

~~C-5-2-51~~

2, 1951

31200 1949.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF GIBRALTAR.

UNIVERSITY OF LONDON
W. CREDIT FONCIER D'ALGERIE ET DE TUNISIE
(Defendants)
17 JUL 1953
INSTITUTE OF ADVANCED STUDIES (Plaintiff)
LEGAL STUDIES

BETWEEN

W. CREDIT FONCIER D'ALGERIE ET DE TUNISIE

(Defendants)

Appellants

AND

INSTITUTE OF ADVANCED STUDIES (Plaintiff)

Respondent.

10

Case for the Respondent.

RECORD.

1. This is an Appeal from the Judgment of the Supreme Court of Gibraltar dated the 18th November 1948, in an action heard before His Honour Roger Sewell Bacon, M.B.E., Chief Justice, and a Special Jury, in which the learned Chief Justice ordered that judgment be entered for the Respondent (Plaintiff) for £2,200 and costs.

pp. 62, 63.

2. In the action the Respondent claimed damages from the Appellants in respect of the loss by him of the value of 110,000 pesetas by reason of fraudulent misrepresentations made to him by the Appellants or by their negligence.

p. 2, ll. 1-5.

20 3. As regards the Respondent's claim based on fraudulent misrepresentation, the essence of his case was that as the result of certain false representations made to him fraudulently by or on behalf of the Appellants, who were his bankers, he was induced to agree to taking certain action and did take action resulting in the Appellants ceasing to be his debtors on current account for the sum of 110,000 pesetas and becoming instead custodians for him of a set of Bank of Spain notes to the nominal value of 110,000 pesetas.

30 4. As regards the Respondent's claim based on negligence, his case was that the Appellants failed in their duty to him to take proper steps to secure the legalisation by the Spanish authorities of the above-mentioned peseta notes.

5. After a hearing in which a substantial amount of oral and documentary evidence was adduced by both sides, the jury were asked whether the Appellants had made the representations alleged, whether they were false, whether the Respondent was thereby induced to alter

p. 45, ll. 30-44.

p. 46, l. 12.

his position as he alleged, whether the representations were made fraudulently, whether the Appellants were negligent in taking steps to have the notes legalised and to find the damages if any suffered by the Respondent. The jury answered all the questions in favour of the Respondent and awarded a figure of £2,200 as damages. In these circumstances it is submitted that the only questions arising in this appeal are :—

(i) Whether there was any evidence to justify the findings of the jury ;

(ii) Whether the jury were properly directed by the learned Chief Justice in his summing up. 10

pp. 3, 4, 5.

Exhibit 7.

p. 3, l. 10.

Exhibit 9.

Exhibit 8.

p. 3, l. 16.

6. By his Statement of Claim delivered on 30th April 1947, the Respondent, after stating that he was a chemist and had since 1929 kept a current account in pesetas with the Appellant's bank at their Gibraltar branch, alleged by paragraph 3 that on the 24th November 1936 he was induced by representations made by the Appellants to draw a cheque on his current account with them for 110,000 pesetas and to re-deposit the said sum with the Appellants in an account marked "to be stamped" and that at the same time the Appellants delivered to him a list of Bank of Spain notes to the value of 110,000 pesetas. By paragraph 4 the Respondent alleged that the said representations were made verbally to him by the Appellants' then Manager Joseph Noguera and were to the following effect :— 20

Exhibit 21, p. 19.

(A) In order to comply with a decree dated 12th November 1936 of the Government of Burgos in Spain it was necessary for the Defendants to forward to the Bank of Spain at Burgos their customers' Bank of Spain notes for stamping ;

(B) the list of Bank of Spain notes delivered to the Plaintiff did not contain any Bank of Spain notes placed in circulation after 18th July 1936 ;

(C) upon the Respondent admitting these notes to be held by the Appellants for his account such notes would be stamped and the said decree complied with. 30

The Respondent further alleged that the Appellants at the time when the above representations were made knew them to be false or made them recklessly not caring whether they were true or false.

p. 3, ll. 28-42.

Exhibit 21, p. 19.

