection of the goods, is it not? A. No, it is not my understanding.

Q. Well, is it your understanding that it is a certificate of inspection of the ship in which the goods are shipped from Taiwan from Australia? A. No, I don't think so – unless it specifically said so.

Q. Well, do I understand you to say that you just don't know what in those circumstances has to be the subject matter of the inspection? A. It could be the goods or the packing. 30

Q. Yes. Anything else? A. And in my opinion it is the responsibility of the person who establishes the purchase to specify what they want.

Q. That is your opinion? A. Yes.

Q. And it is your view, is it, of current banking practice that if there is specified only a certificate of inspection and there is produced in the case of a letter of credit established for the purchase of goods a certificate relating to the ship that carries the goods, the credit would be met? A. I don't think that would be so – not really – the ship.

Q. That is absurd? A. Yes.

Q. And it is quite absurd, isn't it, also to say that where the letter of credit is for the purchase of goods and it calls for a certificate of inspection, a document which says no more than “I have inspected the cases,” is just not a certificate of inspection? A. Well, I am sorry sir, but I have seen cases where it has been accepted by many importers and cases where the importer has specifically said that he wanted the inspection of the case. 40

Q. Yes, but I didn't put that to you, you see. I did not put to you a case or illustration where the importer specifically asked for a certificate of inspection of the case – that is the packing – but where the letter of credit was one for the purchase of goods and where what was asked for was a certificate of inspection, you would agree, wouldn't you, that it would be your understanding that the certificate of inspection was a certificate of inspection of the goods? A. No, I am sorry, I can't agree that that would be the practice because of the fact that the uniform customs indicate, as I say, that a certificate which purports to be a certificate would be accepted.

Q. That is your view of it? A. Yes. Well, it is my view because I know that the banks of the world do comply with the uniform customs and that would in my view be in accordance with the uniform customs. 10

Q. You don't really suggest that the banks of the world take that view of the uniform customs do you? A. I think they do, yes.

Q. You realise that Article 31 permits the bank to accept such documents as tendered without responsibility on their part? You realise that? You agree with that, do you? A. Well, that is what the words say.

Q. You realise that it does not require the bank to accept anything? A. No, perhaps not.

Q. You would agree, wouldn't you, that a certificate which says no more than that the giver of it has inspected the goods is absolutely worthless? A. I don't know about that, I wouldn't agree with that, no. 20

Q. You wouldn't say that? A. I don't think so, no.

Q. You realise of course that the document is being called for by the buyer? A. Correct.

Q. And presumably for his protection? A. Presumably it is something he wants, yes.

Q. And you would regard it as a fair reading of the words, "Certificate of inspection", wouldn't you, that they should give to the buyer something of value? A. We are not in a position to know what he wants.

Q. By that do I understand you to say that because of Article 31 it is your view of banking practice that the bank just accepts whatever comes along? A. I think that is an extreme statement actually. I wouldn't put it as broadly as that. 30

Q. Pardon? A. I wouldn't put it quite as broadly as that – accept whatever comes along.

Q. Tell me your understanding of the practice. What is it that they do accept? A. They accept something which purports to be the document required.

Q. But "purports to be" in the sense that it has a title on it, you mean? A. Well, that is desirable but it is not always exactly word for word. For instance, I mentioned earlier that in the case of this survey report my opinion is that most banks in the world, all banks in the world probably would be prepared to regard that as being synonymous with an inspection certificate.

Q. You mean if they agreed with your view of Article 31? (Objected to. Allowed. Previous two questions and previous answer read by Court Reporter at his Honour's direction). A. I am not quite sure that I see what you are driving at. 40

HIS HONOUR: Q. You are obliged to answer it if you can. A. I want to answer it intelligently.

HIS HONOUR: And if you can't, just say you can't. (At his Honour's direction the two questions and answer previously read were re-read.) A. No, I don't think so at all because I am not aware of what their views on Article 31 are. I have never been given them.

MR. BYERS: Q. And you are not aware of what the practice of the banks throughout the whole of world is either, are you? A. Well I have been in our department for twenty-five years and I have seen a fair representative section of documents and I think that the views I have expressed are reasonable views.

Q. Those views are based upon what you have seen in your section of your bank? A. Undoubtedly.

Q. And on nothing else? A. Of course.

HIS HONOUR: Q. What does that answer mean, that the previous answer was correct? A. No. It means that my experience is limited to what I have seen in our bank. I have never worked in another bank.

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HIS HONOUR: That is very clear now.

MR. BYERS: Q. You would agree that the answer you gave to my learned friend as to the acceptability of Ex. CC or DD was coloured by the view you take of Article 31? A. No.

Q. It was not? A. No.

Q. Well, why did you mention it? A. I am sorry –

Q. Why did you mention Article 31? A. Well, I tried to illustrate – oh, I am sorry; I follow what you mean. I thought you meant that I was giving my opinion of what they did in other parts of the world because of my view of 31. I am not coloured. I am giving you my views on what has happened in another part of the world from what I have seen in the way of documents coming in. The assumption is that their reading of Article 31 is similar to my reading. That is the assumption. The fact is that I have seen the documents which have been accepted.

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Q. Now would you just answer the question, please. Might it be read?

HIS HONOUR: I thought the question was Why?

MR. BYERS: Q. You remember giving an answer to my learned friend that it was your opinion that Ex. CC would be acceptable as a certificate of inspection under Exs. 1 and 2? A. Correct.

Q. It is right to say, isn't it, that that view is coloured by the fact that you have formed a particular opinion about the meaning of Article 31? A. No, that is not correct.

Q. That is not correct? I see. Well, the basis of your view therefore was that you treat the words "certificate of inspection" as meaning a certificate of the fact of inspection and no more? A. Yes.

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A. And it is not to the point for the purpose of your opinion what it is that has been inspected? A. Well, it has got to pertain to the shipment, obviously.

Q. It has obviously got to pertain to the shipment – the goods? A. It may be the goods or it may be packages.

Q. It may be the goods, it may be packing? A. It has got to pertain to the shipment though.

Q. Then you treat the words "certificate of inspection" as meaning a certificate of inspection of the subject matter of the contract between the parties – is that right? A. What do you mean by "the subject matter"?

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Q. Well, either the goods that are sold or, to use your expression, the shipment? A. Yes.

Q. Don't you? A. Yes.

Q. And by “the shipment” you mean that which passed from the exporter to the importer?
A. Yes.

Q. In the case of goods it means the goods, doesn't it? A. Or the content. The goods or packages it can mean. I have seen many cases where letters of credit have called for the certificate in regard to the packing so if it is not specified you are not in a position to judge what is required.

Q. I am asking you about a case, in case you have forgotten, where what is specified is a certificate of inspection. Do you follow that? A. Yes.

Q. You understand that to refer to a certificate of inspection relating to the shipment? A. Yes.

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Q. And a certificate of inspection of the goods? A. Well I have explained before, I think it relates to the shipment. The goods are contained in cases. The inspection might require any number of things in connection with any of those. It might be something regarding quality they want; it might be something regarding numbers; it might be something regarding packing, and if they don't specify we are not in a position where we can refuse a certificate which purports to be a certificate of inspection in regard to that shipment.

Q. So whether it is in other words in your view a certificate only about the outside of the cases or whether it is a certificate about the goods – A. My view is that it would be accepted in most cases.

Q. Tell me would you agree with this definition of a certificate of inspection and I will quote it to you: A shipping document vouching for the condition of perishable goods at the time of despatch? A. No. It is a certificate no doubt, yes. It would not be the only one though.

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Q. You would agree with this that a certificate of inspection is a shipping document vouching for the condition of goods at the time of despatch? A. No, I would not agree with that.

Q. You wouldn't agree with that? Well, what is the difference between the first definition and the second? A. Would you mind reading the two of them and I will tell you.

Q. Have you forgotten? A. I could not repeat that, no.

Q. I will read you what I read the first time. Would you agree with this as a definition of a certificate of inspection: a shipping document vouching for the condition of perishable goods at the time of despatch? A. Yes.

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Q. You would? A. That is a certificate of inspection, yes.

HIS HONOUR: Q. Do you agree with that or not? A. I agree that that is a certificate of inspection, yes.

Q. I think you were asked that? A. I understand the question is “is this a certificate of inspection?” Well, undoubtedly it is a certificate of inspection.

MR. BYERS: Q. You agree with that? A. A document that complied with those conditions would be a certificate of inspection, no doubt.

Q. Would you agree with this as a definition of a certificate of inspection: a shipping document vouching for the condition of goods at the time of despatch? A. Yes, that would be a certificate of inspection.

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Q. Would you agree with this as an exclusive definition – do you follow me – that a certificate of inspection means this and nothing else – A. Oh no, I wouldn't agree with that.

Q. You have already given his Honour the reasons that it would be a certificate of inspection of the cases or of the goods? A. They were instances which I gave. I did not pretend that they were the only possible instances, of course.

Q. There can be others, can there? A. Possibly, yes.

Q. What occurs to you? A. I don't know whether any would occur to me at the moment, but there could obviously be others.

(Witness retired)

JOHN BAKER PARKER
Sworn, examined as under:

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Parker – examined*

10

MR. KENNY: Q. Is your name John Baker Parker? A. Yes.

Q. You live at 8 Tryon Avenue, Wollstonecraft? A. Yes.

Q. Are you an officer of the defendant, the Commercial Banking Company of Sydney? A. Yes.

Q. You are the manager of the International Division? A. Yes.

Q. How long have you occupied that position? A. Since '64.

Q. Since 1964. What are the functions of the International Division in the bank? A. It is an administrative department basically, to do with policy to an extent – mainly administration, co-ordinating overseas department work throughout the bank, making contact with agents to see that the functions of customers can be carried through correctly. That is the basis. 20

Q. Is it as a rule concerned with customers? A. No, not as a rule, unless they are specifically referred by branches or capital city offices.

Q. I think in 1966 you visited Taiwan with Mr. Stephens? A. This is so. That is correct.

Q. What was the purpose of your going to Taiwan? A. The bank had never had any of its officers visit Taiwan previously and we did not have agency arrangements with any of the Taiwanese banks. Our purpose was to let the banks have a look at us and we to have a look at the banks to see which banks we would like to choose as our agents. This was the purpose of the visit.

Q. How long were you there? A. I think eight days. I think. I could not be precise on that. Just over a week. 30

Q. What functions for customers does the International Department normally carry out? A. Well, agency arrangements occupy a great deal of our time. We have another section that makes trade inquiries when requested or obtains overseas opinions for customers. It also controls the overseas funds, which the bank owns itself – not customers' funds; the bank's funds. It makes the settlements of transactions with the Reserve Bank that our bank has with London funds and also buys and sells the foreign currencies we require.

Q. Is it any part of the function of the international division to give advice to customers of the bank? (Objected to. Pressed. Allowed). A. The answer is that we give information.

Q. What is the nature of the information that you give? A. The information is usually in general terms and basically if it is to do with a customer, we have visited — people in my position having visited territories, then we can give general information on those territories and as regards settlement of transactions and possibly not so much the economic conditions of the country because this would be the function of our economics department — but the flow of trade, this type of thing, but nothing specific — it would be general information on conditions there in the area concerned.

Q. Is it any part of your division's function to deal with particular transactions by customers — a specific transaction? A. No. Our normal function would be if a reference was made to us from one of our overseas departments, but dealing directly with customers on day-to-day transaction, no; this is not the function of our department. It is not an operational department as far as customers are concerned. 10

Q. You met Mrs. Davey. Do you recollect meeting Mrs. Davey? A. Yes.

Q. How did she come to be referred to your division? A. By a manager who was either manager at Double Bay branch at the time or assistant manager at head office, Mr. Wall. That was the reference. He was the reference to us.

Q. Do you remember her coming in to the division? A. Yes, I do.

Q. Was she accompanied by anybody? A. No, she came on her own.

Q. Do you remember approximately when it was? A. Yes, it was not long after we returned. We returned in August so it would have been the latter part of 1966. 20

Q. When you say "we returned in August", who do you mean by "we"? A. Stevens and I visited Taiwan together.

Q. On this occasion when Mrs. Davey came in, what happened? What happened when she came in to the division? A. Well she was ushered into my room or I went out of my room to meet Mrs. Davey. We went in and just had general discussion, made pleasant remarks on the case, and then after a very short time I had Stevens into the room to be in on the interview.

Q. Do you remember anything that was said? A. Well, the conversation was general, basically covering conditions in Taiwan — trade conditions — especially about the banks and shipping conditions, in a very general sense.

Q. Did you have at that time any brochures or pamphlets relating to Taiwan? A. Yes, I did. These were usually given, distributed by the banks wherever anyone goes. I brought these back. 30

Q. Did you give any of these to Mrs. Davey? A. Yes.

Q. What was the general nature of these documents? A. I think most of them were issued by banks so they would be general information on trade and conditions in Taiwan, probably to do with crops and products of the country and there could easily have been some instructions or some guide lines mentioned in these on how to handle trade with Taiwan — general instructions these would be.

Q. Anything else you remember that they covered? A. No, I don't think there was anything — nothing I can remember specifically. It is some time since. The conversation was very general. 40

Q. How did the conversation terminate? A. With me asking Stevens to take Mrs. Davey to Carman in our overseas department.

Q. Do you remember Mrs. Davey saying anything leading up to that happening? A. She wanted to settle transactions or make arrangements to import goods and our overseas department is the department which performs this function and by way of letter of credit Mr. Carman is the officer in charge of establishing import letters of credit.

Q. On that day do you recollect anything being said in your office by you to Mrs. Davey about certificates of inspection? A. No, I can't recall.

Q. Do you recollect anything being said by anybody else in your office to Mrs. Davey, by Stevens to Mrs. Davey about it? A. No.

Q. Do you remember anything being said that day about protection or how anybody trading with Taiwan might protect themselves? A. No. I can't recall anything to do with the certificate of inspection. 10

Q. Did you say to Mrs. Davey, "Mr. Carman is the man who is in charge of putting up funds overseas. He is the person to rely on. He is the person to ask advice of. He is the person you can trust." A. I think it would be most unlikely for any officer of a bank to say that a person could be trusted. I would not have said the last part.

Q. You would not have said the last part — how far does that take us? A. Well, putting up funds overseas I would not have said either I would have said something about that Mr. Carman was the officer-in-charge of establishing import letters of credit. It would have been referred to, that specifically.

Q. As far as you recollect, did you say, "He is the person to ask advice of." A. No. I would say, "He is the person to interview to establish the letter of credit", not to ask advice of people. 20

Q. Did anybody in your presence say that "He is the person to rely on". A. Not that I recall. Stevens and I were the only two there. Not that I can recall.

