

# In the Privy Council.

## ON APPEAL

FROM THE SUPREME COURT OF GIBRALTAR.

UNIVERSITY OF LONDON  
 W.C.1.  
 17 JUL 1953  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

BETWEEN

CREDIT FONCIER D'ALGERIE ET DE TUNISIE  
 (Defendants) - - - - - *Appellants*

AND

JEROME LINARES (Plaintiff) - - - - - *Respondent.*

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## Case for the Appellants.

1. This is an appeal from a judgment of the Supreme Court of Gibraltar dated the 18th November, 1948, whereby it was adjudged after a hearing before the Chief Justice of Gibraltar sitting with a special jury that the Respondent should recover from the Appellants the sum of £2,200 as damages for fraud and negligence together with his costs to be taxed. Record, pp. 62, 63.

2. The Appellants are a Company incorporated in France and carrying on business at all material times as bankers. They have a branch in Gibraltar, and the Respondent at all material times was one of their Gibraltar customers, having an account with them in Spanish pesetas, a currency which had always circulated freely in Gibraltar, although sterling is and has at all times been the only currency of the Colony. The account was originally opened on the 6th June, 1928, and on the 24th November, 1936, an important date in the story, was in credit to the extent of Ptas. 112,887. The events which then occurred involve an appreciation of the situation in Spain as regards currency legislation, more particularly in connection with the Franco rebellion. Exhibit No. 7, in pocket.

3. Currency restrictions had been imposed in Spain as early as 1931 and on the 26th May, 1931, the Respondent entered into an agreement with the Appellants, giving them the option of repaying the Respondent's peseta account "by cheque on La Linea or Madrid." By 1936, currency control in Spain was in the hands of a Governmental organ called the Official Centre for Currency Transactions (Centro Oficial de Contratación de Moneda) and on the 6th March, 1936 (four months before the outbreak of the rebellion), the Appellants obtained from this body what may be Exhibits, p. 1, ll. 22-3.

called for convenience a special concession to enable them to carry on their business in Gibraltar in pesetas. The words of the official letter were :  
 Exhibits, p. 2, ll. 18-25. " You are authorised to open in any Spanish Bank or Banks which you may think fit accounts in Pesetas in which there can be deposited, without our previous permission, and only on presentation\* of a certificate of the Spanish Customs House to the effect that the Bank notes enter from your City (i.e. Gibraltar), remittances made by you in Bank of Spain notes."  
 Exhibits, pp. 3-4. To this letter the Appellants replied on the 10th March, 1936, acknowledging and accepting the concession, and stating that they were opening such an account with the Banco Español de Crédito at La Linea. 10

Exhibits, pp. 5-6. 4. On the 16th March, 1936 (still before the rebellion), a decree was made by the Government of Spain instituting, for the purposes of the export and import of Bank of Spain notes, a system of what was called Guías (literally, Guides) which were in effect export permits. The decree provided that Bank of Spain notes could only be exported from Spain if a Guía was issued by the Customs House Administration. Guías did not in practice identify in any way any particular notes, but merely specified an amount in pesetas ; but the appropriate Guías had to be attached to any Bank of Spain notes which were imported (or re-imported) into Spain.  
 Record, p. 25, l. 12, pp. 23, ll. 29-30; 25, ll. 12-13.  
 Exhibits, p. 6, ll. 13-20.

Exhibits, p. 5, ll. 19-23. 5. This decree provided in terms that " the existing system relating 20 to the crediting of accounts resulting from the agreements entered into to date by the Official Centre for Currency Transactions is however maintained." Furthermore, on the very day when this decree was gazetted, the 17th March, 1936, the Official Centre for Currency Transactions acknowledged the Appellants' above-mentioned letter of the 10th March, 1936, and stated that they were forwarding to the nominated bank, the Banco Español de Crédito at La Linea, the concession letter of the 6th March, 1936, " with the object that they may not place any difficulty whatsoever in the Pesetas account you may wish to open in such bank," and on the Exhibits, p. 7. 6th April, 1936, the Banco Hispano Americano at Madrid wrote to the 30 Appellants stating that they also had received a copy of the concession letter and were opening an account to the extent of Ptas. 500,000 in favour of the Appellants' Tangier Branch. It was thus made quite plain—it is submitted—that, provided they operated by way of the accounts opened pursuant to the concession letter, the Appellants were exempted from the Guía legislation, both as regards their Gibraltar and their Tangier Branches.

Record, p. 33, ll. 16-17. 6. From then on peseta transactions between the Appellants and their customers in Gibraltar were for the most part carried on in pesetas without Guías. In particular the Respondent's transactions were all 40 carried on in that way, and in his evidence at the trial he said " I agree that the Defendants (Appellants) were to pay me out in pesetas without Guías, since I paid my pesetas in without them. That was the arrangement."

Record, p. 25, l. 16, and p. 54, l. 29. 7. The rebellion started on the 18th July, 1936, and the whole of southern Spain was soon in Franco's hands, Gibraltar being thus completely cut off from Madrid. It was not long before the whole of the commercial community in Gibraltar came to the conclusion that Franco

\* Sic in the official translation ; the meaning is obviously " on presentation only ".

was going to win; as the Respondent put it in his evidence "the commercial community generally had more confidence in Franco than the Republicans—and so in Franco's currency." Throughout the whole of the material period, however, Franco was in law no more than a rebel and the Republican Government in Madrid was the only constitutional Government of Spain, and was recognised by Great Britain as such. The notes of the Bank of Spain issued under the authority of the Republican government remained in law the only legal tender of Spain (apart from metal currency) and no purported legislation of the rebel "government" could affect them at any time prior to the 26th January, 1939, when His Majesty recognised the rebels as the government of Spain. It followed that the Appellants, had they desired, were entitled at any time to pay to the Respondent, and the Respondent was entitled to draw from them, such notes in discharge or part discharge of the Respondent's credit with the Appellants.

Record, p. 33, ll. 27-8.

Record, p. 25, l. 40.

8. On the 12th November, 1936, the rebel government purported to make a "currency decree" of a drastic character. It provided by Article 1 that all Bank of Spain notes put into circulation after 18th July, 1936, were to be "invalid," and by Article 2 that all Bank of Spain notes issued before that date had to be sent in for stamping to indicate their validity.

Exhibits, pp. 19-24.

Exhibits, p. 20, ll. 17-21.

Exhibits, p. 20, ll. 21-27.

Article 3 laid down a stringent time limit for this stamping to be carried out, fifteen days being allowed for notes coming from Gibraltar. (This was later extended up to the 14th December, 1936.)

Exhibits, p. 20, l. 28 to top 21, l. 14.

Exhibits, p. 20, ll. 17-23.

Article 4 provided that any person presenting notes to be stamped had to enclose a list of the notes and an affidavit showing that they were his "personal belonging and lawful property" and, in relation to notes coming from (inter alia) Gibraltar, it was made "obligatory" that they should have Guías attached to them. The pre-Franco Guía decree of the 16th March, 1936, was thus in effect adopted and continued.

Exhibits, p. 21, l. 19 to p. 22, l. 11.

Exhibits, pp. 5-6.

The remaining Articles are not directly material.

