Privy Council Appeal No. 106 of 1926.

The Bank of British West Africa, Limited - - - - *Appellants*

v.

"Comarex" Compagnie Franco Marocaine d'Exportation Société Anonyme Marocaine (formerly called La Société A. L. Cane and Co-operative A. T. C. Réunis Société Anonyme) - - *Respondents*

FROM

THE SUPREME COURT OF GIBRALTAR.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH JULY, 1927.

Present at the Hearing:

VISCOUNT HALDANE.
LORD ATKINSON.
LORD BLANESBURGH.
LORD DARLING.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* LORD WARRINGTON OF CLYFFE.]

The questions in this appeal are (1) whether the appellants (the defendants in the action) are liable in damages for having converted into francs a certain sum of sterling received by them by direction of the respondents (the plaintiffs in the action), and (2) whether they are so liable for having failed immediately to communicate to the respondents the fact of such conversion.

The action was tried on the 2nd September, 1924, before Mr. G. H. Selous, His Majesty's Consul at Casablanca, with commercial assessors, and on the 18th September, 1924, judgment was pronounced dismissing the action with costs.

On the 30th June, 1926, the Acting Chief Justice of Gibraltar, by his judgment of that date, reversed the judgment of H.M. Consul, and directed judgment to be entered for the respondents, for damages to be assessed, and ordered the appellants to pay the costs in his Court and below.

The facts of the case are simple and are not in dispute.

The appellants are bankers, having a head office in London and branches at Casablanca and Hamburg.

The respondents are grain exporters at Casablanca and are a subsidiary of a French company in Paris, hereinafter referred to as the respondents' Paris house. They have at Hamburg an authorised representative named Alexander Bloch.

In the early part of 1924 the respondents were shipping barley from Casablanca to Hamburg, passing the shipping documents with drafts attached to the appellants for collection, and obtaining advance from the appellants on the security thereof in the usual way.

In the ordinary course of this business two drafts, one for frs. 447,500 and the other for frs. 144,000, with shipping documents relating to certain parcels of barley shipped to consignees in Hamburg, were handed to the appellants in the early part of April, 1924. They made advances to the respondents on the security thereof, of which, at the material times, frs. 350,000 remained owing.

Unfortunately, there was at the time an acute trade depression at Hamburg, and the drafts were dishonoured.

The respondents, however, through Alexander Bloch, sold the barley to the Norwegian Government for a sterling price of £5,985, and at his request the appellants' Hamburg branch consented to deliver up the documents on payment of that sum.

The terms on which this arrangement was made were expressed in certain letters hereinafter referred to, but it is well to pause here and consider what, independently of any special stipulation, was the position of the parties at this point.

The respondents owed the appellants frs. 350,000, as security for which the latter held the documents relating to the parcels of barley. The appellants were entitled to insist on their debt being paid in francs, the currency in which it was contracted. They consented at their debtors' request so far to waive their strict rights as to release their security on receiving the sum of sterling above referred to, but their right to be paid their debt in the contractual currency remained unaffected. Acting on this view, they immediately, after receipt of the money—viz., on the 7th May, 1924—purchased frs. 350,000, which they credited to the respondents in discharge of the debt, retaining on their behalf £761 16*s.* 5*d.*, the balance not applied in such purchase of the sum of sterling above referred to.

In their Lordships' opinion the appellants, in thus obtaining payment of their debt in the currency to which they were entitled under their contract, were acting correctly, and were not driven to rely on any special authority so to act.

But both parties refer to the correspondence—the appellants as strengthening their position by giving them express authority to act as they did, the respondents as having the reverse effect, and it is accordingly necessary shortly to deal with it.

Prior to the 30th April, 1924, the appellants had been informed that the barley would probably be resold for a sum in a different currency to that in which the original sale had been effected, and on or about that day they were informed of the actual resale, and at the request of Mr. Bloch consented to release their security on payment of the £5,985 to their Hamburg branch.