Q. Did Mrs. Davey say to you that she was a complete idiot at the game of import and export from Taiwan, she had no ideas about it? A. I don't think Mrs. Davey would say that. No, I can't recall Mrs. Davey saying that.

Q. Did she say that she had never done it? You know when I say, "never done it" I am referring back to the previous conversation. Did she say that she had never done any exporting or importing from or to Taiwan? A. That I can't recall. 30

Q. Did she ask you to advise her what to do? A. I can't recall that. I think not, at once.

Q. Did she say to you, meaning in relation to a person importing goods from Taiwan, "What protection does one have?" A. I can't recall that having been asked of me. We do not deal with the documents or functions of that nature, not in our division.

Q. Did you say to her or did Stevens say in your presence — did you say or did Mr. Stevens in your presence say to Mrs. Davey, "One of the requirements for protection is a certificate of inspection." A. Not that I am aware of.

Q. Did you tell Mrs. Davey that she should protect herself because Taiwan was an area of very under-quality goods? A. I guess in a general sense I would have given some information on conditions in Taiwan and one thing I can recall in Taiwan was the Taiwanese were very general — (Objected to). 40

MR. BYERS: The question is what was said.

WITNESS: I don't recall.

MR. KENNY: Q. Did she say to you, "What should I do? I have come to the bank for advice and assistance." A. This I don't know either. I can't recall that either.

Q. Did you say, "One of the requirements is a certificate of inspection."? A. No, I would not say that.

CROSS-EXAMINATION

MR. BYERS: Q. There is no doubt that you did see Mrs. Davey towards the end of 1966? A. That is so.

Q. And you saw her in your office? A. That is correct.

Q. The head office? A. That is correct.

Q. You spoke to her there? A. This is so.

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Q. And one of the topics mentioned was Taiwan? A. This is so.

Q. And after you had spoken to her for some time Mr. Stevens came in? A. A short time, yes.

Q. And then you and Mr. Stevens spoke to Mrs. Davey? A. Correct.

Q. And I suppose that conversation continued for a period of time? A. That is correct.

Q. About how long would you say? A. I think about twenty minutes, but this is four years ago.

Q. About twenty minutes. By that you mean to include the period of time that you were alone with Mrs. Davey and the period of time during which you and Mr. Stevens and Mrs. Davey were together? A. From when Mrs. Davey first came to the room until Stevens escorted her to Carman, yes.

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MR. BYERS: Q. There is no doubt in your mind that you did ask Stevens to take her down to Mr. Carman? A. No doubt at all.

Q. You mentioned Carman's name? A. Yes.

Q. Carman at this time was head of a section of the Overseas Department? A. More precisely he was the officer-in-charge of establishing letters of credit, import letters of credit.

Q. I suppose you asked Stevens to take Mrs. Davey down to see Mr. Carman because of something that had arisen in the conversation between yourself and Stevens and Mrs. Davey? A. Yes.

30

Q. I suppose it is fair to say that she at least indicated to you that she wanted the bank to establish a letter of credit for her? A. That is the reason of reference to Carman.

Q. There is no doubt that she said to you that she wanted the bank to establish a letter of credit for her? A. I would think this was so.

Q. You have no real doubt about that? A. No.

Q. You have no doubt in your mind, have you, that she told you she wanted the bank to establish a letter of credit to enable her to import goods from Taiwan? A. This is so.

Q. There is no doubt that she told you she wanted to import goods from Taiwan? A. I infer, I do not know whether she said it specifically.

Q. What is the best to your memory? A. I cannot see that I would take any action like this had this not been the case, but I cannot see definitely or cannot say that she wanted to import goods from Taiwan but I cannot imagine referring to Carman otherwise.

Q. It seems highly likely that she told you she wanted to import goods from Taiwan? A. Yes.

Q. It seems highly likely that she told you she wanted to establish, through your bank, credit for that purpose? A. Yes.

Q. There is no doubt about that? A. No.

Q. I suppose she did tell you, did she not, that it was for that purpose, namely to establish the letter of credit that she was coming to your bank? A. No, this is not so. The reference, as far as Wall (?) was concerned, why Mrs. Davey wanted general information on Taiwan and it was for that purpose that Mrs. Davey was referred. 10

Q. You have read something recently that Wall (?) wrote then. A. Beg pardon?

Q. You have read something recently that Wall (?) wrote then in 1966? A. No, I do not think Wall (?) would have written anything at that time.

Q. He rang you up? A. It would have been done by phone.

Q. Did he ring you up? A. Yes.

Q. You can recollect that clearly enough? A. Yes.

Q. You can recollect, I suppose, clearly enough what it was that you and Mrs. Davey were talking about? A. In detail I think that would be impossible for me to do over four years. 20

Q. You have come to the stage where you can recollect that she did ask you to help her set up a letter of credit for the import of goods from Taiwan? A. I would not like to say that she asked me to help her but that she wished the letter of credit to be established; which is slightly different. In other words if we had so to be given the operation to the overseas department which is the Department that does it.

Q. You told her, according to the best of your memory, that the person who could help her to set up a letter of credit for the import of goods from Taiwan was Carman? A. I would not have said "help" but that Carman was responsible and would have established. . . .

Q. He would assist her in setting up a letter of credit? A. He actually sets it up.

Q. And help her? A. I have no doubt. 30

Q. But that is what you said to her — words to that effect? A. Beg pardon?

Q. You said to her words to the effect that Carman was the man who could help her set up the letter of credit in Taiwan? A. I would not — I think have said "Help". I cannot recall — that it would be most unlikely to say that Carman would help her. I would say Carman would establish a letter of credit. This is just terminology, as far as we are concerned.

Q. And not a matter of substance; it is not something you can particularly call to mind, whether or not you used the word "help". A. No, most unlikely.

Q. Or whether or not you used the word "assist". A. Most unlikely.

Q. "Most unlikely" what? A. That I would use the word "assist".

Q. Why do you say that? A. Because it is Carman who establishes the letter of credit. 40

Q. But why is it most unlikely that you would have said to Mrs. Davey that you would assist her in setting up credit. (Objected to. Question re-read. Allowed.) A. I think I have already answered it, your Honour. It is most unlikely I did it because I do not use the word "Assist".

Q. You do not use it? A. I do not use the word in that context.

Q. Come now! You are not serious in that? A. I certainly am! I do not use that word in that context. I say: Establish a letter of credit.

Q. You say "establish". A. Yes.

Q. It is your memory that you gave her some books? A. This is so.

Q. These were books relating to Taiwan? A. Yes.

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Q. They could have been catalogues of traders in Taiwan? A. Yes.

Q. Mrs. Davey did say to you that she wanted the Bank's advice and guidance about a letter of credit? A. I do not recall that having been said.

Q. Would you just think about it Mr. Parker: Would you like me to repeat the question? A. I do not think there is any need: I do not recall that being said.

Q. So you do not know one way or the other whether that was said? A. That is correct.

Q. Mrs. Davey said to you that she wanted the bank's advice and guidance about documents that she should call for under the Letter of Credit? A. I do not recall Mrs. Davey saying that to me.

Q. You have no recollection one way or the other? A. That is correct.

20

Q. So she could have said it? A. It could have been said.

Q. You would agree with this that there was discussed at this meeting between yourself and Steven and Mrs. Davey the protection that could be given to the buyer by the documents specified in the authority establishing the letter of credit? A. No, I cannot recall that being said.

Q. It could have been said? A. It could have been.

Q. You would not deny that it was? A. I certainly would not deny that it was.

Q. You have mentioned that this discussion took place over some 20-odd minutes? A. That would be my estimate.

Q. The discussion was about Mrs. Davey importing goods from Taiwan into Australia? A. Yes, amongst other conditions in Taiwan.

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Q. And a discussion about general conditions in Taiwan? A. Yes.

Q. Insofar as they related to trade, of course? A. It might have even gone beyond that into the tourist side.

Q. There was certainly discussion between yourself and Mrs. Davey and Steven about trading conditions in Taiwan? A. Yes.

Q. During the course of that discussion, Mrs. Davey asked you how she could set up a letter of credit for the import of goods from Taiwan? A. She probably asked whether we could establish a letter of credit, not how she could because she does not do it, we do it.

Q. She probably asked you how she could go about the having of a letter of credit established in Taiwan? A. I think that would be most likely.

Q. You told her that you had a department dealing with that very thing? A. I would not have used those terms but I would have told or said that the overseas department looks after the establishing of letters of credit.

Q. You could have said to her that Carman was the man who would give her advice about the establishment of the letter of credit? A. I think it would be most unlikely that I would say that Carman would give advice. I would have said that Carman would establish the letter.

Q. But Carman gave advice every day, to your knowledge? A. I am not that closely associated with Carman that I know what he would do every day. 10

Q. I suppose you knew in 1966 that it was Carman's duty to assist the bank's customers in filling out the requisitions for credit? A. Yes.

Q. To your knowledge at that time that was done by Carman every day? A. Yes.

Q. A part of his duty to your knowledge then Carman's duty was to assist people in the formulation of the documents called for by the credit? A. If he was requested to do so he could offer an opinion on it.

Q. You have used the phrase "offer an opinion". A. Yes.

Q. You do not draw any distinction between offering an opinion to someone on a topic and giving them advice about documents, do you? A. Yes. 20

Q. You do? A. Yes.

Q. Would you explain to his Honour what the distinction is? A. I could offer an opinion on something that would not be advice at all.

Q. You realised that Carman was the man who had spent a number of years in the bank's employment rendering himself proficient in the filling up of these requisitions? A. Yes.

Q. No doubt acquainting himself with the documents that might be called for before credit would be met? A. I do not know what you mean by that. I do not know what you mean by "credit would be met" would you rephrase that?

Q. The documents that the beneficiary had to produce in order to call upon credit? A. I am sorry. 30

Q. Do you understand that? A. No, I am sorry. Would you rephrase that?

Q. Carman, in your understanding of his position, was a man who had spent some years in the Bank's employment learning about letters of credit? A. That is correct.

Q. So that he could assist the Bank's customers, amongst other purposes? A. Basically it would be permit him to establish the letters of credit; this would be the training.

Q. So that he could assist the bank's customers in the formulas and procedures necessary to establish the credit? A. So he could establish a letter of credit.

Q. Mr. Parker, have you any difficulty in understanding my question? A. Yes, because the training is to establish — so he can establish a letter of credit —

Q. Of course, in order to establish a letter of credit, was your understanding that the bank's procedures called for the filling up of a requisition for a credit? A. Yes. 40

Q. And the bank had a settled form for that sort of application? A. Yes.

Q. And it had in 1966 and in 1967? A. That is correct.

Q. You understood it to be part of Carman's duty to assist your customers in the filling out of that form? A. Carman's duty is to see that that form is filled in in terms of customers' requests, also to ensure that the bank has its position covered; that documents are not called for, which would be impossible or impracticable to inspect an agent to obtain. In other words to see that the beneficiary of the letter of credit would obtain payment. This is the object of establishing letters of credit.

Q. The beneficiary would obtain payment in return for what? A. Documents.

Q. You understood it to be part of Carman's duty in seeing that the beneficiary obtained payment to see that he did so under conditions protecting your own customers? A. May I ask - as against what? 10

HIS HONOUR: Q. Do you understand the question? A. No, your Honour because. . . .

Q. That is enough, Mr. Parker; you do not understand the question? A. No.

HIS HONOUR: The witness says he does not understand the question.

(To witness) You must only answer the questions that you do understand.

WITNESS: There are two things that I can see that fit this question.

HIS HONOUR: Q. You are not asked for your explanation: you are simply asked: Do you or do you not understand it? A. No.

MR. BYERS: Q. You did not understand it? A. No. 20

Q. Do you remember me asking you this question that there was a discussion between yourself and Mrs. Davey and Mr. Steven about the protection that could be given to the buyer by the document specified in the authority establishing the letter of credit? A. No, I do not recall that question.

Q. You do not recall it? A. No. I am not saying it was not asked; I just do not recall it.

Q. When you answered it. . . . A. I just do not say - I cannot recall it.

Q. I assume you would not answer anything you did not understand, would you? A. Not here.

*Q. I suppose you would not discuss with a customer something you did not understand? A. It would be my custom to get another opinion. I would not offer it unless I understood it and if I did not understand it and I thought my advice was not right or my opinion was not formally (formerly) based, I would qualify it. 30

Q. Now would you answer the question.

(Question marked with an * re-read to the court.)

MR. BYERS: Q. What is your answer to that? A. Unless I qualified it.

Q. Qualified what? A. The opinion I gave.

Q. About something you did not understand? A. I might be reading into this, I might be doing it incorrectly, but something I did not know the full answer to.

Q. You had a fairly recent acquaintance with Taiwan in December of 1966? A. Yes.

Q. And I suppose you thought you understood the trading conditions in Taiwan? A. Not fully.

Q. In part? A. In part.

Q. It would be right to say that you and Stevens had made a note of the traders you had seen in Taiwan? A. We had made a note?

Q. Yes. A. I am sorry — we would have put the names in our report.

Q. You made notes for the purpose of assisting the banks' customers. A. The information, as I explained earlier on, was: We specifically went there, basically anyway, to make agency arrangements with the banking agency, the banks in Taiwan; I did not call on anyone other than banks except the trade corporations, I think that is a semi-government body and Attaka & Company. 10

Q. Mr. Parker, do you have difficulty in understanding what I am asking you? A. Yes, I do.

Q. May I put this in an endeavour to clarify it: at some stage you and Stevens made notes about the standing of traders in Taiwan. A. I cannot recall that being done. I have a report but I cannot recall that being done.

Q. Would you agree that you and Stevens made notes for the purpose of assisting the bank's customers? A. Yes.

Q. So you might know about the status of trading companies in Taiwan. A. That would be impossible to do. — if we wanted the status of trading companies in Taiwan (and not to be done) — we would write specifically to a bank at that point of time when the information was required; we would not refer back for any length before. 20

Q. You say that this is impossible? A. We would not do it.

Q. You would not do it? A. That is right.

Q. And you did not? A. No.

Q. And it is quite untrue to say you did? A. What, in 1966?

Q. Yes. A. Unlikely.

Q. Is it untrue to say that you did? A. It is not untrue.

(Witness stood down.)

(Further hearing adjourned to 10 a.m. Monday 16th March, 1970.)

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SIXTH DAY: MONDAY, 16TH MARCH, 1970

(The following emendments were made to the transcript:

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Parker
cross-examined*

Page 182, 9th question, to read; "Are you saying to his Honour, that you, in your understanding of banking practice, accept documents that purport to be certificates of origin, for example . . ."