Exhibits, p. 19, l. 5.

This decree appeared in Franco's Official State Bulletin of the 13th November, 1936, and was published in the Seville periodical "A.B.C.," Gibraltar's main source of Spanish war news, on the 14th November, 1936, and in the Gibraltar newspaper "El Anunciador" on the 16th November, 1936.

Record, p. 25, ll. 27-8.

Record, p. 33, ll. 32-3.

9. In the difficult situation created by this decree the Appellants promptly sought legal advice. The Gibraltar Manager interviewed counsel in Gibraltar on the 17th November, 1936, and again, with the Area Manager of Tangier, on the 20th and 21st November, 1936. The advice they received was that, as the rebel administration was not recognised as a constitutional government, the Appellants could not properly send notes to Burgos (the seat of the rebel "government") to be stamped, unless they received express instructions from the customers who wished the stamping process to be carried out. It is submitted that this advice was correct, inasmuch as no rebel "legislation" could in British eyes alter in the least the provisions of the law of the constitutional government of Spain as to what was or was not legal peseta tender.

Record, p. 25, ll. 28-38.

Pursuant to this advice the Appellants operated a scheme by which the customer drew a cheque on his account ; specific notes were allocated against this cheque, as recorded on a list ; and at the same time the customer signed a specific request to the Appellants to deposit those notes for the purpose of stamping pursuant to the rebel " decree." The requisite lists were in fact prepared by the Appellants for all their peseta customers in order to be ready if the appropriate instructions were received.

Record, p. 25, ll. 44-6.

Exhibits, p. 25-7.

10. The Respondent was one of the customers who signed the appropriate document. He did so on the 24th November, 1936, in respect of the sum of Ptas. 110,000, practically the whole of his then credit balance of Ptas. 112,887. The circumstances in which he did so will be considered in detail, in the light of the evidence, later in this Case. As will appear, the Respondent's main ground of claim against the Appellants is based on their allegedly leading him to sign this document by fraudulent misrepresentation. In addition, he alleged negligence on the part of the Appellants in not taking steps to have the said notes timeously " legalised " and stamped. 10

Record, p. 3, ll. 16-27 ;  
and p. 5, ll. 4-15.

Record, p. 26, ll. 15-21.

Exhibits, pp. 30-2.

11. The Appellants at this time had little, if any, reason to doubt either the continued validity of their special concession of the 6th March, 1936, or the acceptance by the rebel authorities of its validity ; but they promptly took the matter up with the rebel authorities in Spain. Queipo de Llano was at this period the " General in Chief of the Southern Army " of the rebels, and the Appellants' manager went to see the " Delegado " of Queipo de Llano, and his legal " assessor " or adviser ; the latter had a brother who was a lawyer and this lawyer drafted for the Appellants a petition, originally dated the 25th November, 1936, but amended later to the 5th December, 1936, which was addressed to the " Delegado," asking for a declaration that " the authority granted to the Crédit Foncier d'Algérie et Tunisie Bank, Gibraltar agency, by the Official Centre of Currency Transactions of Madrid under date the 6th March, 1936, exempts it, in connection with the introduction into Spain of its Bank notes for the purpose of stamping, from the requirements of Guides " (Guías). 20 30

Exhibits, p. 32, ll. 9-16.

Exhibits, pp. 34-5.

Exhibits, pp. 36-7.

Not having received any satisfaction, the Appellants addressed a second petition to the " Delegado," dated the 9th January, 1937, to which an answer was sent dated the 25th February, 1937, from the Military Governor of Algeciras asking for further information, namely first, whether the Appellants had presented the Bank notes in question at any Bank of Spain branch for stamping ; second, whether the Bank notes in question represented the movement of the peseta current accounts held by clients or whether they contained any amounts proceeding from money exchange operations ; and, third, whether in the list of current account holders there were any money changers whose Bank notes had been deposited in the Bank without its having been possible to identify the origin of the same. This request having been received by the Appellants on the 2nd March, 1937, they replied on the 6th March, 1937, saying that they had not presented any Bank notes for stamping at any branch of the Bank of Spain, that the notes corresponded exclusively to the movement of peseta current accounts and did not emanate from currency exchange operations, and that no money changers or black market speculators were contained in the list of current account holders. 40 50

Record, p. 26, ll. 45-7.

Exhibits, pp. 37-8.

Exhibits, pp. 48-50.

A third petition was addressed to General Queipo de Llano personally a few days later but no answer was received to this, or to any of the earlier petitions except as above stated.

Record, p. 43, ll. 7-9.

At the end of March, 1937, the Appellants sent their Spanish lawyer to Burgos to see the rebel "Minister of Finance," who told him that the difficulty was that all transactions since the 18th July, 1936, would have to be examined because of the suspicion that current account holders had "illegal" pesetas, meaning thereby notes issued after the 18th July, 1936. It is to be noted that even this Minister of Finance did not, even as late as the  
10 end of March, 1937, purport to be able to distinguish between notes issued before, and notes issued after, the 18th July, 1936. (All Bank of Spain notes at that time, even if issued after the 18th July, bore printed dates earlier than that.)

Record, p. 43, ll. 10-16.

12. The Appellants' efforts all having been fruitless, the Respondent seems to have taken up the matter for himself, and in October, 1937, he lodged a petition with the President of the Foreign Currency Committee (of the rebel "Government") at Burgos. To this he received no reply; so he approached the rebel representative in Gibraltar, who told him that this Committee had ceased to function and that a body called the "Tribunal  
20 de Canje Extraordinario de Billetes" (Tribunal for special exchange of bank notes) had been established in its place. (This conversation must have taken place after the 27th August, 1938, the date of the decree setting up this body.)

Exhibits, p. 42,  
ll. 12-22; p. 51,  
ll. 6-17.

Exhibits, p. 30.

Record, p. 32, ll. 36-7.

The Respondent apparently saw the Appellants' then Manager in Gibraltar and was advised to petition under this decree and was supplied with a certificate dated the 18th October relating to his account. The Respondent submitted a petition dated the 18th October, 1938, to the "Tribunal de Canje," asking it to agree to exchange his Ptas. 110,000 deposited with the Appellants "for the same amount of money of National  
30 Spain" (i.e. of the rebel "Government").

Exhibits, p. 41.

Exhibits, pp. 42-3.

Exhibits, p. 43, ll. 7-8.

According to his evidence, this petition met with no success; but in a letter dated the 4th October, 1946, to the British Embassy at Madrid, he stated that his request to the Tribunal de Canje was granted on the 8th November, 1938, and he was instructed to deposit the notes at the Custom House at La Linea. The version of the matter given in the Statement of Claim is that on the 8th November, 1938, the Tribunal de Canje acknowledged the receipt of his application, and "directed the plaintiff inter alia to deposit the said Bank of Spain notes at La Linea Custom House." A letter of that date from the Tribunal to the Respondent is  
40 mentioned in his affidavit of documents, but no such letter was put in evidence.

Record, p. 32, ll. 38-9

Exhibits, p. 51, ll. 21-25.

Record, p. 4, ll. 35-38.

Record, p. 12, ll. 14-15.