7. By paragraphs 5 and 6 of his Statement of Claim the Respondent claimed that the said decree was to the effect that all Bank of Spain notes put in circulation after 18th February 1936 would cease to have any monetary value and that notes put in circulation before that day would be considered legal currency if presented for stamping and stamped within the period stipulated in such decree, which was for notes held in Gibraltar fifteen days from the date of the decree, and that such notes should be presented for stamping at the Customs House, La Linea, Spain accompanied by their "guias," namely, the Government's authority for their previous exportation from Spain required by a decree of the Spanish Government of 17th March 1936. 40

Exhibit 21, p. 5.

8. The Respondent then alleged that the above representations were false and known by the Appellants to be false in that— p. 3, l. 44.

(A) it was not incumbent on the Appellants to establish that Bank of Spain notes held by them were held for account of their customers in order to procure the stamping of such notes ;

(B) it was untrue that the list of notes prepared by the Appellants contained no notes put in circulation after 18th July 1936 ;

10 (C) it was untrue that the notes to be held by the Appellants for the account of the Respondent would be stamped in accordance with the decree of 12th November 1936 as they lacked the accompanying " guias ", Exhibit 21, p. 19.

and that the Appellants by such false and fraudulent representations altered their position of debtors to the Respondent to that of Custodian of a set of Bank of Spain notes in order to evade the payment to the Respondent of the sum due on his current account. p. 4, l. 7.
p. 5, l. 17.

9. Finally the Respondent claimed that the Appellants did not deposit the said notes at La Linea for stamping, failed to inform the Respondent that no application for stamping was being made within the prescribed period and by their fraud and negligence as aforesaid caused the Respondent damage in the sum of £3,000. pp. 4, 5.

10. By their Defence which was delivered on 3rd June 1947, the Appellants denied having made any false or fraudulent representations or having failed in their duty to the Respondent and alleged further that— pp. 5, 6, 7.

30 (A) at the time of the decree of 12th November 1936 it was not known which notes had been put in circulation after the 18th July 1936 as all notes then in circulation bore dates earlier than 18th July 1936 though they admitted that it subsequently transpired that notes to the value of 3,325 pesetas, among those allocated to the Respondent, had in fact been put in circulation after the 18th July 1936 and were therefore " illegal " ; Exhibit 21, p. 19.

(B) by a decree of 28th November 1936 the time for the presentation of notes for stamping was extended to 14th December 1936 ; Exhibit 21, pp. 28, 29.

(C) the decree of 12th November 1936 did not make it clear whether the notes had to be deposited at the Customs House, La Linea, for the account of the customers or of the Bank : Exhibit 21, p. 21.

40 (D) the Respondent was not entitled to have any notes with " guias " delivered to him because he never presented any " guias " with his deposits of pesetas in the Bank ;

(E) the Appellants were entitled to present the said notes for stamping without " guias," since under an authority of the Bank of Spain of 6th March 1936 the Appellants were permitted to deal in pesetas and to import them into Spain without " guias " ; Exhibit 1A, pp. 2-3.

(F) they were prevented from depositing the said notes at the Customs House, La Linea, by the Spanish Authorities, who would not accept the deposit of the said notes, and that the Respondent was kept informed of their efforts to get the said notes stamped.

pp. 23-28.
pp. 32-34.
pp. 28, 29, 45.
pp. 36-40.
pp. 41-42.
pp. 30-32, 42-45.
Exhibits.

11. The case came on for hearing on 9th November 1948 and the trial lasted for eight days, six of which were taken up in whole or in part with the examination of witnesses. Evidence was given for the Respondent by one Noguera, the Appellant's manager at Gibraltar at the material time, by the Respondent himself, and by his brother, who was a clerk in the Appellant's employment; and for the Appellants by one Raida, 10 manager of their branch at Tangier, and one Sené, a clerk in their employment. Both parties called expert witnesses on Spanish Law, and there was a large amount of documentary evidence.

p. 32, l. 11.
p. 23, l. 7.
Exhibit 1, pp. 2, 3.
Exhibit 21,
pp. 5, 6.
p. 30, ll. 18-39.
p. 44, ll. 8-23.
p. 31, l. 33.