Page 190, the first question, to read: "There is no doubt in your mind that you did ask Stevens to take her down to Mr. Carman?"

Page 192, the third question, "Should" to be amended to "could".

Page 192, the seventh last answer to read: "I think it would be most unlikely that I would say that Carman would give advice. I would have . . ."

Page 195, the third answer to be amended to read: "That would be impossible to do – 10
if we wanted the status of trading companies in Taiwan we would write specifically to a bank at that point of time when the information was required; we would not refer back for any length of time before."

On page 175 Mr. Byers' comment at the top of that page to have "Mr. Carman" amended to "Mr. Iverach".)

JOHN BAKER PARKER

On former oath:

HIS HONOUR: Q. You are still bound by the same oath to tell the truth. Do you understand? A. Yes, Sir.

HIS HONOUR: Yes, Mr. Byers? 20

MR. BYERS: I do not wish to ask any further questions, if your Honour pleases.

MR. KENNY: I have no questions.

(Witness retired)

(Case for the defendant closed.)

CASE IN REPLY

JOHN MAXWELL EGAN

On former oath:

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Egan — examined*

HIS HONOUR: Q. You are still bound by the oath you took earlier to tell the truth. Do you understand that? A. Yes.

MR. SHEPPARD. Q: Your name is John Maxwell Egan; is that correct? A. Yes.

Q. Would you look at — it is m.f.i. 22, your Honour; I have not the exhibit number. I am sorry. (Pause) It is Exhibit 4, apparently. (Shown to witness.)

Do you remember seeing a booklet like that on a previous occasion? A. To the best of my recollection, no, Sir, no. 10

Q. I think, in fairness to you, you have seen one in my room, have you not? A. Yes. I think it was Thursday or Friday.

Q. Yes? A. You asked me —

Q. Yes. You need not tell what I asked you. But apart from that occasion you do not recollect having seen one before; is that correct? A. No.

Q. Do you remember any occasion at any of your interviews with Mr. Carman when he handed you such a booklet? A. No, Sir.

Q. Do you remember any occasion when you went to see Mr. Carman at the bank not for the purpose of having any particular application filled out but when you had some general discussion with him? A. Well, that could have been well so, Sir. To the best of my recollection it was on a particular basis, more so than a theoretical basis. 20

Q. I do not quite understand that. Are you talking about a discussion? A. Well, Sir, I had several visits to the bank.

MR. SHEPPARD: I am looking at p.136, your Honour.

Q. Do you remember any occasion towards the end of December, 1966, or early in January 1967 when you came to see Mr. Carman to discuss the method of filling in an application for a letter of credit? A. Well, actually I did that with virtually every letter of credit that was completed.

Q. Do you remember any occasion when he gave you some forms? A. Yes. He gave me a stack of blue forms which, the normal application — 30

Q. Do you remember when that was? (No answer.)

HIS HONOUR: Q. Excuse me. I think you were going to say, "which is the normal application for a letter of credit". A. Yes. Blue form, black print, like we have seen.

MR. SHEPPARD: Q. When was that; do you remember? A. I cannot recall exactly.

Q. On the day that he did that was there any general discussion about the way that you fill in forms? A. Yes. Mr. Carman took me for a run through on how the form was to be filled out.

Q. On that occasion did he hand to you a booklet of which Exhibit 4 is a copy, or any booklet like it? A. No, Sir.

Q. On the occasion that you picked up the forms, did Mr. Carman say to you words to the effect, "If they just call for a certificate of inspection the beneficiary to the credit can issue it but it can also be issued by anyone else". A. He may have said that. I could not say for sure one way or the other.

Q. Do you remember that conversation? A. No, Sir, I do not.

CROSS EXAMINATION

MR. KENNY: Q. Mr. Egan, I think you and Carman got on quite well together? A. Yes, Sir.

Q. There is no doubt that he did endeavour to assist you with regard to filling in these requisition forms? A. Yes.

Q. I think there is no doubt that you did have a supply of requisition forms in your office? A. Yes. 10

Q. In Fell and Starkey's office? A. Yes.

Q. Under your control? A. Yes. They were kept in a safe.

(Exhibit R, requisition dated 12th January, shown to witness.)

Q. That, I think, was the — that requisition was typed out in Fell and Starkey's office? A. To the best of my recollection, yes.

Q. That was how the dealing with that requisition originated; the first thing that you did was that you had it typed in Fell and Starkey's office and then it was taken down to the bank? A. As I recall, yes.

Q. What? A. Yes. 20

Q. Can you recollect that it was between the 16th — that was the first of the requisitions which was typed out in Fell and Starkey's office? A. Yes.

HIS HONOUR: Excuse me. I will have that question and answer read. I did not hear it.

(Last question and answer read.)

MR. BYERS: I do not wish to interrupt my friend. I do not wish it to be misleading but there is Exhibit MM. Could I just remind my friend of that?

MR. KENNY: Yes. Could I have Exhibit MM?

Q. Have a look at Exhibit MM? (Shown) You see one is substantially a copy; MM is substantially a copy of Exhibit R. They relate to the same transaction? A. Yes.

Q. Exhibit MM was a document which was typed out in Fell and Starkey's office? A. Yes. 30

Q. The particular transaction related to Easter Novelties; it was initiated by the typing of MM? A. Correct, yes.

Q. Then it was taken down to the bank? A. Correct, yes.

HIS HONOUR: Q. Speak up please, Mr. Egan, would you? A. Yes.

MR. KENNY: Q. Now Exhibit MM was the first of the requisitions which was typed in Fell and Starkey's office? A. As I recollect, yes, Sir.

Q. And after it it was common for the requisitions to be typed in Fell and Starkey's office and after typing to be taken to the bank? A. Yes.

Q. Of course, at the time that Exhibit MM, which you have, was typed you had this supply of requisition forms – blank requisition forms? A. I cannot be sure of that. It could have been at the time when the next application for letter of credit was made that I got what I will call a stack of blank application forms. I could not –

Q. In any event I suppose it is also possible that it was prior to MM being typed that you got the blank forms? A. I could not be sure.

Q. In any event I suggest that on the occasion on which you got the blank forms you had a conversation with Mr. Carman about the method of filling in forms generally – filling in these requisition forms generally? A. To the best of my recollection it would have been the time before that. Before the time that I actually picked up a stack of forms.

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Q. Then, we can get this straight, you certainly had a general conversation: a conversation in general terms with Mr. Carman about filling in requisitions for letters of credit? A. Yes, Sir.

Q. That was at the bank? A. Yes, on the first floor.

Q. At a time when there was no particular transaction contemplated? A. No, Sir. As I recall it, it – every time I saw Mr. Carman it was in connection with filling out forms for an actual transaction.

Q. I see. This was some occasion when you went there, you had a discussion with him in general terms because you were about to make a requisition for a particular credit and then you went away and typed out a requisition and took it back; is that what happened? A. Yes.

Q. You did read these forms, I suppose – a copy of this form – at some time, did you? A. Read every single word on it, do you mean? 20

Q. Yes. Start at the beginning and read it through? (No answer.)

HIS HONOUR: Referring to the print on a blank form?

MR. KENNY: Q. Yes. The blank form? (No answer.)

Q. I will withdraw that and come back to it.

You were anxious to go on with the requisition for the credits; is that right? A. Yes.

Q. It was a subject that interested you greatly, was it? A. Yes.

Q. What I am suggesting to you is that some time fairly early in the piece because of your interest in the subject generally you read the printing on one of these requisition forms? A. Yes. I would say I probably did.

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Q. You would not be filling in forms over a period of six months, having some interest in the matter, without finding out what the form said, would you? A. Yes.

Q. What? A. True.

Q. It is entirely unlikely that that would happen? A. Sorry?

Q. It is entirely unlikely that that would happen? A. Correct.

Q. So his Honour may take it that at some stage, at some stage, you read the printing on the form? A. Yes.

Q. I suggest to you that that would have been fairly early, fairly soon after you first became associated with the requisitioning of credit? A. Yes.

Q. I suggest to you that you were anxious to understand what and how this procedure worked? A. Yes.

Q. I suggest to you that when you read the printing you saw a reference to the Uniform Customs and Practice for Documentary Credit? A. Yes.

Q. You were looking then at one of the exhibits. What is the document? A. This one is MM.

Q. You were looking at Exhibit MM; there is no doubt that whenever you read this form you saw the reference in it to the Uniform Customs and Practice for Documentary Credit, 1962 Revision, International Chamber of Commerce? A. I read those words, yes, Sir.

Q. Of course, at the time you read them they did not mean anything to you, did they? A. No, they did not.

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Q. You would not deny, would you, that after you had read them on the next occasion you went to the bank you asked Mr. Carman what this was all about? (Objected to by Mr. Byers and Mr. Sheppard. Mr. Sheppard addressed. Question pressed.)

HIS HONOUR: Would you just, perhaps to save any argument about it, that is to say, having the question read, would you withdraw the question and put it again?

MR. KENNY: I withdraw the question.

Q. I suggest that some time after you had read those words Uniform Customs and Practice for Documentary Credit in the requisition form that that subject was mentioned between you and Mr. Carman? A. It may well have been, Sir.

Q. I suggest to you that on the occasion that it was mentioned Mr. Carman – I withdraw that. Mr. Carman, of course, answered any queries you raised from time to time about these forms, the requisition? A. As I recall, yes.

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Q. I suggest to you that on the occasion upon which the subject of the Uniform Customs and Practice for Documentary Credit was raised between you he gave you a booklet, not necessarily in the form of the one that was shown to you, but a booklet setting out the Uniform Customs and Practices? (Objected to. Mr. Sheppard addressed. Question withdrawn.)

Q. Mr. Egan, you ceased doing work for this company, I think you told us, some time in 1967? A. September, as I recall.

Q. What? A. September, as I recall.

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Q. Yes, 1967? A. Yes.

Q. You just had no – correct me if I am wrong – but as I understand your evidence you then had no further association with the affairs of Jalsard during the rest of your term of employment with Fell and Starkey? A. Nothing of a material nature. I may have taken a phone call or something of that nature.

Q. Yes, but nothing that sticks in your memory; is that right? A. That is correct.

Q. You then went to other employment? (No answer.)

Q. You left Fell and Starkey and you went to your present position; is that so? A. No, that was – I got a transfer to another section with Fell and Starkey in September 1967.

Q. That is right, you remained in that section for some time? A. Yes.

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Q. Until when? A. I resigned from Fell and Starkey in August or September, 1969, and I was with a small firm for about eight weeks and then I went to my present employer. I think I started there on October 22nd, 1969.

Q. When were you first asked to recollect these matters relating to Jalsard? A. Yes, Sir.

Q. When? (No answer.)

Q. When were you first asked to recollect about these matters? A. The other day.

Q. The other day? A. Here in Court.

Q. You had had no occasion to throw your mind back to these particular matters between 1967 when the requisitions were severally made out and the other day? A. I do not quite understand.

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Q. All right. Look, after the last requisition with which you were associated in 1967 was made out you did not think about making out — about these incidents — making out this requisition to which your attention has been directed to here until the other day? A. No. It would have been about, I suppose, a year ago when I — Mr. Bradney called me and asked if I would go to his office and that is when I — I made out a statement.

Q. That was twelve months ago, was it? A. Yes, it would be — I think it was about twelve months ago, your Honour.

Q. That was the first time you had ever thrown your memory back to these incidents in 1967? A. As I recall, yes.

Q. Do you know whether Jalsard, while you were associated with its affairs, had any agents anywhere other than Taiwan? (Objected to as not arising out of evidence given in reply.) 20

HIS HONOUR: I just do not see the significance of this evidence, I must say: I am loth to stop you. By leave I will allow you to put it.

MR. KENNY: I do not seek leave.

Nothing further.

MR. SHEPPARD: I have no questions.

(Witness retired and excused)

(Mr. Byers called for confirmation of a cable of credit which is the defendant's document produced on discovery Number 58. Not immediately available.)

(Mr. Byers called for a packing list dated 4th October, 1967, document numbered 74 in Mr. Carman's affidavit of inspection. Produced.) 30

(Document tendered and objected to as not in reply. Mr. Byers addressed. Admitted and marked Exhibit VV.)

(Mr. Byers called for a document referred to in the affidavit of inspection as being an undated packing list and numbered 78 in that list. The full description is, "Undated packing list re 80 gross boxes of Christmas lights".)

MR. BYERS: To save possible further delay I would tender a packing list dated September 8th, 1967 relating to 80 cases, 80 gross, and signed by Raymond and Company.

HIS HONOUR: You say that is a copy?

MR. BYERS: My learned friends have produced an undated packing list re 80 gross boxes of Christmas lights. I would tender a copy from our custody dated September 8th, 1967 relating to that very subject matter. Together the two, of course, make up the 150 gross referred to in the requisition which is Exhibit 1.

(Without objection this document was marked Exhibit WW.)

(Mr. Byers called for an invoice dated 4th October, 1967, item No. 73 in the affidavit of inspection there described as, "Commercial invoice dated 4th October, 1967".)

(Tendered, no objection; tendered as being one of the documents referred to in Exhibit 1, the commercial invoice.)

MR. BYERS: Your Honour, there is a reference to the beneficiary certifying on the invoice that each box contains ten pieces in Exhibit 1. 10

(Exhibit marked XX.)

(Mr. Byers called for an invoice dated 8th September, 1967 being a document referred to in the defendant's affidavit of discovery and numbered 77.)

(Tendered from the plaintiff's custody a commercial invoice dated 8th September, 1967.)

MR. BYERS: I would say that is identical to the document which is No. 77 in the affidavit of discovery.

HIS HONOUR: No. 77 is not available?

MR. BYERS: 77 is not available at the moment, it seems. 20

(Document marked Exhibit YY.)

(Tendered copy letter from the plaintiff to Raymond and Company dated 4th August, 1967 referring to the letter-writer's last letter which is Exhibit 12. Objected to. Mr. Kenny addressed. Admitted and marked Exhibit ZZ.)

(Mr. Byers tendered a number of letters passing between the plaintiff and Raymond and Company Limited the first of which is dated 6th February, 1967 and is from Raymond and Company to "Mrs. Robin Davey, Jalsard Trading Company, Sydney, Australia" and the last of which is dated 12th August, 1967 and which is from Raymond and Company Limited to Messrs. Jalsard Trading Company: This tender includes the correspondence, the original letters from Raymond and Company to the plaintiff and copy letters of the plaintiff to Raymond and Company. 30

Mr. Byers added that of these letters, that is of copy letters, a number only had been tendered by his learned friend.)

HIS HONOUR: Which is the Exhibit?