The Respondent certainly, as he was entitled to do, withdrew notes of the Bank of Spain for Ptas. 110,000, being legal tender according to Spanish law, from the Appellants on the 6th December, 1938, and deposited them at the Custom House at La Linea on the 7th December, 1938. The Respondent never received back any of his notes, nor any notes in exchange for them, from the rebel Government, either before or after its recognition by His Majesty as the Government of Spain, and he has thus lost his Ptas. 110,000.

Record, p. 4, ll. 42-5.      The Respondent alleged in the Statement of Claim that on the 17th December, 1938, the Bank of Spain at Burgos certified that a small portion of the Respondent's notes, to wit, notes to the value Ptas. 3,225

Record, p. 31, ll. 14, 15      "were placed in circulation after the 18th July, 1936, and were therefore of no monetary value." (The fact that the notes were "post-18th July," which could not of course make any difference to the position of the notes as legal tender, was admitted at the hearing.) According to the letter of the 4th October, 1946, to the British Embassy at Madrid, mentioned above, the Bank of Spain at Burgos nevertheless acknowledged receipt

Exhibits, pp. 50-51.      "of the said sum" (apparently the whole Ptas. 110,000) on the 10 28th December, 1938, "enclosing a covering letter and two different receipts." None of these four documents was mentioned in the Respondent's affidavit of documents (except that there is mention of a "receipt from Cashier, Bank of Spain, Burgos," dated 17th December, 1938) and none of them—not even that receipt—was produced at the trial.

Record, p. 12, ll. 21-2.

Exhibits, pp. 42-3.      In the Statement of Claim, the Respondent alleged that his above-mentioned application to the Tribunal de Canje of the 18th October, 1938, was dismissed on the 12th June, 1939. Once again, no document to that effect was produced at the trial, although a letter of the 12th June, 1939, from the Tribunal figures in the Respondent's affidavit of documents. 20

Record, p. 4, l. 46 to p. 5, l. 2. Exhibits, p. 12, ll. 29-30.

Record, p. 5, ll. 3-6.      The Respondent further alleged in the Statement of Claim that he applied to the Tribunal de Canje on the 26th September, 1939, and that this application was dismissed on the 20th May, 1942. Again the documents of those dates figure in the Respondent's affidavit of documents, but were not produced at the trial.

Record, p. 12, ll. 35-8.

Record, p. 25, l. 40.      In the meantime, on the 26th January, 1939, the rebel Government had been recognised by the British Government as the Government of Spain, and hostilities in the Spanish Civil War came to an end on the 1st April, 1939. According to his above-mentioned letter of the 4th October, 1946, the Respondent made further efforts to secure redress from the new government, and on the 3rd August, 1943, he learned through the Spanish Consul-General in Gibraltar that the Secretary of the Tribunal de Canje "had come to the conclusion that his case was a lost one." On the 4th October, 1946, by the letter already mentioned, the Respondent got in touch with the Commercial Secretary of the British Embassy in Madrid, but still got no satisfaction. The Commercial Secretary, in his reply of the 31st October, 1946, stated—this being the first time that any such view was suggested—that the "Spanish authorities have always maintained that the decree of the 14th (?16th) March, 1936, cancelled any authority which the Crédit Foncier may have held to operate in Spanish bank notes which were unaccompanied by Guías." 30 40

Exhibits, p. 51, ll. 29-30.

Exhibits, pp. 50-51.

Exhibits, p. 53.

Exhibits, p. 53, ll. 14-18.

13. Through all this long period the Respondent never suggested, or even hinted, that the Appellants had done anything improper; but on the 14th January, 1947—over ten years after the date on which fraudulent representations are alleged to have been made by the Appellants—the Respondent's acting solicitor wrote a letter to them claiming damages for alleged negligence, misrepresentation and fraud, of which no particulars were given at all. On the 4th February, 1947, the Respondent issued the Writ in this action, claiming £3,200 "damages in respect of the loss of

Exhibits, pp. 53-4.

Record, pp. 1-2.

Ptas. 110,000 standing to the credit of the Plaintiff in the books of the Defendants caused through the fraud, misrepresentation and negligence of the Defendants.”

14. By his Statement of Claim delivered on the 30th April, 1947, the Respondent alleged that on the 24th November, 1936, he was induced by representations made by the Appellants to draw a cheque on his current account for Ptas. 110,000 and to redeposit the same with the Appellants in an account marked “to be stamped”; that the said representations were made verbally by the Appellants’ then Manager Joseph Noguera to the Respondent; and that the said representations were to the following effect, namely, “that in order to comply with the decree of the Government of Burgos in Spain dated the 12th November, 1936, it was necessary for the Appellants to forward to the Bank of Spain at Burgos their Bank of Spain notes for stamping; that the list of Bank of Spain notes delivered to the Respondent did not contain any Bank of Spain notes placed in circulation after the 18th July, 1936; and that, upon the Respondent admitting those notes to be held by the Appellants for his account, such notes would be stamped and the said decree complied with.” The Respondent further alleged that he relied upon those representations, “which were false and which the Defendants knew to be false in the following particulars, viz.: it was not incumbent on the Defendants 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; it was untrue that the list of notes prepared by the Defendants did not contain Bank of Spain notes placed in circulation after the 18th July, 1936; and it was untrue that the Bank of Spain notes to be held by the Defendants for account of the Plaintiff would be stamped in accordance with the decree, as the same lacked the accompanying guías.”

15. It is convenient to record here that at the close of the Respondent’s case the learned Chief Justice, in rejecting a submission by the Appellants’ Counsel that there was no case to answer, indicated that the Statement of Claim lacked any express allegation of recklessness in making the alleged representations and that he thought amendment was necessary. Notwithstanding the Appellants’ opposition, an amendment was made as drafted by the learned Chief Justice, inserting in paragraph 4 of the Statement of Claim, after the allegation that the said representations were made verbally by the Appellants’ then Manager Joseph Noguera to the Plaintiff, the words “and the Defendants at the time when they were made knew them to be false or made them recklessly not caring whether they were true or false.”

16. It is also convenient to record here that in his evidence at the trial the Respondent alleged only two “fraudulent misrepresentations,” namely “(1) that all the notes in my list had been in circulation before the 18th July, 1936, and (2) that if I signed the various documents my notes would be stamped, all would be in order—owing to defendants’ exemption from need to produce guías.”

17. So far as concerns negligence, the allegation made against the Appellants in the Statement of Claim was that they failed in their duty to the Respondent as their customer in not taking steps within the period

Record, pp. 3-5.

Record, p. 3, ll. 10-15.

Record, p. 3, ll. 16-17.

Record, p. 3, ll. 19-27.

Record, p. 3, l. 43 to  
top p. 4, l. 4.

Record, p. 35, ll. 28-48.

Record, p. 3, ll. 17-19.

Record, p. 33, ll. 36-39.

Record, p. 5, ll. 11-15.

Record, p. 4, ll. 11-14. prescribed in the decree of the 12th November, 1936, to have the said Bank of Spain notes legalised, stamped and exchanged for currency notes of the Bank of Spain. An earlier allegation in the Statement of Claim, to the effect that the Appellants failed to comply with the decree of the 12th November, 1936, in that they did not apply for nor made [*sic*] any deposit at La Linea Customs House of the said notes for stamping within the stipulated time or at all, may also have been intended to come under the head of negligence.

