trasted to theory, "the actual situation is: what may be considered morally bad law by philosophers is taken to be legally valid law by lawmen until it is repealed or overruled" (p. 83). This does not quite answer the question.[2]

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[2] It may be instructive to note experience with the somewhat similar theories that a statute judicially held unconstitutional is to be viewed as if it was never enacted, and that an overruled judicial precedent never was law. See SNYDER, PREFACE TO JURISPRUDENCE 355, 359–60, 418–19, 428 (1954).

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Bank Credits and Acceptances. By Wilbert Ward and Henry Harfield. New York: The Ronald Press Company, 4th ed., 1958. Pp. vii, 277. $7.00.

The appearance of a new edition of *Ward & Harfield* would at any time be an event of some importance for the student and practitioner in the field of letters of credit. However, the many changes in letter of credit operations produced by the upsurge of domestic and foreign trade following the conclusion of World War II and the need for a cogent and comprehensive analysis of these changes make its advent especially welcome at this time.[1]

Unfortunately, the book itself does not live up to expectations. By and large, the authors fail to shed much light on the new situations which have arisen in this area, and their analysis of the practices which have developed in the last decade is in many instances inadequate and in some cases actually misleading.

One example of the many deficiencies in the book is found in the discussion of the conformity of the bill of lading to the documentary specifications laid down in the letter of credit. Although most credits invariably call for a "clean" bill of lading from the seller, the meaning of this term is far from clear. While most definitions, especially those advocated by the banking community, refer to a clean bill of lading as being one which contains nothing in the margin which qualifies the document itself,[2] such definitions are for the most part too broad. They do not grapple in any way with the real problem of the carrier's claused or superimposed notations and the fact that the carrier is seldom so careless as to his liability to fail to note every defect possible in the goods delivered to him and to qualify the bill accordingly.[3]

[1] The third edition of *Ward & Harfield* was published in 1948.

[2] This type of definition for the most part reflects the position adopted by the U.S. banking community in the 1920's. See Draper, *What is a "Clean" Bill of Lading?—A Problem in Financing International Trade*, 37 CORNELL L. Q. 56, 57 (1951).

[3] Especially since the inclusion of disclaimer clauses relieving the carrier from liability for damages arising from his own negligence or fault is made unlawful by the Harter Act and the Carriage of Goods by Sea Act, 27 Stat. 445 (1893), 46 U.S.C. §§ 190, 191 (1958); 49 Stat. 1207 (1936), 46 U.S.C. § 1309 (1958).

While it is clear that the importance of these superimposed clauses varies considerably in terms of determining whether or not a bill is "clean" within the meaning of the credit requirements,[4] the authors make no attempt to analyze these differences. Instead, they put forward the argument that the banks are always justified in accepting the documents if the rubber-stamped notations affect only the terms of carriage, and in refusing them if the superimposed statements in any way "negative the apparent good order or condition of the merchandise" (pp. 56–57).[5] They further state that any doubt as to the banker's obligation in this matter would be resolved to a large extent by adoption of Article 18 of the Uniform Customs and Practice for Commercial Documentary Credits as promulgated by the International Chamber of Commerce (pp. 57, 221).[6]

Such an oversimplification of issues obviously contributes very little to the resolution of the very difficult problems in this area. As the approach which is prevalent among most United States' banks, it has led the seller to resort more and more frequently to the somewhat unhealthy practice of giving indemnities to the carrier as consideration for the latter's refraining from rubber stamping or noting the bill of lading in any way.[7] Significantly, however, the authors nowhere allude to this practice or discuss the intricate problems which it can create.[8]

Article 18 of the Uniform Customs and Practice, which the writers think will materially assist in settling these difficulties, fails to advance the situation a great deal. Its definition of a "clean" shipping document as being one "which bears no superimposed clauses declaring a defective condition of the goods or packaging" obviously begs the question completely. Furthermore, as another authority points out, the wording of the article itself is ambiguous; it begins by

[4] See Minett, *Certain Aspects of Bills of Lading and Documentary Credits*, 74 J. OF THE INST. OF BANKERS 110 (1953).

[5] The authors seem to overlook the fact that a bill of lading containing a claused or rubber-stamped notation which, for example, reserves to the shipping company the right to carry the merchandise on deck is, in the absence of any qualifying provision, not considered "clean." St. Johns N. F. Shipping Corp. v. S. A. Companhia Geral Commercial do Rio de Janeiro, 263 U.S. 119 (1923).

[6] The Uniform Customs and Practice for Commerical Documentary Credits were first codified in 1933 by the International Chamber of Commerce. Subsequent revisions have occurred since then, the last of which was in 1951. Reference throughout the text and footnotes is to the 1951 revised rules.