MR. BYERS: The exhibits are 12 and backwards; there is Exhibit 8 of 25th January, 1967; Exhibit 9 of 17th February, 1967, and Exhibit 10 of 14th April, 1967, a copy letter.

HIS HONOUR: 12th July, 31st July.

MR. BYERS: That is so; 12th July and 31st July. I tender the relevant correspondence.

(Bundle of correspondence read by Mr. Kenny. Objected to. Mr. Kenny addressed and said, inter alia, that the correspondence tendered was not the whole of the correspondence.) 40

MR. BYERS: I am happy to tender all.

(Mr. Kenny addressed.)

HIS HONOUR: Mr. Byers, at this stage if they are objected to I have to sit down for half an hour and read these before I can rule but just you state shortly —

MR. BYERS: I am happy to tender all and possibly I should do so now if that is taken as a ground of objection in the sense that it is then said that because all are not there those that are there may not be fully comprehensible so I am happy to tender the remaining letters in the period.

We have taken the view that they do not touch any matter but still my friend is entitled, if he takes that view, to have them all in.

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(Mr. Byers addressed further.)

(Mr. Byers tendered further correspondence beginning with a letter from Raymond and Company of 12th January, 1967 and concluding with a copy letter from the plaintiff to Mr. J. Wu of Raymond and Company dated 27th April, 1967.)

HIS HONOUR: I follow; you are really saying this; you tender them in view of what Mr. Kenny says. If he raises an objection to them you will not be distressed and may well withdraw the tender.

(Mr. Kenny addressed.)

HIS HONOUR: Your position is clear, is it not, Mr. Byers?

MR. BYERS: Yes, your Honour.

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HIS HONOUR: I will have a look at these. I do not propose to hold the matter up unless counsel tells me it is inconvenient unless I rule now.

MR. BYERS: No, I certainly would not ask your Honour to do that or request that your Honour should.

There is only one matter; I think I did call, at one stage, for a confirmation of the letter of credit.

I showed a document to my friends which, as I understand, was produced on discovery but apparently there is some difficulty finding it, so, subject to the tender of that, that is the case in reply.

HIS HONOUR: What is your attitude towards this document, Mr. Kenny?

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MR. KENNY: We have two copies of the confirmation of credit. It may be — I have not been able to check it — it may be in the affidavit referred to but if it is an affidavit which is said to be produced on discovery I do not take any exception to my friend using that if he shows it to me.

(Document shown to Mr. Kenny. No objection. Marked Exhibit AAA.)

(Case in reply closed.)

HIS HONOUR: What is the most convenient course for you, Mr. Byers, to start now?

MR. BYERS: I am quite happy to do so. May I just mention one thing? Your Honour will have observed that the statement of defence contains in it a paragraph that, when one bears in mind the probable identity of who drew it, it is not, possibly, surprising: the paragraph that I refer to is para. 21, the demurrer.

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Your Honour sees it contains a reference to paras. 5 to 19 inclusive.

It follows a form which is familiar in other jurisdictions and, as we would understand the rules under the Commercial Causes Act, the type of procedure to which possibly the pleader may have thought, should any contingency arise, may refer to some point of law.

HIS HONOUR: We do not have demurrers.

(Mr. Byers addressed further.)

*In the
Supreme Court of
New South Wales*

No. 2

*Transcript of
Evidence
Egan –
cross-examined*

JUDGEMENT.

HIS HONOUR: Mr. Jackson Wu and Mrs. Margie Wu were residents of Taiwan and the owners of a company named Raymond & Company Ltd. In 1966 a certain Mrs. Robin Diana Davey, whom I will in this judgement describe as Mrs. Wilson, which is her present name, visited Taiwan. The main purpose of the visit was to enjoy a holiday, but while she was there Mrs. Wilson formed the opinion that opportunities existed for a profitable trade in commodities manufactured in Taiwan and exported to Australia. She made a number of inquiries and formed a friendly association with Mr. And Mrs. Wu. Her inquiries also extended among other traders and banking organisations and in the result she satisfied herself that Raymond & Company Ltd. was a business of repute.

Mrs. Wilson was at all material times the managing director of the plaintiff. The plaintiff had been incorporated in New South Wales for several years and until the end of 1966 its business was only that of an investment company. In addition to Mrs. Wilson there was another director. This director was Mr. Rowell, the senior partner in a firm of accountants now known as Messrs. Fell & Starkey. A certain Mr. de Montfort, a Sydney solicitor, was an alternate director of the plaintiff, but only acted in that capacity when Mrs. Wilson was absent from Sydney. Until her visit to Taiwan, Mrs. Wilson had not had any business experience and, in particular, did not have any knowledge of the practices or procedures involved in importing goods or their sale. The plaintiff also had not been concerned in any manner with importing or, indeed, with any form of transaction other than those customarily associated with a business conducted by an investment company. The knowledge of Mr. Rowell in these respects did not appear in evidence.

Upon her return to Sydney, Mrs. Wilson considered how best the plaintiff's plans to import could be effectuated. Mr. Rowell advised her to have discussions with the plaintiff's bank, which is now the defendant. In December 1966, Mrs. Wilson spoke to Mr. Wall, who was then either manager of the Double Bay Branch of the defendant or assistant manager at its head office. Mr. Wall suggested that she should make inquiries from the International Division of the defendant and arranged an interview with Mr. Parker, who was then and still is manager of that Division. Shortly afterwards, Mrs. Wilson met Mr. Parker in his office. Upon her arrival and when the usual pleasantries had been exchanged, Mr. Parker invited Mr. Stevens, who was then an officer of the International Division, to join the discussion. The International Division did not ordinarily have dealings with the defendant's customers, but it is possible that the reason for Mr. Wall's suggestion that Mrs. Wilson should see Mr. Parker was that Mr. Parker and Mr. Stevens had, only a few weeks before, returned to Sydney from a visit to Taiwan. Understandably, the recollection of Mr. Parker and Mr. Stevens was initially somewhat faint about the details of the discussion. Nevertheless, these two gentlemen, and particularly Mr. Stevens, were able to recollect a number of matters as their minds were brought back to the events of that occasion. It is obvious that the circumstance that all three persons had recently been to Taiwan should have stimulated a general discussion between them about the nature of the country and its customs and habits. The discussion lasted about 15 or 20 minutes and, although it is quite impossible to state with confidence everything that was said in the course of it, I am satisfied to accept in substantial respects the recollection of Mrs. Wilson about what was then said. I find that Mrs. Wilson explained to these two gentlemen the plaintiff's hopes to open up a business of importing goods from Taiwan and that she had not any experience in the manner in which that could or should be done or in which the plaintiff might pay for its imports. I am of the opinion that it is probable that either or both of Mr. Parker and Mr. Stevens told her that it would be important for the plaintiff to protect itself in respect of its imports because Taiwan constituted an area of unsure reputation in relation to goods that emerged from it. I also think it probable that these gentlemen told Mrs. Wilson that a good means to insure this protection was to obtain a certificate of inspection and that the best means of paying the seller was by a documentary letter of credit. I do not doubt that a purpose for which Mrs. Wilson on behalf of the plaintiff had this discussion with Mr. Parker and Mr. Stevens was to

seek information from them and also their advice. I also do not doubt that in the matters I have mentioned both Mr. Parker and Mr. Stevens knew that Mrs. Wilson was seeking their advice and gave it.

During the course of this discussion, Mr. Parker told Mrs. Wilson that another officer of the defendant, a Mr. Carman, whose duties were with the Overseas Department, was experienced in the establishment of documentary letters of credit and that he would give her information and advice. Mr. Parker then requested Mr. Stevens to escort Mrs. Wilson to the part of the building where Mr. Carman worked. Mr. Stevens did this and introduced her to Mr. Carman. I think it probable that, in the course of this introduction, Mr. Stevens explained to Mr. Carman that the plaintiff intended to import goods from Taiwan and requested him to assist and advise her on the best means to do this.

A requisition for a documentary letter of credit was then prepared, but it is necessary to state that the interview with Mr. Parker and the introduction to Mr. Carman had been made in December 1966. However, the transaction in respect of which the plaintiff in this action alleged a breach of duty by the defendant occurred in July and August 1967. A great deal of evidence was given about the transaction in December 1966 and also about other transactions before May 1967. These transactions, to the extent to which they were completed were, I infer, completed in the result to the satisfaction of the plaintiff.

In order to explain the purpose for which the plaintiff led evidence of these earlier transactions, a brief explanation of the plaintiff's causes of action is necessary. In July and August 1967 the plaintiff requisitioned another documentary letter of credit to pay for goods it bought in Taiwan. This requisition was in a standard form provided by the defendant and it contained spaces for insertion in it, as part of it, of additional provisions. One of these spaces appeared under a heading called "additional documents" and one of the additional documents which, according to the requisition as amended, was to be obtained by the defendant's agent as negotiating bank, was a certificate of inspection. The plaintiff's case as principally framed was that the phrase "certificate of inspection" meant certificate of inspection by Raymond and Co. Ltd. The words "Raymond and Co" did not appear in the document but the plaintiff led this considerable evidence of the earlier transactions with the object of proving that when, in the transaction of July and August 1967, the parties used the phrase "certificate of inspection" they were referring to a certificate of inspection by Raymond and Company Ltd.

At the end of the trial, full argument was submitted about the relevance of this early evidence in deciding this point. The argument submitted by learned counsel for the plaintiff was that the agreement between the parties was in writing, that it was constituted by Mrs. Wilson on behalf of the plaintiff signing the requisition and by the oral acceptance by Mr. Carman on behalf of the defendant, or, at any rate, by acceptance by the defendant when it actually established the credit. Learned counsel then argued that the earlier transaction constituted the surrounding circumstances existing at the time the July-August transaction occurred or shortly before, and that these circumstances must have been known to the parties and understood by them at the time when the contract was made. It was not submitted on behalf of the plaintiff that this earlier evidence showed the existence of any trade custom or that it established the existence, apart from this contract, of any special meaning attached to the phrase "certificate of inspection". In support of this argument, learned counsel for the plaintiff cited and relied upon a number of well-known cases. Learned counsel for the defendant argued that, assuming that the relationship established in July-August 1967 between the plaintiff and the defendant was contractual, which he denied, nevertheless the evidence of the earlier transactions was only of negotiations between the parties, of what they had done in other and perhaps different transactions or was evidence of what the parties meant by the words which they had used. He submitted that where the words used had an ordinary and usual meaning, evidence of the kind on which the plaintiff relied was not admissible.

I am of the opinion that the argument submitted on behalf of the defendant should be upheld and that the earlier evidence is not of relevant significance on the principal point for which it was tendered. I am of the opinion that the written document which constituted the requisition and the two further written documents which constituted, in the case of the July-August transaction, amendments to the requisition contain the whole of the bargain between these parties and that my decision must depend upon the words which they have used in it. Accordingly, I am of the opinion that on the claim based upon breach of contract the evidence of the earlier transactions is not relevant for the purpose of construing the contract made in July-August 1967 and must be disregarded for that purpose.

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It is, however, necessary to state that the plaintiff made another claim, which is probably an alternative, based upon the principles stated in *Hedley Byrne & Partners v. Heller*, 1964 A.C. 465, and *Evatt v. Mutual Life and Citizens' Assurance Co. Ltd.*, (1967) 86 W.N. (pt. 2) (N.S.W.) 183. In my opinion this early evidence is important to that alternative claim and I will refer to it at a later place in this judgement.

I now turn to a consideration of the particular transaction. It was said on behalf of the plaintiff that on 11th July, 1967, it lodged a requisition with Mr. Carman which, on behalf of the defendant, he accepted. This requisition requested the establishment of a documentary letter of credit with the defendant's agents at Taipei. This credit was to be used to pay the seller, Raymond & Company Ltd. for goods which the plaintiff had bought f.o.b. Keelung, which is the port of Taipei. The goods were Christmas decorations packed in small cartons, to be shipped to Sydney in two ships. Shortly after this credit had been established, Mrs. Wilson on behalf of the plaintiff noticed that there was not included among the additional documents, which the defendant's agent was required to obtain from the seller in return for payment, a certificate of inspection. Mrs. Wilson spoke to Mr. Carman about what she had noticed and, at his request, a letter was written on behalf of the plaintiff to the defendant requesting the insertion of this document among those which the defendant's agent was required to obtain. These instructions were acknowledged and confirmed by the defendant. The plaintiff's claim is that the defendant was in breach of its contract with it because its agent the negotiating bank in Taipei did not receive a certificate of inspection for either shipment before it paid the price to the seller. It was acknowledged that a certificate was received by the defendant's agent, but it was argued that this certificate was simply a certificate that the goods had been inspected and did not express the opinion of the certifier about the condition or quality of the goods at or shortly before the time of shipment.

When the goods arrived in Sydney they were damaged or of defective quality, with the result that they were substantially unsaleable and were returned to the seller at its cost. The plaintiff claimed to recover from the defendant the difference between the amount paid to the seller and the amount received from the seller in compensation, together with certain additional inspection and other costs payable in respect of the goods in Sydney.

It will thus be seen that the breach alleged was that the defendant's agent received a document which was not, within the contractual intention of the parties, a certificate of inspection and that the plaintiff's loss flowed from that breach. It will, therefore, be necessary to examine the evidence relating to the certificates which were received and to state my opinions upon the meaning of the contract and upon certain arguments that were submitted on behalf of the defendant about the effect of a document entitled "The Uniform Customs and Practice for Documentary Credits".

The defendant's agent in Taiwan, which was the negotiating bank, did receive two certificates before it paid the seller. There were two shipments and one certificate was in respect of each shipment. It might be observed, although it is not important for the point which I must now decide, that certificates had been given in respect of earlier transactions between the plaintiff and Raymond & Company Ltd. These certificates had been given by Raymond & Company Ltd., two of them related to snakeskins and one of them related to Christmas decorations. The first of those relating to snakeskins certified to the commodity being in good condition and suitable for export and the second one certified as to the quality and packing being suitable to export standard. The third certificate given by Raymond & Company Ltd. related to Christmas decorations of the same kind as those involved in the disputed transactions. In this document Raymond & Company Ltd. certified that it had duly inspected the cargo and found "the qualities of the goods are deemed acceptable". The certificates in the disputed transactions were not given by Raymond & Company Ltd. The first related to a shipment of Christmas decorations on the S.S. Tai Yuan. It was entitled "Survey Report" and was given by the International Surveyor Co. In material parts it stated as follows:

"This is to certify that we, the undersigned surveyer, at the request of Messrs. Raymond & Company Ltd, Taipei, did proceed at Keelung Harbour, Keelung, from 1st through 3rd Sept. 1967 for the purpose of checking upon the quantity and condition of the above mentioned commodity and we report as follows:-"

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There then followed a reference to the packing and against a side-note "Condition" there was stated: "The cases were found to be in good condition for ocean transit". There then followed against a sidenote "Inspection": "The contents was packed in carton box and wooden cases secured with two bands under supervised by us, for checking the quantity and condition of the contents, with the result as shown below:-" Then followed a description and statement of the quantity of the commodity, but there was not stated any opinion at all as to the quality or condition of the contents.