Record, pp. 5-7. 18. The Appellants' Defence, delivered on the 3rd June, 1947 admitted much of the history pleaded in the Statement of Claim, but 10 denied that there was any fraud or negligence on their part and alleged Record, p. 6, ll. 11-14. in terms that at the material time, i.e. the 24th November, 1936, it was not known which peseta notes had been put in circulation after the 18th July, 1936, as all Spanish notes then in circulation bore dates earlier than that.

Record, p. 21. 19. On the 9th November, 1948, the trial began before the Chief Justice and a special jury of seven men. It lasted seven days.

Record, p. 23. 20. The first witness called for the plaintiff-Respondent was the above-mentioned Joseph Noguera, the former manager of the Appellants' branch at Gibraltar, the person alleged to have made the fraudulent 20 misrepresentations complained of. As emerged in cross-examination, he Record, p. 27, ll. 28-32. had in April, 1939, left the Bank and gone to Spain and thence to Italy, whence he was brought back to Gibraltar to face a prosecution for embezzlement, on which he was acquitted. His evidence in chief, briefly summarised, Record, p. 23 ll. 19-43. was that after hearing about the decree of the 12th November, 1936, he had discussions with the Appellants' branch manager in Tangier, one Raida, who told him to assign [*sic, quære allot*] the peseta notes held by the Bank, to the value in all of over Ptas. 1,000,000, to the various customers having peseta accounts. With regard to the interview of the 24th November, 1936, at which it was alleged that he made the fraudulent 30 representations sued on, he said "I called Plaintiff to the Defendants' office and told him he must sign the letter giving us a cheque for the 110,000 pesetas, and paying the pesetas in again to get them stamped. I had to persuade plaintiff that this was the only means of getting the notes stamped in Spain. It was, I said, only a matter of form. I told him there were no notes in his list which had been declared illegal by the Franco Government, i.e. in circulation too late. We had a list of the notes in circulation too late, i.e. after 18th July, 1936. I had told the clerks to examine plaintiff's list in relation to that list.

Exhibits, p. 25. In pocket. "The plaintiff did not at that moment sign anything. Later that 40 day I sent Bernard Linares, defendants' employee, to see plaintiff. Bernard brought back exhibit 8" (the letter of the 24th November) "signed by the plaintiff and a cheque (exhibit 9) drawn by plaintiff for 110,000 ptas. and a paying-in slip for 110,000 ptas. made out by Bernard Linares and signed by plaintiff."

Record, p. 24, ll. 41-3. Later he referred to his petition to General Queipo de Llano the object of which was "to allow us to take the peseta notes into Spain. The lack of guías prevented us from taking them in."



21. In cross-examination, Noguera said at the outset: "I cannot say we defrauded plaintiff. All I said to plaintiff was true according to my instructions. I believed everything I said was true. I said nothing which I knew to be untrue." And later "I was not telling plaintiff anything false to my knowledge about the validity of the individual notes allocated to him." Seeing that he was the only person alleged to have made the misrepresentations on which the action was brought, it is submitted that these answers from a witness called by the plaintiff-Respondent were really the end of the case so far as it was founded on fraud.

Record, p. 24, ll. 44-6.

Record, p. 26, ll. 11-12.

22. On the general position, too, Noguera's evidence in cross-examination was important. He accepted that the Bank of Spain treated the Appellants as free from the guía requirements notwithstanding the decree of the 16th March, 1936, and that between the 16th March, 1936, and the decree of the 12th November, 1936, the Appellants acted many times on the basis of the letter of the 10th March, 1936, sending large quantities of pesetas into Spain without guías.

Record, p. 25, ll. 8-9.

Record, p. 25, ll. 18-20.

20 Noguera also agreed that as soon as the decree of the 12th November, 1936, was known the Appellants took legal advice, and that it was on legal advice they took the line that, the rebel Government not being then recognised, express instructions from the customers were necessary before there could be any question of complying with its "decrees."

Record, p. 25, l. 35, ll. 28-38.

He was shown the official circular from the Appellants' head office in Paris dated the 3rd April, 1939, which enclosed a letter from the French Minister of Commerce circulating a note from the French Commercial Agent in Spain setting out the numbers of the notes of the Bank of Spain declared "illegal"; and he stated in terms "it was then that we were told which notes were put into circulation after the 18th July, 1936." By the word "then" he plainly meant "then for the first time."

30 It is true that he sought to qualify that by saying "But we knew long before that; we had received lists from the Spanish Banks before the 24th November, 1936. A copy was with the Cashier, a copy in my office."

Record, p. 25, ll. 46, 47-9.

Exhibits, pp. 44-6.

Record, p. 25, ll. 46-8.

Record, p. 26, ll. 1-6.

With regard to the Respondent's transactions on current account, Noguera said that there were large movements from early 1936 onwards, both ways, without guías, and that the Respondent was only entitled to draw pesetas without guías, "of course." So far as the negligence issue was concerned, he detailed the long and elaborate attempts made by him on behalf of the Appellants to secure the admission of peseta notes to Spain for stamping.

Record, p. 25, ll. 23-6.

Record, p. 26, l. 12 to p. 27, l. 9.

40 23. The next witness called by the plaintiff-Respondent was his brother Bernard Linares, who had been an employee in the Appellants' Bank up to 1946. He said he had taken the relevant documents to the Respondent on the 24th November, 1936. "I told him he had to sign the cheque and the paying-in slip to pay into a special account marked for stamping. He asked if I thought everything was in order. I said 'Yes.' I tendered him exhibit 9 (the cheque) for his signature. He signed everything including every page of the list of notes." In cross-examination this witness, who was not alleged to have taken any part in any fraudulent misrepresentation, said: "I thought the transaction was quite in order.

Record, p. 28, ll. 26-30.

In pocket.

Record, p. 29, ll. 5-7.

Record, p. 29, ll. 25-6. Noguera had told me so ; he was my manager ; I took it for granted he was right . . . I should believe Noguera if he said he was not deceiving the plaintiff. There was no reason why Noguera should pick out the plaintiff to deceive him." He added that the Respondent was not reluctant to sign ; he signed because he was told it was in order.