12. The evidence for the Respondent showed that he had been a customer of the Bank since 1928, operating both a peseta and a sterling account. On the 6th March 1936 the Appellants were granted a special concession by the Bank of Spain, the effect of which was to enable them to take pesetas into Spain from Gibraltar without restriction, and to put them in an account at a Spanish Bank, on proof merely that the notes had come from Gibraltar. On the 16th March the Spanish Government 20 issued a decree prohibiting the export of pesetas from Spain without a permit, or "guia," from the authorities, and required pesetas re-imported into Spain for any reason to be accompanied by their "guias." The expert witnesses differed as to the effect of this decree, Sr. Manzuco for the Respondent holding that the Appellants were thereafter as a matter of law unable to take their pesetas into Spain without "guias," while Sr. Carrera for the Appellants maintained that they were. In fact, however, all parties were agreed that the Appellants did continue to take pesetas into Spain without "guias," and to put them in accounts at Banks in Algeciras and La Linea by virtue of their concession of 6th March. 30

p. 32, ll. 12-13.
p. 37, ll. 25-27.
p. 37, ll. 45-48.
p. 25, ll. 18-20.
p. 27, l. 45.
Exhibit 21,
pp. 19-24.
Exhibit 14A, p. 18.
p. 25, ll. 14-17.

13. The Respondent admitted that he knew of the terms of this decree; he said that he asked Mr. Noguera (the Appellants' manager) about the effect of it, and was assured that he could safely continue to accept pesetas and pay them into his account, as the Appellants were exempted from having to produce "guias" at La Linea. On July 18th 1936 the Spanish Civil War broke out, and within a few days Algeciras and La Linea were both in Nationalist hands. The Appellants said that after that date, whatever the legal position was, they did not in fact transfer any pesetas from Gibraltar to Spanish banks, though they continued to accept pesetas from the Respondent. Mr. Noguera said 40 however, that the Appellants continued sending large quantities of pesetas into Spain without "guias" until the decree of 12th November 1936. An exhibit was also put in evidence showing that on 1st October 1936 the Appellants were able to change at La Linea peseta notes in their possession, of high denomination, for notes of smaller denomination. This transaction was effected without "guias."

Exhibit 21,
pp. 19-24.

14. On the 12th November 1936 the Nationalist authorities published a decree declaring that all paper currency put in circulation after 18th July

- 1936 would be regarded as illegal and would have no monetary value, and that notes put in circulation before that date would be treated as legal currency if within a short period, which was subsequently fixed to expire on 14th December 1936, they were stamped by the Burgos authorities; such stamping involved taking the actual notes into Spain, accompanied by their "guias." Sr. Carrera, for the Appellants, maintained that the Appellants' concession of 6th March 1936 was still effective even after this decree, but the Respondent's evidence was to the effect that this was not so. In any event it is submitted that it is clear, from the
- 10 evidence of both Mr. Noguera and Mr. Raida, that after 12th November 1936 the Appellants could not take pesetas into Spain without "guias" because the customs authorities at La Linea would not accept them, and that Mr. Noguera and Mr. Raida both realised this, at latest by 21st November 1936.
15. It was admitted that at this time the Appellants had more than 1,000,000 pesetas in their possession in notes, and no, or at most only a very few, "guias." The Respondent said that he read of this decree in the newspaper "El Anunciador" on 16th November 1936, and in these circumstances he had an interview with Mr. Noguera on
- 20 24th November 1936. What transpired at that interview is of crucial importance in the case.
16. The only persons present were Mr. Noguera and the Respondent, and their evidence was substantially in agreement, being in effect that Mr. Noguera, who had asked the Respondent to come and see him, told the Respondent that the withdrawal and re-deposit of his pesetas was the only means of getting the notes stamped in Spain, that there were no notes in his list which had been declared illegal by the Franco Government, and that he must sign a letter drafted for him by the Appellants. Mr. Noguera never suggested to the Respondent that the lack of "guias" would give rise to any difficulty. It is submitted that it is clear from the
- 30 evidence that the Respondent, far from going out of his way to instruct the Appellants to get his money legalised and agreeing to withdraw and re-deposit his pesetas for this purpose, as suggested by Mr. Raida, had to be persuaded, somewhat unwillingly, that the proposed procedure was essential and that he would get his money back legalised.
17. There were important discussions and preparations within the Appellants' Gibraltar branch before the above-mentioned interview of 24th November. At some date between 12th and 24th November 1936 Mr. Raida, manager of the Appellants' branch at Tangier, had come to
- 40 Gibraltar to discuss with Mr. Noguera the policy to be pursued by the Bank in view of the decree of 12th November. Mr. Noguera at Gibraltar was under Mr. Raida's control and instructions. They had a meeting on 20th or 21st November; but there was a sharp conflict of evidence as to what was said. According to Mr. Noguera, Mr. Raida told him that the notes in the Bank's possession had to be assigned to the various customers, whereupon they went through the accounts, making a list of the customers with the largest credit balances, of whom the Respondent was one, and decided how many notes to assign to each. Mr. Raida, on the other hand, said that Mr. Noguera told him that the customers