The second certificate was given in respect of the second shipment, on the S.S. "George Anson". This document was headed "Inspection Certificate" and was given by Ho Cheng Surveyor Company Limited. In material parts it stated:

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"This is to certify that we the undersigned surveyer at the request of Messrs. Raymond & Company Ltd., Taipei, did proceed at Keelung Harbour, Keelung, on October 1 through 3, 1967, for the purpose of checking upon the quantity and condition of the aforesaid sheet and we report as follows:-"

The aforesaid sheet referred to the first page of the certificate, in which the commodities were described as being 70 wooden cases of Christmas decorations. Against a sidenote "Condition" the following was stated: "The cases were found to be in good conditions for ocean transit". Against a sidenote, "Inspection" there was stated: "The contents was packed in carton box and wooden cases secured with two bands under supervised by us for checking the quantity and condition of the contents, with the result as shown below:-". Then followed a description and statement of quantity of the commodity. Against a sidenote "Remarks" there was stated:

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"(1) The commodity was loaded on S.S. "George Anson" from Keelung to Sydney.

(2) This survey report reflect our findings at time and place of inspection and not at time of loading.

END

This report is issued in good faith and to the best of our knowledge and ability but without responsibility on our part."

A feature of both these certificates is that they state the intention of the certifier to inspect the quality and condition of the commodities, but a perusal of the words of the certificates shows that if the certifier did make an inspection he has not expressed any opinion upon either the condition or the quality. Although the second document consists of two pages and the first of only one, all comments and opinions by the certifier are typed and easily read. Subject therefore to the comments which I shall make later, these certificates do not, in my opinion, certify as to the condition or quality of the commodities.

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It is therefore, necessary to consider whether they should have done so or, rather whether the defendant's agent should have insisted upon receiving a certificate which did so before it paid the price to the seller. The authority of the defendant and of its agent was only to make the credit available and pay the price if at the time it received a certificate of inspection.

Learned counsel for the plaintiff submitted three arguments to prove the breach. The first argument was that only a certificate given by Raymond & Company Ltd. could satisfy the condition. The second was that the phrase "certificate of inspection" according to its ordinary meaning and considered apart from its context, required that the certificate, by whatever person given, should certify as to the condition and quality of the commodity. The third was that the phrase "certificate of inspection" in the context of the contractual relations between the plaintiff and the defendant must be taken to have expressed an intention that the certificate should express the certifier's opinion upon the condition and quality of the goods.

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The first argument depended upon inferences to be drawn from conversations between Mrs. Wilson, Mr. Parker, Mr. Stevens and particularly Mr. Carman, relating to earlier transactions than those which are now in dispute. The argument on this point was that "certificate of inspection" was understood by the parties to mean a certificate of inspection

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by Raymond & Company Ltd. For reasons which I have already given, I am obliged to reject this argument. The words "Raymond & Company Ltd." do not appear in the writing of the instant transaction and none of the oral evidence is, in my opinion, admissible to add them or their meanings.

I will consider the second and third arguments together. The primary problem, in my opinion, is to construe the actual agreement. As appears from the requisition, the credit established was for a sum not exceeding \$U.S.16920, purporting to cover the invoice cost f.o.b. of 75 gross boxes of battery operated Christmas lights, round shape, and 75 gross boxes of battery operated Christmas lights, lantern shape, at \$U.S.9.40 currency per dozen boxes, to be shipped from Taiwan to Sydney in two shipments, 38 gross boxes each shape not later than 7/8/67 and 37 gross boxes each shape not later than 1/9/67. As a condition of payment it was provided that the seller's draft "must be accompanied" by, inter alia, commercial invoices and packing lists. On or about 1st August the plaintiff, having been informed that the seller could not ship on the due dates requested the defendant to extend the credit. This request was made orally by Mrs. Wilson on behalf of the plaintiff to Mr. Carman. During the course of this conversation Mrs. Wilson told Mr. Carman that she had only recently noticed that the conditions of the credit did not provide for a certificate of inspection and she requested that this amendment be made. Mr. Carman agreed to both suggestions and requested that a letter be sent to the defendant. This was done on 2nd August, 1967 and confirmed by a reply dated 3rd August. The witnesses for the defendant asserted that the certificates tendered to the defendant's agent were certificates of inspection as required by the conditions of the credit. Both Mr. Carman and Mr. Cardwell, a senior and experienced officer of another bank expressed the opinion that a certificate of inspection was complete and regular if it certified merely to the fact of an inspection having been made and that it was unnecessary that it should also state the certifier's opinion of the quality or condition of the goods he had inspected. There was also other evidence, which originated from the defendant but was tendered by the plaintiff. At a later time, when the defective condition of the goods had become all too apparent, Mrs. Wilson on behalf of the plaintiff orally requested the defendant to tell her its definition of a certificate of inspection. The defendant answered her request and wrote a letter which I will quote in full. It was as follows:

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"As arranged we quote hereunder definition of 'Certificate of Inspection' as given in 'Thomson's Dictionary of Banking' p.135:- 'CERTIFICATE OF INSPECTION'. A shipping document vouching for the condition of perishable goods at the time of despatch."

The substantial argument submitted on behalf of the plaintiff was that a certificate of inspection was, indeed, a useless document if it did not state the certifier's opinion of the condition of the goods. In my opinion, the argument submitted by learned counsel for the plaintiff is sound. I base my opinion not merely upon the meaning of the phrase itself but upon the meaning of that phrase in the contract made by the plaintiff with the defendant. In my opinion, such a certificate is intended to be a form of insurance by the buyer that before it pays the price to the seller it will have the assurance of the certifier about the condition of the goods. This may be expressed in another way by stating that the real object of such a certificate of inspection, as appears from this contract, is to be a protection to the buyer. The buyer, in my opinion, is ill-protected, if there is any protection at all, by any more restricted meaning. I am fortified in my conclusion by the definition from Thomson's dictionary which was propounded by the defendant and, while I realise that that definition in terms applies only to perishable goods, I cannot think that there is any sound distinction between perishable goods and the goods of the kind which were involved in the present transaction and were described in the requisition for a documentary letter of credit.

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Learned counsel for the defendant submitted that a bank in a transaction of this kind is concerned only with documents and is not concerned with the quality or condition of goods. I agree with learned counsel, but in my opinion, his argument does not wholly reflect the true nature of a banker's responsibility. A bank in such a case is not concerned with goods, but is concerned with the expression in a document of another person's opinion about the condition of the goods. In a case such as that I am considering, the duty of the bank is to obtain a document stating that opinion and I would think it mattered not, so far

as a bank's responsibility was concerned, if the opinion expressed in the certificate were wrong or false or founded upon an insufficient basis. I emphasise that the opinion I have expressed is based upon the true meaning of the contract between the plaintiff and the defendant, and only that contract. In particular, I have not formed and I do not express any opinion upon the meaning of the phrase in other contracts or where another type of goods is involved. I also do not express, because the point does not arise, any opinion upon the type of inspection that must be made by the certifier or the extent to which, if at all, he may form his opinion by sampling the goods: c.f. *Scrivener's Holdings Pty. Limited v. Charles David Pty. Ltd.* A.L.J.R. In my opinion therefore, the agent of the defendant was, as a condition of making the credit available to the seller, obliged to obtain a certificate of inspection, and it did not do so.

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I must now consider a further argument submitted on behalf of the defendant. The requisition for a letter of credit, in the part relevant to the point I am now considering, was expressed as follows:-

"We hereby request you to open on our account by cable an irrevocable credit subject to Uniform Customs and Practice for Documentary Credits (1962 revision), International Chamber of Commerce Brochure No. 222 . . .".

This document became part of the evidence and it was submitted by learned counsel for the defendant that its provisions were wholly incorporated in the agreement between the plaintiff and the defendant and that those provisions properly construed meant that the defendant, in accepting by its agent the two certificates in the present case, had not committed any breach of its obligations to the plaintiff. Learned counsel for the plaintiff submitted that the agreement between the plaintiff and the defendant was not subject to the provisions of this document, but only the irrevocable credit, and that, as he submitted, the argument for the defendant was therefore unsound. In my opinion the argument submitted on behalf of the plaintiff, which I rather thought was not seriously pressed, must be rejected and I cannot see any answer to that part of the argument of learned counsel for the defendant that the provisions of this document were included in the agreement.

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The Uniform Customs and Practice for Documentary Credits is a second edition of an earlier document. Its aim is to achieve uniformity in the practice relating to documentary letters of credit, which are now so largely used as the means of payment for international transactions. It had not been the practice of the Australian Trading Banks to adhere to the earlier edition, but as from 1st July, 1963 they have subscribed to the 2nd edition and it is now in general use. Its provisions, as I have held, are included as part of the contract made between the plaintiff and the defendant, and I must, therefore, examine it with the knowledge that it was designed to achieve the aim I have stated and that it reflects, subject to the provisions of any particular contract, the practice of banks in Australia.

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In developing his argument learned counsel for the defendant relied particularly upon Article 31 which provides as follows:-

"Article 31.

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When other documents are required such as warehouse receipts, delivery orders, consular invoices, 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."

It is true that a certificate of inspection as such is not mentioned in this article but the reference to a certificate of quality is sufficient for the purpose of examining the argument. Learned counsel first submitted, consistently with the opinions of Mr. Carman and Mr. Cardwell, that a certificate stating only that the certifier had inspected the goods was sufficient. He then submitted, as I understood him, that because banks deal in documents and not goods if a document described as a certificate of inspection were tendered by the seller the bank was entitled and indeed bound to accept that document for what by its description it purported to be and was not concerned to examine the document to ascertain whether its description did, in reality, accord with and reflect its contents. It seems to me with great respect to learned counsel that his first argument was denied and answered by his second. This is so, in my opinion, because it impliedly acknowledged a responsibility to read and understand the document at least to the extent that there was recognised a statement of

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an inspection having been made. In my opinion it would be unsound to decide that a bank may rely absolutely and exclusively on the description given to a document. Thus, in an extreme case, a document entitled "certificate of quality" might by mistake or for other reason in reality be a certificate of weight only or of origin. I cannot think that in those circumstances a bank would be entitled to accept such a document as a certificate of quality and in my opinion the Uniform Customs and Practice for Documentary Credits does not oblige or entitle it to do so. I hold this opinion for several reasons. Article 7 is as follows:—

"Article 7.

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit."

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The words of this article are in my opinion self-explanatory. In my opinion it would not be a compliance with these provisions of the Uniform Customs if a bank officer were to confine his perusal of a document to its title. That would be merely an examination of part of "the face" of the document, whereas in my further opinion the examination must extend, not necessarily to the whole of what appears on the face of the document, but certainly to the extent that will enable the reader to satisfy himself that it is a document of a kind which by "the terms and conditions of the credit" the bank is required to obtain. If the document is of such a kind it binds "the party giving the authorisation to take up the documents" — see Article 8.

Article 9, so far as is relevant, is as follows:—

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"Article 9

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents"

I would myself think that the declaration in this passage I have quoted re-states previous banking practice. Nevertheless, Article 9 does not, in my opinion, lessen or effect the obligation of the bank to ascertain that a particular document "on its face" is of the kind required by the credit. It only relieves a bank of responsibility for its "sufficiency, accuracy, genuineness, falsification or legal effect".

Article 31, in my opinion, is consistent with the general nature of the Articles to which I have already referred. It was argued that the phrase "without further definition" releases the bank from an obligation of insuring that a document defined, as, for example, a Certificate of Quality, did in truth certify as to quality. In my opinion this argument is unsound because it misplaces the descriptive quality of the phrase "without further definition". This phrase, in my opinion, refers to the description of the document embodied in the Letter of Credit; it does not refer to the description on the document tendered by the beneficiary of the credit. The document tendered by the beneficiary must indeed be a document of the kind described in the letter of credit, and in my further opinion the banker is obliged to read the document tendered to him to ascertain that it is.

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In the case of the present transaction I have held that when the bank inserted in the letter of credit the words "certificate of inspection" it bound itself to obtain a document certifying the quality or condition of the goods. In the result I am of the opinion that the argument submitted on this point by learned counsel for the defendant fails. So that I may express my opinion affirmatively I hold that in the contract which it made with the plaintiff, including as part of that contract the Uniform Customs and Practice for Documentary Credit, the defendant became obliged to obtain such a certificate of inspection and that it failed to do so.

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I will now consider the defence of ratification and the facts proved in evidence which relate to it. It is I think important that I should state the exact scope of this defence in the words in which it was pleaded.

By par. 9 of the statement of claim the plaintiff alleged:—

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“9. By request in writing dated the 11th day of July 1967 the Plaintiff requested the Defendant to open on its account an irrevocable credit authorising Raymond & Company Limited of Taipei Taiwan to draw on it for any sum or sums not exceeding in all \$U.S.16,920 purporting to cover the invoice cost f.o.b. of 75 gross battery operated Christmas lights round shape and 75 gross battery operated Christmas lights lantern shape at \$U.S.9.40 currency per dozen boxes of Taiwan origin to be shipped on the Plaintiff’s account from Taiwan to Sydney in two shipments as therein specified, the first shipment not later than the 7th day of August 1967 and the second shipment not later than the first day of September 1967.”

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By pars. 15, 16 and 17 of the statement of claim the plaintiff also alleged:—

“15. The goods mentioned and referred to in the request referred to in paragraph 9 hereof were shipped from Keelung Taiwan in two shipments. The first shipment was on the vessel ‘Taiyuan’ on or about the 3rd day of September 1967 and the second shipment was on the ‘George Anson’ on or about the 3rd day of October 1967.

16. At or about the time of each such shipment and at or about the time of the presentation of the drafts there were handed to the Defendant’s agent in Taiwan certain documents. These documents did not include any certificate in relation to either shipment by the Plaintiff’s agent or otherwise that the goods were up to standard at the time of being loaded on the ships on which they were to be carried.

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17. The Defendant by its agent caused drafts for sums totalling \$U.S.16,920 to be paid to Raymond & Company Limited without any such certificates of inspection being received and the Plaintiff says that payments of the drafts which were subsequently made were accordingly contrary to the provisions of the said request dated the eleventh day of July, 1967, as amended by the letters of the 2nd and 3rd days of August 1967 hereinbefore mentioned.”