The Hamburg branch on the same day wrote to Mr. Bloch the following letter :—

> " For the sake of regularity we confirm to you that we shall tender to the Norwegian Government, against payment of £5,985, goods relating to the above shipment " (being the shipment, in question).
>
> " We draw your attention to the fact that we undertake no responsibility whatsoever for any loss which may arise through the fact that a portion of the payment against these shipments is made in sterling instead of in French francs. We have informed our Casablanca branch that a sterling payment will be made. Whether they will cover the exchange risk involved is unknown to us, but we explicitly repudiate any responsibility for this."

On the same day the appellants wrote to the respondents' Paris house a letter in similar terms, except that the reference to the possible action of their Casablanca branch is as follows :—

> " Should they on the strength of this undertake any operations to cover the exchange risk, please note that these will be for your account and risk."

Mr. Bloch on the 6th May wrote to the appellants the following letter :—

> " I am in receipt of your letter of the 30th ult., and hereby confirm to you that I, as representative of [the respondents], have ordered the sale of the above two parcels against £5,985 instead of against the balance of frs. 350,000 due to you.
>
> " I further confirm that neither your Casablanca branch nor you are in any way responsible for any exchange loss which may arise through the fact that payment of a portion of the amount is effected in £ sterling instead of in francs, and declare myself, as representative of [the respondents], in agreement with any measures which your Casablanca House may or may not take for the purpose of covering a possible exchange loss."

On the 7th May the purchase of the frs. 350,000 already mentioned was made on the instructions of the appellants' Casablanca house.

No answer to the letter of the 30th April written by the appellants to the respondents' Paris house was received till the 19th May.

On that day the appellants' Casablanca branch wrote to the respondents a letter in which they informed them for the first time that they had made the purchase above referred to of francs " to cover the exchange," and enclosed an account showing the above-mentioned balance of £761 16*s*. 5*d*. due to the respondents.

This last letter was answered by one of the 21st May, in which no objection was raised to what had been done and in which the respondents stated that they had instructed their Paris house to convert into francs the £761 16*s*. 5*d*. This was apparently not done.

The price at which the conversion was made was 67·10. After the 7th May the exchange went steadily against the franc, and on the 19th May the latter stood at between 79 and 80 to the £ and subsequently declined still further.

In the opinion of the Board the letter of the 6th May, so far from restricting the authority of the appellants to obtain payment of their debt in francs, actually confirmed it. It in terms expressed agreement in advance with any measures which the Casablanca branch might or might not take for the purpose of covering a possible exchange loss. They thought it best, presumably because in Casablanca their business was conducted in francs and because, as bankers, they did not wish to speculate on variations in the exchange, to obtain payment of their debt in francs. It is suggested on behalf of the respondents that the only exchange loss contemplated was one which would render the £5,985 insufficient to satisfy the appellants' debt of frs. 350,000. In their Lordships' opinion the expression cannot be so limited.

On the first point, therefore, their Lordships are of opinion that the decision of H.M. Consul was correct.

On the second point there is little to be said. It was no doubt unfortunate that so long a time as 12 days was allowed to elapse before the respondents were informed of what had been done, but their Lordships are not aware of any principle under which the omission to give such information could be held to be a breach of duty in the legal sense on the part of the appellants. On this point also H.M. Consul was, in their opinion, right.

On the whole, their Lordships will humbly advise His Majesty that the appeal ought to be allowed, the judgment of the Appeal Court discharged, and that of the Consul restored, and that the respondents should be directed to pay the costs here and below.

In the Privy Council.

THE BANK OF BRITISH WEST AFRICA, LIMITED

v.

"COMAREX" COMPAGNIE FRANCO MAROCAINE D'EXPORTATION SOCIÉTÉ ANONYME MAROCAINE (FORMERLY CALLED LA SOCIÉTÉ A. L. CANE AND CO-OPERATIVE A. T. C. RÉUNIS. SOCIÉTÉ ANONYME).

DELIVERED BY LORD WARRINGTON OF CLYFFE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C 2.

1927.