Exhibit 21,
p. 28, 29.
p. 30, ll. 46, 47.

Exhibit 1A, p. 2.
p. 44, l. 20.
p. 30, ll. 34-39.
p. 31, ll. 35-35,
40-46.
p. 25, ll. 27-39.
p. 37, ll. 25-27.
p. 38, ll. 12-24.
p. 41, ll. 35-37.

p. 23, ll. 33, 34, 39.

p. 32, ll. 19-29.
p. 33, ll. 36-39.
p. 34, l. 22.
p. 24, ll. 3-21.
p. 27, ll. 17-21.

p. 34, l. 22.

p. 36, ll. 26-34.

p. 23, l. 15.

p. 37, ll. 5, 6.

p. 23, l. 37.

p. 23, l. 40—

p. 24, l. 3.

p. 25, ll. 31-34.

p. 36, ll. 9-39.

p. 39, ll. 14-16.

desired to have their notes stamped, and that after taking legal advice they decided to accede to the customers' wishes. The customers had to sign a letter of request—the procedure was to wait for them to come and make their applications. There was no question of putting pressure on them to apply. It was stated in evidence by Bernard Linares, the Respondent's brother, and confirmed by Norberto Sené, called for the Appellants, that for some days before the 24th November all the available staff at the Bank were at work till a late hour allocating individual notes to different customers, and typing out lists of their numbers. Mr. Noguera said that this was necessary in order that the Bank could be ready to deal with any requests for stamping that the customers might make. Mr. Raida's evidence as to these lists was self-contradictory; he said first that there was no need to draw up these lists and that "he had never heard of that being done"; and a little later that he knew on the 21st November that lists of notes were to be made in the Bank for customers who came forward with requests for stamping.

p. 28, ll. 36-38.
p. 41, ll. 34.

p. 25, ll. 44-46.

p. 38, ll. 4-12.

Exhibit 21, p. 19.

p. 24, ll. 9-11.
p. 25, l. 47—
p. 26, l. 12.
p. 28, ll. 18, 19.p. 28, ll. 40, 41.
p. 29, ll. 9-19,
ll. 40-41.
p. 36, ll. 40-42.p. 38, l. 47—
p. 39, l. 5.
p. 41, ll. 17-19.
p. 42, ll. 7-19.
Exhibit 21, p. 19.

18. There was also a conflict of evidence as to whether the Appellants at the material time knew, or had in the Bank the means of knowing, what notes were in fact put in circulation after 18th July 1936. This information did not appear in the Decree of 12th November, and could only be obtained by reference to a list of the numbers of the illegal notes. Mr. Noguera said that the Appellants received such lists from the Spanish banks before 24th November 1936, and that he and the cashier each had a copy of them. He told the clerks to check all the notes in the Bank against these lists. Bernard Linares confirmed that the Bank had these lists, but added that the cashier never used them. Mr. Raida said merely that he never asked Mr. Noguera to obtain this information, and that Mr. Noguera did not mention that he had it; the matter did not attract their attention. Mr. Sené, however, said that this information was not available in the Bank till late in 1937 and that Mr. Noguera did not endeavour to obtain it when they saw the decree of November 12th. He added that, if Mr. Noguera, who was in touch with the Spanish banks, did obtain the information, he never told the staff in the Bank about it.

p. 39, ll. 17-28.