By par. 16 of the statement of defence the defendant alleged:—

“In further answer to Paragraphs 16 and 17 of the statement of claim the defendant says that payment of each of the drafts therein referred to was specially and expressly or impliedly authorised by the plaintiff with knowledge and/or notice of the facts alleged in Paragraph 16 of the statement of claim and was ratified and acquiesced in by the plaintiff.”

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The only transaction on which the plaintiff sued was that which was initiated by requisition dated 11th July, 1967, and signed by Mrs. Wilson and by Mr. Rowell. The plaintiff alleged that the defendant in breach of the contract made with the plaintiff did not obtain a certificate of inspection as it was required to do. The plea of ratification was submitted as a total defence to this claim and learned counsel argued it on this basis. The argument as it seemed to me assumed that the legal relationship between the issuing bank — the defendant, and the applicant for credit — the plaintiff, was that of principal and agent although this aspect was not fully examined notwithstanding that learned counsel for the plaintiff submitted in a short argument that the relationship was that of banker and customer and not otherwise. On this assumption it was then submitted that the conduct of the defendant which was beyond the authority conferred by the plaintiff would be justified if the acts of the plaintiff were such that in a relationship between an agent and his principal, the principal would be held to have ratified the excess of authority. In a further argument submitted by leave learned counsel for the defendant submitted that “ratification in this class of case is a special term used in a special sense.” The availability of the argument was essentially founded upon certain parts of Gutteridge & Mograh, “The Law of Bankers Commercial Credits”, 4th ed., and Professor A.G. Davies, “The Law Relating to Commercial Letters of Credit”, 3rd ed., and certain judicial authorities to which I will refer later. Learned counsel for the defendant did not submit an elaborate statement of the facts upon

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which he relied to establish ratification but they were rather implicitly assumed in the manner in which the argument was presented. It will therefore be necessary for me both to examine the facts which would support the defence if it were a good defence and also to examine the sufficiency in law of a plea of ratification to a claim of the kind made by the plaintiff. Certain of the facts are alleged in the paragraphs of the pleadings which I have cited. The next events are told in the correspondence between the parties. On 4th October the defendant advised the plaintiff that it was holding the shipping documents in respect of the cargo carried in the "Tai Yuan" and demanded payment. This letter was indorsed, in material respect, with the following note:—

"Negotiating bank has noted the following irregularity. Lack of presentation of acknowledgement of declaration of insurance. 10

Please advise us in writing to authorise our agents to release the guarantee held by them in respect of the abovementioned discrepancy."

This letter did not say anything about the insufficiency, as I have held, of the certificate of inspection but on the contrary as I read it suggested that, subject only to the absence of the acknowledgment of declaration of insurance, the documents were correct.

Accompanying a letter dated 9th October signed by Mr. Rowell the plaintiff delivered to the defendant a cheque for the proper amount and took up the documents. By the same letter the plaintiff requested the defendant to authorise the release of the guarantee. The evidence does not disclose who on behalf of the plaintiff actually delivered the cheque and took up the documents but I do not doubt that a bill of lading was among the documents and that it was used by some person on behalf of or with the authority of the plaintiff or by some person, probably Gollin & Co. Ltd., to whom the plaintiff had negotiated the bill, to take delivery of the goods when they were discharged. 20

By letter dated 1st November the defendant informed the plaintiff that it held the shipping documents in respect of the goods borne in the s.s. "George Anson". This letter also bore a similar indorsement to that noted on the earlier letter and in this instance too it did not make any reference to the insufficiency of the certificate of inspection. It appeared from a letter dated 18th December written by the defendant to the plaintiff that these documents were forwarded to the plaintiff on 31st October and that a cheque for payment was sent by the plaintiff to the defendant on 1st November. However, as also appeared from the defendant's letter dated 18th December the plaintiff did not, as requested on 31st October, authorise the guarantee to be released. The letter dated 18th December expressed a further request for this to be done. This last letter, which was produced from the custody of the plaintiff, bore upon it a handwritten indorsement in the following words:— 30

"Approved by Mrs. Davey 19/12/67

H.C.R.

per H.D.H.

Release signed on this basis."

As with the goods borne in the s.s. "Tai Yuan" the documents relating to the s.s. "George Anson" were negotiated by the plaintiff to Gollin & Co. Ltd., who in due course took delivery of the goods to which they related. I infer from the evidence that the goods carried in the "George Anson" arrived in Sydney about the end of October 1967. 40

It is convenient at this place to mention one other matter. It is that in respect of the instant transaction the plaintiff sold both consignments to Gollin & Co. Ltd. The evidence of this transaction with Gollin & Co. Ltd., is slight but I do not doubt that it was a sale and that it was in its capacity as buyer that Gollin & Co. Ltd. received the documents, took possession of the goods and proceeded to market them among retailers. When their defective character was discovered by the retailer Gollin & Co. Ltd. returned them to the plaintiff which in its turn consigned them back to the original seller in Taiwan. 50

It is now necessary to speak so far as the evidence enables me to do so of the organisation of the plaintiff and the means by which its business affairs were conducted. At all material times Mrs. Wilson was its managing director and it was she who initiated and concluded the dealings with Raymond & Co. Limited. It was also she who made the arrangements with Gollin & Co. Ltd. and when the goods were found to be defective concluded the arrangements for return with that company and the settlement to which I

will afterwards refer between the plaintiff and Raymond & Co. Limited. Mrs. Wilson was also closely concerned, though not exclusively so, with the preparation of the various requisitions for documentary letters of credit which the defendant established. Nevertheless all "the administrative and paper work of the plaintiff" was done in the office of Messrs. Fell & Starkey by or under the supervision of Mr. Rowell who was its other director. Mr. Rowell, with Mrs. Wilson, signed the requisition for letters of credit and Mr. Rowell signed the letters written on behalf of the plaintiff in connection with the receipt of the shipping documents from the defendant and all cheques drawn on the plaintiff's bank account were signed by Mr. Rowell and Mrs. Wilson. A certain Mr. Egan was employed by Messrs. Fell & Starkey until September 1967. Part of his duties was concerned with the affairs of the plaintiff and in the discharge of those duties he became involved in the preparation on behalf of the plaintiff of some of the requisitions. He also had some conversations with Mr. Carman when the form of the requisitions was discussed. Mr. Egan gave evidence at the trial about these matters but as his employment with Messrs. Fell & Starkey ended in September 1967 he did not know anything about the arrival of the shipping documents or the circumstances in which they were taken up by or on behalf of the plaintiff. However, he did say that when his employment with Messrs. Fell & Starkey ended he intrusted the affairs of the plaintiff with which he had been concerned to Mr. Hay. Indeed the defendant's letter dated 18th December 1967 was marked for attention by Mr. Hay. Mr. Hay was in Court for several days of the trial and Mr. Rowell was in Sydney on at least the first day but neither of those gentlemen was called to give evidence.

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In September and October 1967 Mrs. Wilson was visiting Hong Kong and while in that place was informed by a representative of Gollin & Co. Ltd. that the Christmas decorations had arrived in Sydney and that approximately 11 per cent of them were defective. She immediately went to Taiwan to discuss this matter with Mr. Jackson Wu and having done so she returned to Sydney. The result of the discussion with Mr. Wu was that Raymond & Co. Limited agreed to pay the plaintiff a certain sum of money as compensation. Soon after she arrived in Sydney, Mrs. Wilson became aware that the percentage of Christmas decorations that was defective was much greater than her original belief and that those which were defective constituted almost 60 percent of the consignment. In March 1968 she returned to Taiwan and after further discussion with Mr. Jackson Wu Raymond & Co. Limited agreed to pay to the plaintiff a sum of \$A.2,091.04 which sum included the moneys that had been agreed in 1967. I infer that it was at this time too that Raymond & Co. Limited agreed to take back such of the goods as had been returned by retailers to Gollin & Co. Ltd. and by that firm to the plaintiff and also agreed to pay the return shipping freight.

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The evidence does not state whether or not the defendant was aware before June 1968 of the disaster which had befallen the Christmas decorations. The evidence proves that Mrs. Wilson spoke on the telephone to Mr. Carman in March and May 1968. The evidence of the conversation in March is that she requested him to give her a definition of a certificate of inspection and that he, after saying that it was the duty of another officer to do this, transferred her to the International Division. I do not know to whom she spoke or what was said but a few days later the defendant wrote a letter which I have already quoted and which stated the definition she sought. In May 1968 Mrs. Wilson spoke to Mr. Carman about a different and distinct transaction which, because it is also a claim of the plaintiff in this action, I will discuss in detail later. It has, however, some relevance to the matter I am presently examining and its outline must be stated. In December 1967 the plaintiff had contracted to buy some toys in Hong Kong and import them to Australia. To this end arrangements of a kind which had now become familiar were made with the defendant to establish a documentary letter of credit. The credit was established in accordance with the request and by letters passing between the parties on third and fourth January 1968 respectively the expiry date of this credit was extended. In the conversation Mrs. Wilson had with Mr. Carman in May 1968 she claimed on behalf of the plaintiff that the defendant had granted more credit than its mandate permitted and that the plaintiff's account had been wrongly debited with the excess. Mr. Carman denied that in the circumstances the account had been wrongly debited and I will discuss the merits of this dispute at a later place in this judgement. However, the significance of this incident for present purposes is that so far as the evidence proves neither Mrs. Wilson nor any other person on behalf of the plaintiff claimed to Mr. Carman or any other officer of the defendant that the defendant had acted outside its mandate in respect of the Christmas decorations transaction.

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By letter dated 13th June 1968 the solicitors for the plaintiff wrote a letter of demand to the defendant. This letter, so far as is material to the point I am now considering, is as follows:

“We wish to advise that we act for Jalsard Pty. Limited and for Mrs. Robyn Davey.

Jalsard Trading Pty. Limited has instructed us to act on its behalf in the recovery of losses it has sustained. These losses were sustained because of the Company being sold faulty lights and decorations by Raymond & Company Limited of Taipei Taiwan.

Our client made an application to The Commercial Banking Company of Sydney Limited for the establishment of an irrevocable documentary letter of credit. This credit was established by the Bank and was numbered 3/12341.

The documents required and listed in the application for the letter of credit were subsequently altered by the addition of a document named ‘Certificate of Inspection’. We refer you to the Bank’s letter addressed to the Secretary of Jalsard Trading Company which letter is dated the 3rd August 1967 and bears the reference ‘Overseas WGC.MR’.

The Christmas lights and decorations were subsequently landed in this country and sold by our client to Gollin & Company Limited which in turn sold the lights and decorations to various retail outlets. However it was not long before there were returns of the lights and decorations to Gollin & Company Limited. The retailers found that the goods were faulty and could not be sold and refused to accept deliveries.

When this occurred our client made enquiries and found that no Certificate of Inspection was ever received before payment was made to Raymond & Company Limited. Two Survey Certificates were received, one in respect of each shipment of goods, there being two shipments in all. These Survey Certificates are not Certificates of Inspection.

Our client maintains that if the proper Certificates of Inspection were received prior to payment being made to Raymond & Company Limited the goods would not have been sold in a faulty condition. Therefore our client has suffered a loss and this loss our client attributes to the failure to obtain the appropriate Certificates of Inspection as required.”

This claim was on the evidence first made or suggested eight and one half months after the representatives of the plaintiff had taken up and paid for the first set of shipping documents and seven and a half months after the second set of documents. Almost the same amount of time elapsed from the date of the first discovery of defects in the goods. Against the facts I have stated it must be recorded that Mrs. Wilson on behalf of the plaintiff first consulted its solicitors early in 1968 with respect, among other things, to the liability of the defendant.

It is in the circumstances I have stated that I must consider the defendant’s plea that the plaintiff ratified this breach of the mandate conferred upon and accepted by it. Learned counsel for the defendant as a first argument submitted that when a bank agrees to establish an irrevocable letter of credit on behalf of another to enable that other to pay for goods bought in a foreign country the bank does not deal in the goods but is only concerned to deal in documents. It was then said that the bank was not bound contractually with the applicant for credit but as such a dealer in documents was only entitled to an indemnity from the applicant if it faithfully and exactly obtained the documents it had promised to get. Indemnity and transfer of the documents as between the bank and the applicant were concurrent acts and if the bank had not performed its mandate exactly it would not be entitled to be indemnified. There not being in these circumstances any contractual relationship learned counsel said the only sanction upon the bank was that if it failed to perform its mandate exactly it would lose a valued customer. This argument was said to be justified by the authority of a speech by the Viscount Sumner in *Equitable Trusts Company of New York v. Dawson Partners, Ltd.* 27 L.L.R.49. At p. 52 Viscount Sumner said:-

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“The appellants sued, according to their statement of claim, for damages for breach of the respondents’ obligation to accept documents tendered by the plaintiffs and to reimburse to them the amount of a bill of exchange which they had accepted under a confirmed credit opened at the defendants’ request. Alternatively, the amount is claimed as an indemnity against all losses and liabilities incurred in consequence of having accepted the bill under the credit. The substance of the claim is really the indemnity for which in terms the letter of credit provides.

The contract sued on – a confirmed credit of an ordinary kind – was made in writing in London between the parties to the action themselves. By its terms reimbursement is to be made on presentation of ‘the documents,’ and ‘the documents’, in terms of the credit as ultimately agreed, include ‘a certificate of quality to be issued by experts who are sworn brokers.’ What the plaintiffs tendered, as one of the documents and as the only certificate of quality, was one issued by only one expert who was a sworn broker, and by nobody else. There is really no question here of waiver or of estoppel or of diligence or of negligence or of breach of a contract of employment to use reasonable care and skill. The case rests entirely on performance of the conditions precedent to the right of indemnity, which is provided for in the letter of credit. 10

It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same or, which will do just as well. Business could not proceed securely on any other lines. The bank’s branch abroad, which knows officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima facie they were right in refusing to take them.” 20

Although I accept the argument of learned counsel for the defendant that banks deal in documents and not in goods I am of the opinion that certain of the consequences of such a dealing are denied in this case by the defendant’s own printed form of requisition. This document when completed by the plaintiff constituted an offer by the applicant which was accepted by Mr. Carman when, on behalf of and with the authority of the defendant, he agreed to establish the credit. The terms of the agreement between them were those stated in the printed requisition and one of these terms was to confer upon the defendant the right to claim this indemnity even before it tendered the documents. By one of the printed conditions of the requisition it was provided as follows:- 30

“we (i.e. the applicant for credit) hereby agree with the Bank as follows:-

. . . .(B) To pay to the Bank at on demand

- (i) the Australian currency equivalent of payments made or drafts accepted by the Bank under or in intended or purported compliance with the credit or this requisition at the rate of exchange current at date of demand, or at the option of the Bank (excisable by notice in writing to us on or at any time after the making of the demand and prior to payment) at the rate of exchange current on the day of the exercise of the option together with Bank interest for any period by which the date of payment by the Bank (whether or not they are drawees) precedes the date of our payment to the Bank, and,” 40

Learned counsel for the plaintiff developed an interesting argument with respect to the meaning and effect of this clause and with which I am in substantial agreement. The clause means, so he submitted, that the applicant for credit promised that on demand made by the bank he will reimburse the bank for payments it has made “under or in intended or purported compliance with the credit or this requisition”, and that when demand is made 50

the obligation of the applicant exists whether or not the bank has the documents. If, of course, the bank has the documents it is contractually entitled to retain them "as a continuing security by way of pledge" until payment: see cl. (C) of the requisition – and upon payment is bound to deliver the documents to the applicant. It may well be, though it is not necessary to decide this, that the purpose and effect of cl. (B) is to entitle the bank to obtain its indemnity where the documents have been lost or destroyed – e.g. in a fire or aircraft disaster and even possibly where the issuing bank or the negotiating bank, its agent, has not fully complied with all the terms of its mandate. In my opinion learned counsel for the plaintiff may well have been correct when he argued that a possible reason for the insertion of this clause in the contract between the plaintiff and the defendant was to displace contractually some of the inconvenient consequences to a bank of the Viscount Sumner's speech. Learned counsel for the defendant was, I thought, somewhat surprised by this argument and he firmly opposed its adoption.