[7] See, *e.g.*, Continex, Inc. v. The Flying Independent, 106 F. Supp. 319 (S.D. N.Y. 1952). This practice of giving letters of indemnity to carriers against the issuance of "clean" bills of lading is, however, not entirely new in the field of international trade. See Brown, Jenkinson & Co., Ltd. v. Percy Dalton (London), Ltd., [1957] 1 Lloyd's List L.R. 31, a decision of the Mayor's and City of London Court which quotes Lloyd's Standard Form of Survey Report (Goods) as recognizing the practice. See also United Baltic Corp., Ltd. v. Dundee, Perth and London Shipping Co., Ltd. [1928] 32 Lloyd's List L.R. 272.

[8] As regards, for example, the question of claiming under an insurance policy for damage to the goods "incurred in transit."

authorizing the refusal of documents bearing "reservations" and then proceeds to define a "clean" document in terms of an absence of "superimposed clauses."[9]

The attitude exhibited by the authors with respect to Article 18 of the Uniform Customs and Practice is for the most part typical of their uncritical approval of these rules generally and their advocacy of their adoption as a method of solving many of the problems and ambiguities present in most documentary credits. That such approval is something less than warranted is shown by the fact that the British banks which handle almost half of international credit transactions[10] have refused, for reasons which are in most instances more than justifiable, to adhere to these rules.[11]

In addition to the British rejection, however, the authors' own criticisms of the more general aspects of the letter of credit are not always consistent with the practices advocated by the Uniform Customs. For example, while rightly condemning the revocable credit as being an instrument lacking in commercial utility (p. 15), they completely ignore the fact that Article 3 of the Uniform Customs and Practice states that "all credits, unless clearly stipulated as irrevocable, are considered revocable even though an expiry date is specified."[12]

Apart from such oversimplification and inconsistencies, the book, as already stated, is in some areas actually misleading. The statement that there is little question as to the present existing rule of law as to the bank's obligation and liability concerning fraudulent and forged documents (p. 56) is not accurate. While the rule suggested by the authors that a bank should be protected when making payment in good faith against documents which appear to be genuine on their face is one which should obviously be applied (p. 56), the cases do not reflect the unequivocal certainty which the authors regard as existing in this area. The case of *Old Colony Trust Co. v. Lawyers' Title & Trust Co.*, [13] in which the Second Circuit Court of Appeals held that a warehouse receipt which is forged is not a "warehouse receipt" entitling the holder to reimbursement, even though it appeared regular on its face, suggests at least one line of argument which could be used to attack their proposition.

The writers' statement as to the certainty in the law in this area also overlooks the doubt that exists at the present time as to whether any type of alteration of a document is sufficient to make it fraudulent and thus justify non-

[9] GUTTERIDGE & MEGRAH, THE LAW OF BANKERS' COMMERCIAL CREDITS 78–79 (1955).

[10] THACKSTONE, THE METHODS OF FINANCING FOREIGN TRADE: THE PART PLAYED BY THE BANKS, BANKING AND FOREIGN TRADE 125, 132 (1952) (lectures delivered at the Fifth International Banking Summer School, Oxford).

[11] See GUTTERIDGE & MEGRAH, *op. cit. supra* note 9, at 79; Rice & Thorne, *The Uniform Customs & Practice for Commercial Documentary Credits*, 56 CAN. BANKER 53 (No. 3) (1949); Mentschikoff, *Letters of Credit: The Need for Uniform Legislation*, 23 U. CHI. L. REV. 571 (1956).

[12] For an examination of the difficulties which this can create for the unsuspecting beneficiary, see Mentschikoff, *supra* note 11, at 589–96.

[13] 297 Fed. 152 (2d Cir. 1924), *cert. denied*, 265 U.S. 585 (1923).

acceptance.[14] Furthermore, it ignores the question raised by Judge Cardozo's strong dissenting opinion in *Maurice O'Meara Co. v. National Park Bank*[15] as to whether prior knowledge of substantial defects in the goods shipped requires the bank to refuse the documents.

While the book still remains the most important American contribution in the area of letters of credit, it is to be regretted that in their new edition the authors did not examine in greater detail and with greater care the perplexing problems which have arisen in this field in the last ten or fifteen years. Such matters as assignment, partial payment and the problem of notation and the exhaustion of the credit, the difficult problems of insurance, the application of the Uniform Customs and Practice, indemnities and other aspects of these instruments urgently require detailed analysis to show the way to both bankers and lawyers alike. Unfortunately, such analysis is lacking in this present work. As a basic introduction, *Ward & Harfield* still occupies a preeminent position in the literature. However, at this stage something more than just an introduction is needed: something that will do proper justice to the coming of age of this most useful and versatile of credit instruments.

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[14] See Sztejn v. J. Henry Schoeder Banking Corp., 177 Misc. 719, 31 N.Y.S. 2d 631 (S. Ct. 1941); Chao v. British Traders and Shippers, Ltd. [1954] 1 All E.R. 779 (K.B.).

[15] 239 N.Y. 386, 402, 146 N.E. 636, 641 (1925).

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