Exhibit 21, p. 19.

Exhibits 8, 9,
10, 11.

p. 32, ll. 26-29.

p. 28, ll. 23-30.

p. 29, ll. 18-21.

p. 27, l. 20.

19. Finally as to the question of "guias," Mr. Raida admitted that the Bank had none and could not therefore take pesetas into Spain at all after the decree of November 12th 1936, and that in those circumstances he could not guarantee getting notes stamped by taking them to La Linea. All he could do was to petition the Spanish authorities on the basis of the Appellants' concession, and it would be "deceiving the customer" to promise anything more. However, after the conversation of 24th November between the Respondent and Mr. Noguera already referred to, Bernard Linares was sent to the Respondent with a cheque for 110,000 pesetas, a letter of request with a list of notes attached, and two copies of a paying-in slip for 110,000 pesetas, to obtain the Respondent's signature to them. The Respondent asked him if he thought everything was in order; he said "yes". He had previously asked Mr. Noguera if there was a probability of the notes being stamped and Mr. Noguera had told him that everything was in order. The Respondent thereafter signed all the documents submitted to him, the effect of which was to draw 110,000 pesetas from his account and deposit the notes so obtained with the Bank, as bailees, for

- stamping. Mr. Noguera said that the Bank regarded the notes thus deposited as the Respondent's property until they should be stamped; then the Appellants would have paid them into their account in Spain. p. 24, ll. 19-21.
20. The subsequent facts were as follows. The effect of the decree of 12th November was that it was impossible for the Appellants to take pesetas into Spain, as they had been doing, without "guias", because the customs authorities at La Linea would not accept them; and as the Appellants had no "guias" for the notes allocated to the Respondent, those notes were never even taken to La Linea. On the 5th December 1936 and on two subsequent occasions in 1937 the Appellants addressed petitions to the delegate of the Commander-in-Chief of the Southern Army in Spain, this being, in their opinion and that of the Spanish lawyers they consulted, the only way offering any hope of getting the notes legalized, but without effect. On the 27th August 1938 a decree of the Spanish Government set up a tribunal at Burgos with power, in certain circumstances, to authenticate peseta notes that were still unstamped. The Appellants took no action under this decree; but the Respondent on 18th October 1938 applied to the tribunal for relief, and on 6th December withdrew from the Bank the 110,000 peseta notes which he had deposited there in November 1936, and in pursuance of the tribunal's directions deposited them at the Customs House at La Linea on 7th December. The Respondent's application to the Spanish authorities met with no success, and he never recovered the notes. Exhibit 21, p. 19. p. 41, ll. 34-37. p. 25, ll. 14-20. Exhibits 13A, 16A, 19A. p. 43, ll. 34-48. p. 44, ll. 31-33, 39-44. p. 45, ll. 1-4. Exhibit 21, p. 39.
20. As regards the damage suffered by the Respondent it is submitted that, had he not withdrawn 110,000 peseta notes from his account with the Appellants on 24th November 1936, the Appellants would have remained his debtors to the amount of 110,000 pesetas in units of account of the Spanish Republic. In this respect it is significant that when on 27th June 1941 the Respondent withdrew from the Appellants the balance of his peseta account, then amounting to 6,850 pesetas as against 2,887.20 remaining on 24th November 1936, the pesetas paid were "good pesetas usable in Spain or elsewhere." The Respondent further gave evidence, which was not challenged, that in Gibraltar in November 1936 fifty pesetas were worth £1. By withdrawing 110,000 peseta notes on 24th November 1936, in reliance upon the Appellants' representations, the Respondent thus lost the value of a credit with the Appellants worth £2,200, whilst the notes then deposited with the Appellants by the Respondent were, as Mr. Raida admitted, worthless and have further been lost to the Respondent. Exhibit 7. p. 33, ll. 3, 4. p. 40, l. 1. p. 32, l. 38. p. 40, ll. 5, 6.
40. 22. The learned Chief Justice summed up the case to the jury on 18th November 1948. As regards his directions to the jury on matters of law he made it clear that the burden of proving his case was on the Respondent, what were the necessary elements in fraud, and that the damage suffered must have been proved to have been caused by the fraudulent misrepresentations alleged. He further directed them at some length as to what might constitute negligence. On all these matters it is submitted that his summing up was clear and accurate. He then proceeded to remind the jury of the evidence called on the issues of fact and summarised what had been said by the witnesses with substantial pp. 46-62. pp. 47, ll. 16, 27. pp. 50, 51. p. 51, ll. 20-34. p. 52, l. 16 to p. 53, l. 2. p. 53, l. 44 to p. 62, l. 13.

quotations from the most crucial passages of their evidence. It is submitted that his summary was fair and accurate and omitted no point of any materiality.

p. 45, ll. 25-43.

p. 46, ll. 11-13.