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The use which learned counsel for the plaintiff made of this interpretation of cl. (B) was to submit that an inference of ratification could not be drawn from the facts of payment by the plaintiff and taking up the documents. The inference could not be drawn he submitted because contractually payment had to be made on the defendant's demand, whatever the position with respect to the documents or the plaintiff's knowledge of a defect in them. Thus it followed, so he submitted, that there was a contractual displacement of that part of the Viscount Sumner's speech when he said, speaking of the contract sued upon in that case:-

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"The documents tendered were not exactly the documents which the defendants have promised to take up and prima facie they were right in refusing to take them."

Learned counsel for the defendant also submitted that it was always important in deciding whether an exercise or wrongful exercise of authority had been ratified to consider the delay, if any, that had occurred. He submitted that where parties were dealing in documents which are or which include documents of title to goods the importance of delay is greater. In the present case it was submitted that it was necessary to consider the effect of delay and knowledge together. The documents were taken up by or on behalf of the plaintiff and paid for by the plaintiff substantially contemporaneously. Mrs. Wilson, the managing director of the plaintiff, said she did not see the documents until early 1968 when she saw them in the office of the plaintiff's solicitor but that in my opinion does not entitle the plaintiff to say that it did not have notice of or know the contents of the documents until that time. There were other persons attending to the affairs of the plaintiff and the evidence proved that the administrative and paper work was done in the office of Messrs. Fell & Starkey. Mr. Rowell was a director and the correspondence shows that he gave his attention to taking up the documents and paying for them. Mr. Hay had assumed such duties as had previously been performed by Mr. Egan and these certainly extended to and included work in connection with the letter of credit transaction. Neither of these gentlemen gave evidence of his dealings with the documents or his knowledge of their contents. Furthermore, after the first set of documents had been taken up and paid for and probably before the second set had arrived in November the quality of the Christmas decorations in the first consignment was known to be seriously suspect. Notwithstanding this knowledge the plaintiff paid for the second set and negotiated it as it had done the first set to Gollin & Company Limited. It is true I think as both learned counsel told me that, "in commercial matters the doctrine of constructive notice is not favoured" – see *Newsholme Bros. v. Road Transport and General Insurance* (1929) 2 K.B. 356 per Scrutton, L.J. at p.374, but in the present case I am of the opinion that on the facts proved I must infer that those officers of the plaintiff who were concerned with taking up and paying for the documents had actual knowledge of their contents. The absence of Mr. Rowell and Mr. Hay from the witness box tends in my opinion to support the opinion I have formed that by November 1967 the plaintiff had actual knowledge of the documents and of the defects in the certificate of inspection.

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As I have already said, learned counsel for the plaintiff submitted, though he did not develop or elaborate the argument, that in all material respects that concerned this transaction the relationship between the plaintiff and the defendant was that of banker and customer only and that therefore the doctrine of ratification was inapplicable. This argument was founded upon a passage in the judgement of McNair, J. in *Bank Melli Iran v.*

Barclays Bank (1951) 2 T.L.R. 1057. In that case McNair, J. was considering a dispute between the issuing bank and the negotiating bank and he held that the relationship between these two parties was that of principal and agent and that the doctrine of ratification could and, in the circumstances of that case, did apply. McNair, J. was not required to express an opinion about the relationship between the applicant for credit and the issuing bank and in my opinion he did not do so.

Learned counsel for the defendant relied strongly upon the following passages in Gutteridge & Megrah, 4th ed. p.151:-

*In the
Supreme Court of
New South Wales*

No. 3

*Reasons for
Judgement of his
Honour Mr.
Justice Macfarlan*

“With the subject of irregularities and indemnification in respect of payment in spite of them is associated that of ratification. There is nothing to prevent a buyer or his (the issuing) banker from ratifying the action of the intermediary banker in paying notwithstanding irregularities in the documents; in fact ratification happens more often than not, by the ultimate acceptance of the documents. But it can also be inadvertant – the intention which is necessary to the concept of ratification being implied from the action of the buyer or his banker. Roche, J. in *Westminster Bank Ltd. v. Banca Nazionale di Credito*, 31 L.L.R.306 said that:

‘if parties keep documents which are sent them . . . in consequence of some mandate which they themselves have issued, and keep them for an unreasonable time, that may amount to a ratification of what has been done as being done within their mandate.’ ”

At p.152 the learned authors continue: –

“The buyer must at once accept or refuse documents tendered to him; he is not allowed to delay except with the consent of the seller. It follows, if this assertion is right, that, having failed to decline, the buyer adopts the irregular payment. The paying banker’s position would depend on whether he had a right of recourse to the seller (in the *Bank Melli* case he had no indemnity, except for the second and smaller payment), and any delay would make his position more difficult, for his right of recourse to the seller might be lost if the latter had changed his position following the payment.

The statement in regard to the delay of Bank Melli in dealing with Barclay’s letter of June 15, which seems to suggest that the learned Judge would not regard six weeks delay such as to justify a plea of ratification, in conditions of pressure similar to that from which Bank Melli’s documentary credit department was said to be suffering, is unfortunate. It may not be possible to lay down any rule in these matters, but there are many practical reasons for not permitting such a long period of licence in any conditions. It is of the essence of contracts between banks that matters in dispute shall be dealt with promptly, for much depends upon this in the majority of cases. Banks, moreover, in the United Kingdom, may not as a rule plead the exigencies of business in mitigation of some failure to carry out instructions, and it is certain that no English banker would consider that he stood in a very strong position if he allowed some six weeks to pass before notifying his correspondents that he could not accept the particular transaction. He would imagine, long before that period had elapsed, that he was estopped from setting up the failure of his correspondents, no matter what the circumstances, provided these did not preclude the physical possibility of communicating. In practice these matters are not allowed to go by default. Delay is permitted only by agreement.”

At p.86 the learned authors also say:-

“As between the issuing banker and his customer circumstances may arise in which the banker can claim to be indemnified even though the documents tendered do not conform specially to the mandate, as, for instance, where the customer has accepted the documents:-

see *Bank of Montreal v. Recknagel*, 109 N.Y.482.

But it would cause very serious embarrassment to bankers issuing commercial credits if any relaxation was permitted of the rule that the documents tendered must be those specified in the letter of credit.”

In *Westminster Bank Ltd. v. Banca Nazionale di Credito* 31 L.L.R. 306, Roche, J. as Lord Roche then was, referred to this point. The facts of that case were complicated but in the course of giving his decision the learned judge examined the doctrine in connection with the position of several parties involved in the disputes. As I read his judgement he held at p.312 that the doctrine in that case did not apply as between the issuing bank and the applicant for a letter of credit. He did not reach this conclusion because in his opinion the doctrine could not apply but because it was proved that the applicant for the letter of credit had not in fact ratified the unauthorised act of the issuing bank.

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So far I have been considering the matter on the basis of the arguments submitted by learned counsel and the facts which were implicitly involved. It is impossible to think that a complete analysis has yet been judicially made of all the legal implications in the establishment of a documentary letter of credit and the advising to a beneficiary. There is a number of points still unsolved and it would be wrong if I were to attempt a general statement relating to them. It is, though, my duty to decide certain points and it is logical that the first is whether the doctrine of ratification is applicable at all, and to express my own opinion about the adequacy of a plea of ratification as it was pleaded and as learned counsel described it in answer to the plaintiff's claim. The claim was for damages for breach of contract and if the defence be sound in law it must be one which extends not only to entitle a defendant to claim and maintain indemnity for the moneys paid for the plaintiff but also to absolve the defendant from a liability for a breach of its own contractual obligations. The first of these alternative considerations does not arise because the plaintiff has fully indemnified the defendant and the defendant does not need to plead a ratification in reply to the plaintiff's rejection of its claim. But there is still the issue whether the plea of ratification by a defendant is a sufficient answer by it to a claim by a plaintiff for general damages for breach of contract. High authority exists for holding that in relation to the application for and the establishment of an irrevocable letter of credit the relationship between the applicant for credit and the issuing bank is not that of principal and agent. In my opinion this has been held by Griffith, C.J., with whose judgement Barton, J. agreed in *Friedlander v. Bank of Australasia*, 8 C.L.R. 85 at p.94. In *Friedlander*, the bank sued to enforce its indemnity and the defendant who had been the applicant for the letter of credit defended the claim with the argument that the bank when making payment had not complied with its contractual obligations. Learned counsel who appeared for the bank submitted that the defence must fail because the applicant for credit had 'ratified' the bank's breach – see the report at pp.88 and 89. The High Court overruled the defence but as I read the judgement of their Honours they did not base their decision on the ground of ratification but instead held that because the applicant for credit had taken the benefit of the bank's performance of its contract with him he was liable to pay in accordance with his own promise. The basis of that liability was either a new contract to pay or the acceptance by the customer of what the bank had bought for him. At p.97 Griffith, C.J. said:—

“Apart from these answers to the defence, the respondents rely upon the doctrine that if, notwithstanding failure by one party to a contract to perform a condition precedent, the other party accepts the benefit of a partial or imperfect performance, a new contract will be implied to pay for the benefits which he has actually received.

...
In my judgement this act on his part establishes an unequivocal election by the appellant, with full knowledge of the absence of the policies at the time of presentment of the drafts, to accept the benefit of the respondents' action in accepting them, whether it was or was not in breach of their contract with him. Further, S.A. Joseph & Rickard having, as already stated, refused to accept the cargo on the ground of the absence of the policies stipulated for in their contract with the appellant, he on 4th June entered into a new contract with them for the sale of 2,500 tons, part of the cargo. This also is, in my judgement, proof of an unequivocal election by the appellant to take advantage of the Bank's acceptance of the drafts, and so Hodges, J. held.”

At p.102 O'Connor, J. said:—

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“But it seems to me that the real strength of the bank’s position lies in the adoption by the appellant of the benefit conferred by the bank’s advances. . . . The appellant has retained the benefit which it conferred, and afterwards dealt as owner of the wheat in selling a portion of it to Joseph & Rickard in a modified performance of his contract with that firm. In all subsequent dealings with the balance of the wheat up to 30th November 1903, when the agreement was come to between the appellant and the respondents that the balance of the wheat should be realized without prejudice to their respective rights, the appellant dealt with the wheat as owner. . . . Under such circumstances the law is clear that the appellant, having taken advantage of the benefit which the bank’s payment on his account has conferred on him, cannot be allowed to repudiate his liability to reimburse the bank in respect of that payment.”

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The decision of the Court was, as I read it, that by his various acts in relation to the establishment of the credit and the transactions after the credit had been established the applicant for credit, the defendant in the case, had accepted the benefit of the contract which it had made with the bank and that it was not therefore entitled to refuse to indemnify the bank. On the other hand it was held in *Friedlander* that the adoption by the applicant for credit of the benefit of the contract did not preclude him from maintaining against the bank a claim for damages for breach of contract by the bank and that he was intitled to set off against the amount of the indemnity the damages he could prove. On this point O'Connor, J. said, at pp.102, 103:-

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Where, as it is assumed in this case, the payment is made in pursuance of the contract, though not in compliance with its terms, the law will imply from facts such as exist here a new contract to reimburse the bank to the extent of the value of the benefit obtained, and for the purpose of ascertaining that value will permit the appellant to deduct from the amount actually paid by the bank the amount, if any, by which the benefit to the appellant under the contract has been lessened by the Bank’s failure to act in accordance with its terms”.

In the result, it was held by the High Court that because the damages proved were nugatory there was not any deduction that should be made from the entitlement of the bank.

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As far as I am aware, and as far as learned counsel were aware, *Friedlander* is the only Australian authority on the interpretation of an irrevocable letter of credit: cf. *The Law of Sale of Goods – K.C.T. Sutton*, p.393 – note 19. It is a decision of the High Court and one which, therefore, binds me.

In my opinion, that authority governs the decision in the present case and the facts relied upon by learned counsel for the defendant in aid of his plea of ratification, as he expressed it, are, in my opinion, more properly seen as facts which show that the plaintiff took the benefit of the contract which it had made with the defendant. This conclusion would have meant that the plaintiff was precluded from denying its obligation to indemnify the defendant, but as it has already done so it is unnecessary to consider this aspect further. The principle of *Friedlander*, in my opinion, also establishes that on the facts in the present case the defendant is liable to the plaintiff for such damages as it can prove were the consequences of the breach by the defendant of its contract and that it is not an answer to such a claim that the plaintiff has so acted as to preclude itself from denying its obligations to make indemnity to the defendant.

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In the result, therefore, I am not in agreement with the argument submitted by learned counsel for the defendant. The argument assumed, I think, that the legal relation between the plaintiff and the defendant was that of principal and agent and that the doctrine of ratification in its known application to that relationship and with its known limitations, was fully applicable to the facts of this case and operated to absolve the defendant from any of its unfulfilled obligations, including a breach of its contract. I have found great difficulty in my consideration of this defence and this difficulty was, I think, substantially caused by an inability to rationalise the assumptions on which it was based. The use of the word “ratification” may or may not be appropriate to describe the argument in this case, which did not notice any distinction between the right of the defendant to an indemnity and its

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obligation to perform its contract and pay damages if it did not. I cannot think that it is as important to label an argument, as was done, as it is to ascertain the principles that are applicable and which, when applied, bring about the correct result in law. I therefore, for the reasons which I have given, am of the opinion that the plaintiff is entitled to recover such damages as it has proved.