Record, p. 29, ll. 29-30. This witness repeated what Noguera had said about the Cashier at the Appellants' Bank having a list of notes put into circulation after the 18th July, 1936, adding the significant detail that " that list was provided for him in September, 1936," i.e. two months before the November decree was even promulgated ! He also stated that " his list was cut from a newspaper—it was printed," which is also significant seeing that the only evidence of the numbers of the " illegal " notes having been in a newspaper put the date at late 1937, when the Appellants took a cutting although they had by then ceased to take peseta notes without guías. 10

Record, pp. 30-2. 24. The next witness for the plaintiff-Respondent was a Spanish lawyer, one Pérez Manzuco, who gave his views as to various Spanish decrees. The main purpose of his evidence seems to have been to show if possible that the decree of the 16th March, 1936, establishing guías overrode the Appellants' concession and that, after the 5 days' grace given by that decree, the Appellants could only introduce pesetas into Spain if they were accompanied by guías. In cross-examination he said that he appreciated that Noguera had said that he had often taken pesetas into Spain up to November, 1936, without guías, and he agreed that the Bank of Spain in fact continued to act on the concession even after the decree of the 16th March, 1936. But he said he thought they were wrong in law ! 20

Record, p. 31, l. 4. With regard to the rebel " decree " of the 12th November, 1936, this witness said that its general effect was that unstamped notes became useless ; to be more accurate he should have added " except in the then large part of Spain controlled by the lawful Government." 30

Record, p. 32, ll. 12-16. Exhibits, pp. 5-6. 25. The Respondent himself was the last witness on his side. He said that when he heard of the decree of the 16th March, 1936, introducing guías, he asked Noguera whether he should continue to accept pesetas (i.e. without guías) and was told that he could do so and could pay them into the Appellants' Bank, Noguera explaining to him that the Appellants were exempt from producing guías at La Linea. With regard to the events of the 24th November, 1936, he said : " I was asked by Noguera by phone to go and see him. I went that morning. He told me that in order to comply with the decree of Burgos it was necessary for me to sign a letter drafted by defendants and a few sheets of lists of pesetas in order to take those pesetas to La Linea for stamping. He said everything would be all right : I should get my money back, legalised. I asked him whether any of the notes had been put into circulation after the 18th July, 1936, He said ' No.' I was satisfied." The Respondent went on to say that he signed the documents brought round by his brother Bernard, and ended his evidence-in-chief by describing the efforts he himself had made with the Spanish authorities. In cross-examination he made the important admission that : " I agree that defendants were to pay me out in pesetas without guías, since I paid my pesetas in without them. That was the 40

Record, p. 32, ll. 26-8.

Record, p. 32, l. 36.  
p. 33, l. 1.

Record, p. 33, ll. 16-17

arrangement," and that even after the decree of the 12th November, 1936, he continued to accept pesetas without guías, adding: "I could not have got my guía-less pesetas stamped, I admit. I was requiring the defendants to do something for me that I could not do." He agreed that all his notes bore an old date and that there was nothing on their face to show when they were put into circulation. He admitted that prior to the letter before action in 1947 he had never complained to the Appellants of fraud or negligence on their part; and, after specifying, as set out in paragraph 14 above, the representations which he relied on as being fraudulent, he stated in terms: "I do not think that he (Noguera) said these things dishonestly without believing them to be true. I do not believe so."

Exhibits, pp. 19-24.  
Record, p. 33, ll. 23-6.  
Record, p. 34, ll. 6-8.  
Record, p. 34 ll. 11-12.  
Record, p. 33, ll. 40-1.

26. The Respondent called no evidence of Spanish Government officials or any other witness to explain what had become of his peseta notes handed to the Custom House at La Linea as mentioned above, in paragraph 12, and no evidence was given about the notes except for an observation by the Respondent that "I believe my pesetas are now in Burgos; they are certainly in Spain."

Record, p. 34, l. 5.

27. The Appellants at the close of the Respondent's case submitted that there was no case to answer, emphasising as regards the allegations of fraud that Noguera, the Respondent's own witness, had sworn that he acted honestly, and that the Respondent himself had sworn that he did not think Noguera had acted dishonestly or fraudulently; and, as regards the allegations of negligence, that Noguera's evidence as to the steps he had taken showed that he had done all in his power to get the Respondent's notes admitted for stamping.

Record, p. 34, l. 36, to p. 35, l. 4.

The Respondent's counsel in answer to this submission pointed out that the action was against the Appellants and not against Noguera personally, ignoring the fact that the case pleaded was that it was Noguera who had made false and fraudulent misrepresentations; he maintained also that "the 3,300 odd pesetas point is strong enough by itself," meaning presumably the fact that the Respondent's list of pesetas included notes to that value issued after 18th July, 1936, but ignoring that there was no evidence that this statement was deliberate, or that it had caused any damage. He asserted also that there was "evidence of fraud as regards the statement that plaintiff must withdraw and redeposit his notes," ignoring the fact that the Appellants were quite entitled to pay out the Respondent at any time in notes of legal tender, unstamped and without guías, leaving him to make his own efforts to get them into Spain for stamping.

Record, p. 35, ll. 5-9.  
—  
Record, p. 35, ll. 6-7.

40 As regards the allegations of negligence the Respondent's counsel maintained that the Appellants should have taken the pesetas to La Linea within a few days, ignoring the fact that there was no point in doing this until it had been made clear whether the concession was going to be acknowledged. He also suggested that General Queipo de Llano was not the proper authority to whom to submit petitions, though this point had never been pleaded and neither his own expert witness nor any other witness had ever made any such suggestion.

Record, p. 35, ll. 7-9.

Record, p. 35, ll. 10-14.

Record, p. 35, ll. 12-14.

In the result the Chief Justice ruled that there was a case to go to the jury, and the Appellants proceeded to call evidence.

Record, p. 35, l. 26.

28. The Appellants' first witness was Raida, their manager at Tangier, who had administrative jurisdiction over Gibraltar. To some extent he differed from Noguera as to the action taken as a result of legal advice after the promulgation of the "decree" of the 12th November, 1936. He said that it was a question of acceding to the customers' wishes and of waiting for them to come along and ask for notes to be allocated to them, and not of allocating notes to customers beforehand and then going to them to get them to sign the appropriate documents. In his own words, "I never told Noguera that the pesetas we had must be assigned to customers. It is not true that amounts of pesetas were to be allotted to various customers respectively; we were to await the request of customers themselves. I did not tell Noguera to call customers and persuade them to sign." 10

Record, p. 56, l. 4 to p. 57, l. 11.

In his summing up, the learned Chief Justice laid great emphasis on this divergence, implying that Raida was an unsatisfactory witness on a crucial matter. It is submitted that this was beside the point, and calculated to mislead the jury. The discrepancies between the two witnesses were, it is submitted, of little importance. It was quite immaterial whether the bank waited for the customers to come and make their own applications, or took the initiative in getting in touch with them. Noguera's account is perhaps the most likely, because the Appellants might well be thought to have fallen short of their duty to customers with peseta accounts if they had not told them of the "decree" of the 12th November, 1936, and obtained their concurrence in steps that could be taken to comply with it. 20

Record, p. 38, ll. 4-6; 9-12.

In another passage Raida said that there was no need to draw up lists of peseta notes allocated to individual customers in November, 1936, and that he had never to that day heard of that having been done, adding later that he did know on the 21st November, 1936, that lists of notes were to be made in the bank for customers who voluntarily came forward wanting them. 30

Record, p. 57, ll. 12-27.

The learned Chief Justice stigmatised this as "tangled evidence," and stated that in that short passage Raida had directly contradicted himself. It is submitted that he did not do so; what he was saying was entirely consistent with what he had said before as to the arrangements made after consulting their lawyer; the only lists he knew of were lists prepared in response to requests from customers who came forward; he had not heard of lists prepared beforehand allocating notes to customers prior to their having made any request for this to be done. It may well be that Raida was wrong about all this, but that did not in any sense, it is submitted, mean that either he or Noguera had set out to defraud the Respondent. 40

Record, p. 38, ll. 20-22.