23. The questions left to the jury, which were agreed between the learned Chief Justice and counsel for the Respondent and Appellants, and their answers thereto, were as follows :—

(1) Did the Defendants (Appellants) make to the Plaintiff (Respondent) the representations mentioned in para. 4 of the Statement of Claim, or any of them? *Answer* : Yes.

(2) If so, was (or were) any such representation(s) false? **10**
Answer : Yes.

(3) If so, was the Plaintiff thereby induced to alter his position in the manner indicated in para. 8 of the Statement of Claim?
Answer : Yes.

(4) If so, did the Defendants make such representation(s) fraudulently, in the sense that they knew it (or them) to be false?
Answer : Yes.

(5) Alternatively, did the Defendants make such representation(s) fraudulently, in the sense that they made them recklessly, without caring whether it (or they) were true or false? (No *Answer*.) **20**

(6) Were the Defendants negligent as regards taking steps between the 24th November and the 14th December 1936 to have the Bank of Spain notes mentioned in Exhibit 8 stamped?
Answer : Yes.

(7) Damages (if this question arises)? *Answer* : £2,200.

pp. 62-63.

Judgment for the Plaintiff (Respondent) was accordingly entered for £2,200 and costs on the 18th November 1948.

p. 63.

p. 66.

24. The Appellants' motion for a new trial was dismissed on 1st December 1948. Final leave to appeal to His Majesty in Council was given on 24th January 1949. **30**

25. The Respondent humbly submits that the decision of the Supreme Court of Gibraltar was right and that this Appeal ought to be dismissed for the following among other

REASONS

- (1) BECAUSE the relationship between the Appellants and the Respondent prior to 24th November 1936 was that of debtor and creditor.
- (2) BECAUSE by the fraud of the Appellants the Respondent was induced to agree on 24th November 1936 that the Appellants instead of owing him 110,000 pesetas should hold 110,000 peseta notes as custodian for him. **40**
- (3) BECAUSE the Appellants falsely and fraudulently represented to the Respondent that in order to comply

with the Spanish decree of 12th November 1936 it was necessary for the Respondent to admit that the notes detailed in the list submitted to him by the Appellants were held by them for his account.

- 10
- (4) BECAUSE the Appellants falsely and fraudulently represented to the Respondent that the list of notes submitted to him contained no notes put in circulation after the 18th July 1936.
- (5) BECAUSE the Appellants falsely and fraudulently represented to the Respondent that upon his signing the various documents submitted to him on 24th November 1936 the said notes would be stamped in compliance with the said decree.
- (6) BECAUSE the Appellants negligently failed in their duty to the Respondent in that they did not get the said notes stamped or take all possible steps to do so and the said decree was not complied with.
- 20
- (7) BECAUSE by the aforesaid fraud or negligence of the Appellants the Respondent suffered damage in the sum of £2,200.
- (8) BECAUSE there was abundant evidence to justify the jury's findings of fact.
- (9) BECAUSE the learned Chief Justice in his summing up to the Jury dealt fully and fairly with all the material evidence of both parties, and correctly directed the Jury upon all relevant points of Law arising in the case.
- (10) BECAUSE the decision of the Supreme Court of Gibraltar was right and ought to be upheld.

A. A. MOCATTA.

No. 5 of 1949.

In the Privy Council.

ON APPEAL

from the Supreme Court of Gibraltar

BETWEEN

CREDIT FONCIER D'ALGERIE

ET DE TUNISIE (Defendants)

Appellants

AND

JEROME LINARES (Plaintiff)

Respondent.

Case for the Respondent.

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