The opinion I have formed means that it is necessary to consider the plaintiff's claim for damages. I repeat again that learned counsel for the defendant submitted in the forefront of his helpful argument that there was never any contract between the plaintiff and the defendant, whereas learned counsel for the plaintiff submitted that there was. I have already expressed the opinion that there was such a contract and, in addition to the reasons I have given, it seems to me that *Friedlander v. Bank of Australasia (supra)* *Equitable Trusts Company of New York v. Dawson Partners Ltd. (supra)* and *Bank of Montreal v. Recknagel*, 109 N.Y. 482, support this conclusion. I have already quoted or referred to some clauses of the contract document and, for the purpose of one comment I wish to make, I will quote at this point cl.(F):-

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“(F) The Bank its agents the drawees and each negotiating bank are respectively authorised without reference to us and without being liable for any act or omission to give effect to this request in such a manner as in its or their opinion may be most convenient or expedient.”

The comment is that learned counsel for the defendant did not submit any argument based upon the clause I have just quoted and, in particular, did not argue that it justified the defendant in accepting the two certificates that it did or, if it did, absolved it from liability to pay damages to the plaintiff. I have not formed any opinion on the soundness of such an argument if it had been submitted.

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The breach alleged by the plaintiff was that the defendant by its agent paid to the seller the amount of the credit and did not require as a condition of payment a certificate of inspection as I have defined it. I have already held that this breach was proved. It was then submitted that the measure of damages was the loss thereby caused to the plaintiff which was not too remote in accordance with the rules stated in *Hadley v. Baxendale* 9 Ex.341 as explained in *Victoria Laundry Limited v. Newman (1949)* 2K.B. 529 and *Czarnikov v. Koufos (1969)* 1 A.C. 350. The damages therefore included, so it was submitted, not only all the money wrongly paid but also expenses incurred by the plaintiff in engaging persons to survey and examine the goods and monies paid for Customs duties and storage charges. The amount of this claim was reduced by a sum received from the seller by way of compromise, but it did not include a claim for loss of profit or for the expenses incurred by its managing director when she went to Taiwan specially to negotiate a settlement with the seller. Learned counsel for the plaintiff in the course of the argument, at the end of the trial, told me that he was not able to cite any express authority in support of this claim to damages as he had expressed it and I have stated it. He did however cite and rely upon *Urquhart Lindsay & Co., Limited v. Eastern Bank Limited* 9 L.L.R. 572 which was a case where a seller who was the beneficiary of an irrevocable letter of credit sued the bank which had advised the credit and refused to take up the documents in exchange for payment. In that case the seller claimed as damages all its loss caused by the breach which was not too remote. *Rowlatt, J.*, held that the seller's claim correctly expressed the true measure of damages. Learned counsel for the plaintiff submitted that the reasoning of that decision was applicable to a case where the applicant for a letter of credit, and not the beneficiary, was suing an issuing bank for breach of its obligations. I agree with this last submission of learned counsel and hold in accordance with the authorities I have cited that, there being a contract between the parties the innocent party is entitled to damages assessed in accordance with general principles for breach by the other party of its contractual obligations. I do not, as learned counsel did not, intend to review in detail the whole of the evidence given about damages but will make two comments. The first is to say that I accept the evidence of Mrs. Wilson, Mr. Rabbidge and Captain Brown to the extent to which they gave evidence relating to this issue and the second comment is to quote from the formal statement of the plaintiff's claim. This statement is as follows:-

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11th day of July 1967 sold to the plaintiff and bought by the Plaintiff from the Defendant \$US.16920	\$15,252.87
Gollin and Company Limited for examination and testing of lights	1,040.00
Sydney Chamber of Commerce for examination of lights	64.00
Cartage and bond store charges	384.46
Interest and bank charges together with interest at the rate of \$1.87 per day	628.01
	17,369.34
Less moneys received from Taiwan	2,901.04
	14,468.30

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I must now inquire what events or loss were caused by the defendant's breach. The defendant paid the seller and by letters dated 4th October 1968 and 1st November 1968 demanded indemnity from the plaintiff. The plaintiff paid the defendant pursuant to those demands. The letters of demand indicated, in my opinion, that the defendant had, except for the absence of an acknowledgement of declaration of insurance, obtained from the seller all the documents which by contract it was obliged to obtain. I am also of the opinion that when the negotiating bank as agent for the defendant paid the seller the following events and consequences occurred. The defendant made its demands upon the plaintiff for indemnity and the plaintiff paid the defendant pursuant to those demands. In consequence the seller was paid for the goods which the plaintiff had bought and the plaintiff had parted with that amount of money, the payments being made pursuant to the obligation of the buyer under its f.o.b. contract with the seller. The goods which were the subject of the contract between the buyer and the seller were loaded into the ships and the property in them thereupon passed to the buyer: cf. British Shipping Laws, Vol.5, par.412. A further consequence was that the goods were in due course discharged in Sydney and the right and title to them was negotiated by the plaintiff to Gollin & Company Ltd. which in its turn sold them to retailers. The fact that the goods were defective occasioned Gollin & Company Ltd. to seek repayment from the plaintiff and the plaintiff in turn to seek recompense from the seller and in turn the defendant. I am satisfied that the evidence established that the plaintiff was entitled to expect under its contract that the goods would be goods in working order and in accordance with a sample which proved satisfactory and which it had previously received from the seller. I am also satisfied that in all real and substantial respects the consignments were not in accordance with those samples. A further consequence of the defendant's breach was that it became necessary for the plaintiff and for Gollin & Company Ltd. to have the goods tested to determine whether a defective quality was the real reason for the retailers returning them. This testing was, in my opinion, reasonable in the circumstances and the necessity for it was, as I hold, caused by the defendant's breach in paying the seller when it should not have done so. I also hold that the storing of the goods in the free store was an act necessary to enable them to be returned as also was the testing by the Chamber of Commerce.

I will now consider whether or not this loss or any part of it was too remote within the meaning of established principles of law. In my opinion a reasonable person in the position of the defendant could foresee that it was not unlikely that a seller might sell and a buyer might buy goods which were in fact defective. Such an event was as likely in my opinion to occur as one where the goods were not defective at all. This conclusion means in my opinion that the defendant should have foreseen that if it paid the seller without having required a certificate of inspection it was not unlikely that one result would be that the property in defective goods would pass to the buyer and that the seller would be paid and be paid only because of the defendant's breach. The reality of the present situation was that the letter of credit was established by request dated 11th July, 1967. It was an irrevocable documentary letter of credit and from that time onwards the plaintiff could not, except with the consent of the beneficiary, prevent the defendant from paying in accordance with its terms. These payments could be made and in the present case were made to the seller before the plaintiff had any opportunity to examine the goods. In the circumstances proved the demands made by the defendant required payment against documents which included the bill of lading and therefore an inspection could not be made until the bill of lading was taken up and the goods discharged from the ships. I am also of the opinion that the defendant should have foreseen that in the circumstances of this case defective goods would be returned to Gollin & Company Ltd. and to the plaintiff by the ultimate buyers and that the plaintiff would be

obliged to pay sums it had received for the sale of those goods by it and to conduct tests to determine the validity of the statements that the goods were defective.

I am therefore of the opinion that the claim made by the plaintiff has been established. It was argued on behalf of the defendant that the plaintiff had not taken action as it should have done to mitigate its loss. In my opinion this argument is answered by the matters to which I have already referred. In *Banco de Portugal v. Waterlow & Sons Limited*, (1932) A.C. 452 Lord Macmillan said at p.506:—

“I confess I am not disposed to regard with much sympathy the criticism which Messrs. Waterlow have directed at the Bank’s action. Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.”

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In my opinion the actions of the plaintiff after the discovery of the defects were reasonable and justifiable in the circumstances and the defendant should be held responsible for the loss that was caused.

By an amendment made before the trial the plaintiff made another claim against the defendant on a basis to which I have already briefly referred. It is formally expressed in pars. 17A and 17B of the statement of claim in the following words:-

“17A. The plaintiff also says that the Defendant by its agent Mr. Carman negligently carelessly and unskillfully advised it in connection with the necessity for and specification of the certificate of inspection mentioned in paragraph 6 hereof.

17B. By reason of such advice the Plaintiff suffered the damage more particularly alleged in par. 19 hereof.”

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The precise argument was expressed by learned counsel for the plaintiff in substantially the following words. The foundation for the claim was that the true meaning of a certificate of inspection was that the certifier was obliged to state only that he had inspected the goods and not his opinion upon their quality or condition.

The breach of duty alleged was that in the circumstances of their dealings, Mr. Carman should have advised Mrs. Wilson, and perhaps Mr. Egan, that a certificate of inspection had this limited meaning, and that he failed to do so. This claim was submitted as an alternative to the preferred manner of presenting the plaintiff’s case, and only became of importance if I should overrule the arguments of learned counsel for the plaintiff on the true meaning of a certificate of inspection. As is now known I have accepted these arguments and it therefore becomes unnecessary to decide this alternative claim.

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I am of the opinion, however, that it is desirable that I should make, in addition to what I have already said, some reference to the reliability of the various witnesses in case an appeal should be taken and it becomes necessary to decide this point. I formed the opinion that Mrs. Wilson was in general a reliable witness, although there were some occasions where her recollection was at fault, and others, where, as I thought, she tended by her manner to acknowledge that she based her evidence upon an honest reconstruction of events which she believed had happened, and words which she believed she had said or heard. Messrs. Parker, Stevens and Carman were all important and busy officers of the defendant and concerned with many of its transactions. At the time of the events and conversations with which they were concerned they did not have any reason to believe that they were any more important than those occurring in the course of their other duties, or that they would afterwards be in dispute. I thought that all three of these gentlemen laboured, not surprisingly, under the

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difficulty of not having a clear and distinct recollection of the events and conversations about which they were being asked to give evidence. In the case of Mr. Carman I thought that some of his answers, which appeared in print as definite and firm, were expressed in a hesitant manner that evidenced the absence of sure recollection. In general, and on points that are important to this case, I prefer, for the reasons I have given, the recollection of Mrs. Wilson when there is a conflict between her and Messrs. Parker, Stevens and Carman. I found Mr. Egan a very difficult witness to assess. He plainly searched his recollection with honest intent, but in the end I thought that his evidence was unreliable because he ceased in September 1967 to have any connection with the plaintiff's affairs and thereafter did not have any expectation or reason for thinking that he would be required to remember what he had said and done. 10

I will now consider a final and separate claim made by the plaintiff against the defendant. On 21st December, 1967, the plaintiff requested the defendant to open an account by an irrevocable credit authorising Gollin & Company Ltd. to draw on it for any sum or sums not exceeding in all \$5,069.70, purporting to cover the invoiced cost f.o.b. of toys imported from Hong Kong, to be shipped on the plaintiff's account to Sydney. The plaintiff also requested that provision be made in the credit that drafts must be presented for negotiation not later than the twenty-seventh day of January, 1968. On 21st December, 1967, the plaintiff by letter agreed to this request and debited the plaintiff's account with the charges in respect of it. On 3rd January, 1968, the plaintiff requested that the expiry date of the credit be extended to 31st March, 1968, to which request the defendant agreed by letter dated 4th January, 1968. All these facts which I have stated were alleged in the statement of claim and admitted by the defendant. The plaintiff then alleged that the defendant permitted Gollin & Company Ltd. to draw against this credit in the sum of \$6,349.69, which meant that the amount of the credit was exceeded by the sum of \$1,279.99. 20

There was very little argument or evidence with respect to this claim and I intend to decide its soundness in almost as few words. I am satisfied by the evidence that the allegations in par.24 of the defendant's Statement of Defence are correct. In that paragraph it was alleged that the defendant only permitted the sum of \$6,349.69 to be paid after cheques had been drawn by the plaintiff for the purpose of enabling it to be made and the cheques had been delivered by the plaintiff to the defendant. It is in my opinion unnecessary to go any further than the evidence of Mr. Carman on this point. He said that in May 1968 Mrs. Wilson had spoken to him on the telephone and said that she wanted the defendant to 'put back' the sum of \$1200-odd into the plaintiff's account. Mr. Carman also said that Mrs. Wilson claimed that the debit had been made without authority and contrary to the express words of the documentary letter of credit. Mr. Carman said that he replied to Mrs. Wilson by stating that the item had come in on a collection basis, and as the plaintiff had paid for it by cheque, it had given the defendant a discharge and that he could not arrange for the refund to be effected. I think it also probable that the disputed payment was in respect of certain goods in relation to which the defendant had received the documents which it afterwards handed to the plaintiff when it had received the plaintiff's cheque. This evidence satisfies me that the claim of the plaintiff on this point is unfounded and must fail. In the course of his argument learned counsel for the defendant was instructed to submit a criticism of the bona fides of the plaintiff and its two directors for making this claim. In my opinion, this point of the argument was without any legal relevance and I do not propose to say anything about it. 30 40

For the reasons which I have given, I am of the opinion that there should be a verdict and judgement for the plaintiff in the sum of \$14,468.30. 50

Orders accordingly.

IN THE SUPREME COURT)
OF NEW SOUTH WALES)

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
COURT OF APPEAL)

No.5160 of 1968.

Between :

JALSARD PTY. LIMITED (Trading as
JALSARD TRADING COMPANY)
and

Plaintiff

THE COMMERCIAL BANKING COMPANY
OF SYDNEY LIMITED

Defendant

RULE GRANTING FINAL LEAVE TO APPEAL

THE 3rd day of May 1971.

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the Seventh day of April 1971 WHEREUPON AND UPON READING the said Notice of Motion the Affidavit of Christopher William Beale sworn on the Sixth day of April 1971 and the Prothonotary's Certificate of Compliance AND UPON HEARING what was alleged by Mr. Kearney of Counsel for the Appellant and Mr. Jenkyn of Counsel for the Respondent IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment of the Supreme Court of New South Wales in Commercial Causes given and made herein on the Twenty-second day of June 1970 and the Order made herein on the Thirtieth day of June 1970 be and the same is hereby granted to the Appellant AND IT IS FURTHER ORDERED that upon payment by the Appellant of the costs of preparation of the Transcript Record and despatch thereof to England the sum of Five hundred dollars (\$500) deposited in the Court by the said Appellant as security for and towards the costs thereof be paid out of Court to the Appellant or to its Solicitors.

By the Court,

For the Prothonotary.

Chief Clerk

Original Document Signed