Exhibits, pp. 19-24.

Record, p. 23, ll. 17-23.

Another point in Raida's evidence was that he was told by Noguera that the latter had approached the La Linea Customs after the decree of the 12th November, 1936, and had been told that notes could not be admitted without guías. It was odd—and unfortunate—that no question on this point was put to Noguera on behalf of the Respondent. All that Noguera had said about any conversation at La Linea was that the Manager of the Banco Hispano-Americano there had told him that all notes had to be taken to Spain within the period decreed. In any event 50

it is quite possible that a customs officer would make such a statement, which was consistent with the general practice; such an officer would naturally be unaware of special concessions made by the Bank of Spain from its head office. If such a statement were made by a customs officer, its effect would be merely to emphasise that the matter had to be taken up with higher authority: it would be no ground for supposing that the concession had been torn up.

On the question of pre- or post-18th July, 1936, issue of notes, Raida said this was not discussed by him and Noguera because nothing was known  
10 at that time as to this. Record, p. 36, ll. 40-2.

29. This last point was dealt with more explicitly by the Appellants' next witness, one Sené, who in 1936 was Secretary of the Appellants' Gibraltar branch. He said they knew nothing in the bank about which notes were post-18th July, 1936, until late in 1937, and that they then took notes of the numbers of "illegal" notes from a newspaper; the first official intimation on the point came only in April, 1939. Sené denied categorically that in November, 1936, there was any list in the bank as asserted by Noguera and Bernard Linares. It is perhaps significant on this that the only list produced at the trial was the 1939 list, and that no  
20 suggestion had been made previously by way of application for a further and better affidavit of documents from the Appellants that there ever had been a list in 1936. Record, p. 41, ll. 17-19;  
p. 42, ll. 1-2.  
Record, p. 42, ll. 14-15.

30. The Appellants' evidence closed with two expert witnesses in Spanish law. The first was one Marquez Urbano, who shared chambers with his brother, the legal assessor or adviser to the Delegate of General Queipo de Llano; his evidence that the Appellants' various petitions, which he himself had drafted, were addressed to the right quarter, should thus command confidence. He also talked of his one personal visit to Burgos on the Appellants' behalf when he interviewed the President of  
30 what then corresponded to the Cabinet of Ministers, who had told him that all transactions since the 18th July, 1936, would have to be examined because of the suspicion that current account holders had "illegal" pesetas. The Appellants' second legal witness, one Muñoz Carrera, also said that General Queipo de Llano was the proper authority to petition, and that all the steps taken were proper. He also expressed the view that the Appellants' concession of the 6th March, 1936, was kept alive by the decree of the 16th March, 1936, and that the latter decree was itself still kept alive by the decree of the 12th November, 1936, so that the concession was still valid. Record, p. 42, ll. 37-9.  
Record, p. 43, l. 10;  
l. 35-6.  
Record, p. 43, ll. 11-17.  
Record, p. 44, ll. 31-33.  
Record, p. 44, ll. 8-12;  
18-20.

40 31. Before summing-up, the learned Chief Justice settled with the concurrence of counsel on both sides the following questions for the jury:— Record, p. 45, ll. 30-43.

" 1. Did the Defendants make to the Plaintiff the representations mentioned in paragraph 4 of the Statement of Claim, or any of them? (Extract from paragraph 4 attached.)

" 2. If so, was (or were) any such representation (or representations) false?

“ 3. If so, was the Plaintiff thereby induced to alter his position in the manner mentioned in paragraph 8 of the Statement of Claim ? (Copy of paragraph 8 attached.)

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

“ 5. Alternatively to question 4, did the Defendants make such representation (or representations) fraudulently in the sense that they made them recklessly without caring whether it (or they) were true or false ?

10

“ 6. Were the Defendants negligent as regards taking steps between the 24th November, 1936, and the 4th December, 1936, to have the Bank of Spain notes mentioned in Exhibit No. 8 stamped ?

“ 7. Damages (if this question arises) ? ”

Record, p. 4, ll. 5-10.

It will be remembered that the allegation in paragraph 8 of the Statement of Claim was to the effect, not that the Respondent was induced to alter his position, but that the Appellants succeeded in altering theirs from that of debtors to that of custodians.

Record, p. 46, l. 13;  
pp. 62, 3.

32. It may be convenient to anticipate the course of events in order to give the jury's answers to these seven questions. 20

To the first, they answered that the Defendants made the representations mentioned in paragraph 4 of the Statement of Claim (probably, but not certainly, all the representations).

To the second, they answered that the representation or representations was or were false.

To the third, they answered, Yes.

To the fourth, they answered that the Defendants made the representation or representations fraudulently in the sense that they knew it or them to be false. 30

All question of recklessness as to their truth thus being removed from the case, the jury did not answer the fifth question.

To the sixth, they answered that the Defendants were negligent as regards taking steps between the 24th November, 1936, and the 14th December, 1936, to have the Bank of Spain notes in question stamped.

To the seventh, they answered that the Plaintiff had suffered damages amounting to £2,200.

Record, pp. 46-62.

33. The learned Chief Justice, after settling the questions, proceeded to sum up to the jury. So far as it dealt with general matters, and described what is meant in law by fraud and negligence, the summing-up is not open to complaint. When it came, however, to the specific issues in the case, it was, it is submitted, seriously deficient, particularly in the following respects :— 40

(A) The learned Chief Justice did not make clear to the jury the extremely intricate and novel legal problems which were created, both for banks and customers, by the outbreak of the rebellion and

the position which lasted for two and a half years thereafter in which the areas of Spain forming the hinterland of Gibraltar were in the hands of rebels who ignored but could not alter the currency law of Spain.

10 (B) The learned Chief Justice appeared to assume that, merely because a rebel general controlled southern Spain, effect had to be given to his "decrees" as though they had some sort of legal validity, and did not explain that what were throughout the trial referred to as "illegal" notes were in fact lawful notes, of legal tender in Spain, issued by the only constitutional Government of Spain.

(C) The learned Chief Justice did not point out that, if the Appellants had considered merely their own protection, they could have paid out Bank of Spain notes to the Respondent without guías and left him to try and get them stamped, or get them into such part of Spain as he desired.

(D) The learned Chief Justice did not mention the astounding feature that it took the Respondent eleven years to realise that he had been—as he alleged—the victim of a swindle.

20 (E) The learned Chief Justice gave no explanation to the jury of the effect of the Respondent's own witness, the person alleged to have made fraudulent representations to him, having stated in terms that there was no fraud or dishonesty of any kind on his part or at all.

34. Dealing with the specific issues of fraud the learned Chief Justice said :— Record, p. 49, l. 41 ;  
top p. 50, l. 3.

30 " " There were three alleged mis-statements and, of course, it will be for you first to decide whether such statements were made, and, if so, of the meaning the words had at that time, in those circumstances, spoken to that man the plaintiff.

40 " According to what the plaintiff says, his case is this : that the first of those statements meant : under the decree of the 12th November, 1936, if peseta notes are to be validated by stamping, customers' pesetas (not the bank's pesetas) must be forwarded by the bank to Burgos. The plaintiff says that the second statement comes to this : ' Here is a list of peseta notes held by us, the Bank, all of which were in circulation before the Spanish Civil War broke out.' And the plaintiff says that the third alleged misrepresentation is this : ' Make these notes your property, Mr. Linares, leave them with us, and we are in a position to present them in Burgos for stamping '."

Later in his summing-up the learned Chief Justice said :—

Record, p. 57, ll. 38-44.

" Now comes the all important question of the making of the representations. It is of course the basis of the plaintiff's case for fraud that Mr. Noguera on that occasion, on the morning of the 24th November, made the three representations, copies of which you have " (they were supplied to the jury in the form of extracts from the Statement of Claim). " The evidence of the actual making

of the representations must be found in the evidence of two people only, because only two people were, as far as we know, present—Mr. Noguera and the plaintiff himself.”

The learned Chief Justice then recited the evidence of Noguera and the Respondent as set out above, which evidence, it is submitted, constituted no proof of the first representation at all, especially when it is recalled that the Respondent, when asked in examination-in-chief what the fraudulent representations made to him by Noguera were, enumerated only the second and third, wholly omitting the first. The learned Judge concluded: “ That is the case as far as the making of the representations is concerned.” 10

Record, p. 33, ll. 36-9.

Record, p. 58, ll. 17-18.

35. With regard to the first representation, it will be noted that the learned Chief Justice nowhere dealt with the fundamental question whether the words used, whatever precisely they were, were untrue and known to be untrue. Noguera was not asked what he intended to convey by the words he used, nor was the Respondent asked what he understood them to mean. Noguera may well have interpreted the decree of 12th November, 1936, as meaning that, where bank accounts were concerned, it was the customer who had to swear the necessary affidavit—surely an eminently reasonable interpretation. He may equally well have meant to say no more than this: “ We can pay you out with equivalent notes to what you paid in; if however 20 you wish to have notes to the amount of your credit with us stamped as ‘ valid ’ in rebel territory, you will have to sign certain documents ”—and this would have been perfectly true. But this is all speculation, because the whole matter was left in the air.

36. With regard to the question whether the second representation, if made, was untrue the learned Chief Justice stressed the admission made by Counsel for the Appellants that notes to the value of Ptas. 3,325 in the Respondent’s list were, long afterwards, declared to have been issued after 18th July, 1936.

Record, p. 60, ll. 13-16.

Record, p. 59, l. 5.

On the question whether the second representation was known to 30 be untrue, the learned Chief Justice mentioned, without comment or explanation, that there was a conflict of evidence as to whether at the time of the alleged representation the bank had a list of the post-18th July notes. In fact, both responsible officials of the bank said they had no list, and all the inherent probabilities pointed to their being right. It was not till 1937 that a list of some sort appeared in some newspaper and Gibraltar had of course access to Spanish newspapers published in rebel territory, which might be expected to give early information of such importance to everyone in rebel territory—and it was not until 1939 that the French Commercial Counsellor succeeded in getting the official list. 40 Furthermore the language used by the responsible Spanish Minister in March, 1937, to the lawyer Marquez Urbano was absolutely inconsistent with the numbers being known even by that time. The only evidence that such a list did exist was of very doubtful value, coming from the Respondent’s own brother, an ex-employee of the bank, and from Noguera, who may well have borne a grudge as a result of his prosecution. Yet the learned Chief Justice gave no warning to the jury as to the grounds for regarding these witnesses as unreliable, and he did not mention the inconsistencies in their stories—the Respondent’s brother talking about a



printed cutting from a newspaper whilst Noguera spoke of copies, presumably typed, given him by a Spanish bank manager. Nor did Noguera give any explanation as to why, if he had such a list, he didn't look at it.

37. With regard to the third alleged representation, a serious question arose at the outset as to whether it was a representation of fact at all. As pleaded, it was, it is submitted, plainly no more than a promise; there was nothing in Noguera's evidence inconsistent with it being of that character; and the Respondent's version as set out above put it plainly on that basis. On the other serious question, whether, if it were a state-  
 10 ment of fact, it was known to be untrue, the learned Chief Justice recited a passage in Raida's evidence in cross-examination, as follows:—

“ I agree that we had no guías, and therefore could not take  
 peseta notes to Spain at all after 12th November, 1936. All we  
 could do was to petition the Spanish authorities on the basis of the  
 letter granting the concession. I could not guarantee to get notes  
 stamped by taking them to La Linea in those circumstances. It  
 would be deceiving the customer to tell him so. It would be inducing  
 an error . . . I agree that the decree was clear; a fixed period was  
 laid down, and the notes had to be accompanied by guías if they  
 20 were to be taken to Spain.”

Earlier in his cross-examination he had said more succinctly: “ On reading  
 that decree it was clear that the notes could not be taken in without  
 guías except under Exhibit 1 ” (i.e., the concession). The crucial question  
 however was the state of Noguera's mind. If he had no real reason to  
 suppose that the concession had been cancelled—and that was plainly  
 the gist of his evidence—there could be no possible fraud in making  
 representations on the basis that it was still alive.

38. A further matter of importance on the issues of fraud arises from  
 the fact that the questions for the jury did not differentiate at all between  
 30 the three representations relied on, as appears from the form of the questions  
 set out in paragraph 31 above. The form of the jury's answer leaves it  
 uncertain whether they found that all or only some, and if so which, of the  
 alleged misrepresentations had been made fraudulently. If it was the  
 third only, their verdict could not, it is submitted, stand, seeing that this  
 was at most made and understood as being a promise and not a representa-  
 tion. If it was the first only, it was, it is submitted, unsupported by the  
 evidence. If it was the second only, it is, it is submitted, impugnable as  
 being against the weight of the evidence and/or as being given without  
 adequate direction on fundamental matters by the learned Judge.

39. There is a further question on the issue of fraud, namely, whether  
 the Respondent was induced by the alleged representations to alter his  
 position to his detriment. The only alteration alleged was in paragraph 8  
 of the Statement of Claim which referred to an alteration of the Appellants'  
 position. This paragraph ran: “ The Defendants knew that their liability  
 towards the Plaintiff in respect of his current peseta account was for the  
 payment of the equivalent Spanish units of account. By such false and  
 40

fraudulent representations the Defendants for no consideration altered their position of debtors to the Plaintiff to that of custodian of a set of Bank of Spain notes."

40. The only possible basis, it is submitted, on which an argument for the Respondent could succeed on this point would be that the Appellants were liable to pay, and could only discharge, their debt to the Respondent by payment in valid Spanish bank notes; and that bank notes of the lawful government of Spain could somehow cease to be valid because a rebel "government," unrecognised by His Majesty, sought to impose stamping formalities upon them. This argument is plainly baseless, and it follows that there can be no evidence in support of this allegation, and that the Respondent cannot have suffered any damage even if the Appellants did cease to be liable to pay, and entitled to pay, their debt to him in valid unstamped Bank of Spain notes, and became instead custodians for him of a corresponding number of valid unstamped Bank of Spain notes. 10

Record, p. 33, ll. 16-17. There are other defects also, it is submitted, in the Respondent's contention on this point. For example, he himself stated, agreeing with Noguera, that the arrangement was that dealings between them were in peseta notes without guías. He was only entitled to receive from the Appellants peseta notes without guías: he conceded that, if he had been paid these, he could not himself have got them into rebel Spain to be stamped, and that he was requiring the Appellants to do something for him which he could not do. The Appellants were the only people who could, by virtue of their concession, get notes into Spain without guías; and, in leaving it to them to try, the Respondent was unquestionably, if the matter is of importance, not suffering any detriment but seeking considerable advantage. 20

Record, p. 33, ll. 25-6.

41. A similar question arises on the issue as to damages, as to which the Appellants repeat the arguments set out in the first part of paragraph 40 of this Case. Even if the Respondent could in some way have overcome these arguments, the only evidence relevant to damages was that of the Respondent that "the rate in Gibraltar for buying pesetas in November, 1936, was £1 = 50 pesetas." Whether that was the rate before or after the decree of the 12th November, 1936, was known is not stated. Assuming however that it was after, and that it was the price for pesetas without guías (the only pesetas with which the Respondent dealt) that value could only exist on the basis that there was a means of exchange. Barclays Bank had given up all dealings in pesetas without guías after the decree of the 16th March, 1936, and it was only the Appellants who, by virtue of their concession, were able to exchange them. If therefore the true position was from the outset, as it ultimately emerged to be, that the rebel "Government," by the "decree" of the 12th November 1936, intended to withdraw recognition of the concession, from that moment the sole means of exchange was gone and pesetas without guías in Gibraltar were in fact valueless. In other words, if pesetas without guías in Gibraltar maintained any value at all after the 12th November, 1936, this was only because everyone imagined that the Appellants' concession still stood. The Respondent therefore could only have got value for them on the basis of finding someone else who was prepared to trust the 30

Record, p. 32, l. 33.

Exhibits, pp. 8-9.

Exhibits, pp. 10-24.

Appellants to get them changed for him, and that person could only achieve that result by taking the very same steps, presumably with the same results, that the Respondent took.

42. On the issue of negligence, the learned Chief Justice's summing up on the whole was not unfavourable. He referred to the Appellants "moving heaven and earth in the ways which seemed to them to exist"; and on the main point relied on by the Respondent, namely, that the Appellants were barking up the wrong tree in approaching Queipo de Llano, he did not give the jury any encouragement to conclude that they were. In dealing, however, with Marquez Urbano's efforts in Burgos, he undid all the good by stressing a portion of the cross-examination which was, it is submitted, most misleading in the absence of careful explanation, if not actually inadmissible. The witness was asked about the "decree" of the 12th November, 1936, and said it was the result of "illegal" notes being put into circulation and then went on: "The Defendants told me nothing about in fact having 'illegal' notes in their possession. I would have ceased to act for the Defendants had I known it. I always thought I was defending a just cause. I would never have carried 'illegal' pesetas." The word "illegal" appears in quotation marks in the learned Chief Justice's notes, but the constant use of the phrase before the jury cannot but have created the impression that the edicts of the rebel "government" were part of the law of Spain, affecting the validity of Spanish currency; and to treat the witness's view that anyone who held notes issued by the legal government of Spain after a particular date was more or less a criminal, and in any case a person for whom an honest lawyer would not act, as a serious contribution to any question of a bank's duty, was most regrettable. And the learned Chief Justice closed, somewhat unfortunately, by bringing up a suggestion he had made during the trial, to the effect that the Appellants might have paid the Respondent in Tangier. Not only was there no obligation on them to do any such thing, but they were of course free at any time to pay him in Gibraltar in unstamped Bank of Spain notes.

Record, pp. 60-61.  
Record, p. 60, l. 20, and ll. 40 to p. 61, l. 4.  
Record, p. 61, ll. 13-27.  
Exhibits, pp. 19-24.  
Record, p. 43, ll. 24-27.

43. Notwithstanding the overwhelming evidence of the Appellants' attempts, as indicated above, to get the position cleared up satisfactorily with the rebel authorities, the jury did not hesitate to convict them of negligence as well as fraud. The perversity of their whole attitude to the case is, it is submitted, demonstrated by this verdict.

Record, p. 46, l. 13;  
p. 62, l. 28 top 63, l. 9.

44. The jury having on the 18th November, 1948—as stated in paragraph 32—answered all the questions left to them (except the one dealing with recklessness in making the alleged representations, which they ignored) adversely to the Appellants, and having assessed the damages at £2,200, judgment for the Respondent was entered on the same day for that sum with costs.

Record, p. 46, l. 13.  
Record, pp. 62-3.

45. On the 1st December, 1948, the learned Chief Justice granted to the Appellants conditional leave to appeal to His Majesty in Council, a formal motion for a new trial being on the same day dismissed with costs to abide the result of the appeal.

Record, p. 64.  
Record, p. 63.

Record, p. 66.

46. On the 24th February, 1949, the conditional leave to appeal to His Majesty in Council was made final.

47. The Appellants humbly submit that the judgment of the Supreme Court of Gibraltar dated the 18th November, 1948, should be set aside and judgment entered for the Appellants, or alternatively, that a new trial should be had between the parties, for the following amongst other

### REASONS.

- (1) BECAUSE there was no evidence to support a verdict that the Appellants were guilty either of fraud or of negligence. 10
- (2) BECAUSE on both heads the verdict was against the weight of evidence.
- (3) BECAUSE on both heads the verdict was perverse.
- (4) BECAUSE the learned Chief Justice both misdirected, and failed adequately to direct, the jury.
- (5) BECAUSE the Respondent cannot impugn the evidence of his own witnesses that there was nothing fraudulent or dishonest in anything that they did or said.
- (6) BECAUSE, as regards the first alleged misrepresentation, there was no evidence either that it was made, or that it was untrue, or that it was known to be untrue. 20
- (7) BECAUSE, as regards the second alleged misrepresentation, there was no evidence that it was known to be untrue.
- (8) BECAUSE, as regards the third alleged misrepresentation, there was no evidence on which it could be found to be a representation as to existing facts, and no evidence that it was untrue, or that it was known to be untrue.
- (9) BECAUSE there was no evidence on which it could be found that the Respondent was led to alter his position to his detriment. 30
- (10) BECAUSE there was no evidence that the Respondent suffered any loss as a result of any fraud or negligence of the Appellants.
- (11) BECAUSE it is not possible to ascertain whether the jury found that all the alleged misrepresentations were made, or only some of them, and if so which ; and there must be a new trial if any one of them were not established.
- (12) BECAUSE in any event there must be a new trial on the ground of misdirection and inadequate direction of the jury. 40

D. N. PRITT.

STEPHEN CHAPMAN.

**In the Privy Council.**

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**ON APPEAL**

*from the Supreme Court of Gibraltar.*

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BETWEEN

**CREDIT FONCIER D'ALGERIE  
ET DE TUNISIE (Defendants)**

*Appellants*

AND

**JEROME LINARES (Plaintiff)**

*Respondent.*

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**Case for the Appellants.**

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**GILBERT SAMUEL & CO.,**  
6 Great Winchester Street,  
London, E.C.2,  
*Solicitors for the Appellants.*