

PC
J.F. 1951
2 1951
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.*

RECORD OF PROCEEDINGS

GILBERT SAMUEL & CO.,
6 GREAT WINCHESTER STREET,
LONDON, E.C.2,
Solicitors for the Appellants.

WILLIAM A. CRUMP & SON,
10/11 LIME STREET, E.C.3,
Solicitors for the Respondent.

~~GO 2:61~~

2, 1951

31109 No. 5 of 1949.

In the Privy Council.

ON APPEAL FROM THE COURT OF GIBRALTAR.

BETWEEN

CREDIT FONCIER D'ALGERIE ET DE TUNISIE

UNIVERSITY OF LONDON
(Defendants) *Appellants*
W.C.T.

AND

JEROME LINARES (Plaintiff)

17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

RECORD OF PROCEEDINGS

INDEX OF REFERENCE PART I

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<i>IN THE SUPREME COURT OF GIBRALTAR.</i>			
1	Writ of Summons	4th February 1947 ..	1
2	Appearance	11th February 1947..	2
3	Statement of Claim	30th April 1947 ..	3
4	Defence	3rd June 1947 ..	5
5a	Application for Particulars of Defence	18th October 1947 ..	8
5b	Order for Particulars of Defence	24th October 1947 ..	9
5c	Particulars of Defence	3rd November 1947..	10
6	Reply	10th November 1947	10
7	Plaintiff's Affidavit of Documents	9th December 1947 ..	11
8	Order for Amending Defence	26th January 1948 ..	14
9	Further Particulars of Defence	30th April 1948 ..	15
10	Defendants' Affidavit of Documents	12th May 1948 ..	15
11	Order for Trial by Court and Special Jury	8th June 1948 ..	18

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
12	Defendants' Further Affidavit of Documents	11th November 1948	18
13	Chief Justice's Note of Evidence	18th November 1948	21
	<i>Plaintiff's Evidence.</i>		
14	Joseph Felix Noguera	—	23
15	Bernard Linares	—	28
15a	Bernard Linares recalled	—	45
16	Emilio Perez Manzuco	—	30
17	Jerome Linares (the Plaintiff)	—	32
	<i>Defendants' Evidence.</i>		
18	Maximilian Francis Raida	—	36
19	Norberto Sené	—	41
20	Ramon Marquez Urbano	—	42
21	Ricardo Munoz Carrera	—	44
22	Questions for Jury	—	45
23	Jury's Answers	—	46
24	Certified Transcript of Chief Justice's Summing Up on the 18th November 1948	25th November 1948	46
25	Judgment	18th November 1948	62
26	Order dismissing Motion for New Trial	1st December 1948 ..	63
27	Order giving Conditional Leave to Appeal	1st December 1948 ..	64
28	Bond for £500 for Respondent's Cost of Appeal	7th December 1948 ..	64
29	Order giving Final Leave to Appeal	24th February 1949	66
30	Registrar's Certificate verifying Transcript	14th March 1949 ..	66

EXHIBITS—See Volume II.

**LIST OF DOCUMENTS OMITTED TO BE COPIED IN THE
APPEAL RECORD**

NO.	DESCRIPTION	DATE
1	Summons for Directions	12th April 1947.
2	Order for Directions	22nd April 1947.
3	Summons for Leave to amend Defence	21st January 1948.
4	Notice of Motion for Trial with a Special Jury ..	21st May 1948.
5	Præcipe entering Action for Trial	7th October 1948.
6	List of Special Jurors struck and reduced	11th October 1948.
7	Notice of Change of Solicitor	25th November 1948.
8	Præcipe by Defendants' Solicitor applying for Chief Justice's Notes of Evidence	25th November 1948.
9	Notice of Motion to set aside Judgment, dated 18th November 1948, and for New Trial ..	26th November 1948.
10	Notice of Motion for Conditional Leave to Appeal ..	26th November 1948.
11	Præcipe by Plaintiff's Solicitor applying for Chief Justice's Notes of Evidence	15th December 1948.
12	Notice of Motion for Final Leave to Appeal	18th February 1949.

Dated the 14th day of March, 1949.

(Sgd.) E. PIZZARELLO,
Registrar.

In the Privy Council.

ON APPEAL FROM THE COURT OF GIBRALTAR.

BETWEEN

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

AND

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

10 RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

Ordinary Writ—Unliquidated Demand.

GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith

To

Credit Foncier d'Algerie et de Tunisie of 206-210 Main Street Gibraltar Bankers.

20 WE COMMAND YOU, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Jerome Linares of 5 Library Ramp, Gibraltar, Chemist.

AND TAKE NOTICE that in default of your doing so, the Plaintiff may proceed therein and judgment may be given in your absence.

Witness The Honourable ROGER SEWELL BACON, M.B.E., Chief Justice of Our said Supreme Court, the Fourth day of February in the year of our Lord One thousand nine hundred and forty-seven.

30 N.B.—This writ to be served within Twelve Calendar Months from the date thereof, or, if renewed, within six Calendar Months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor, at the Registry of the said Court, situate at the Court House, Gibraltar.

No. 1.
Writ of
Summons,
4th
February
1947.

(L.S.)

Supreme
Court,
Gibraltar.
Filed
4 Feb.
1947.

Albert R.
Isola.

No. 1.
Writ of
Summons,
4th
February
1947,
continued.

THE PLAINTIFF'S CLAIM is for damages in respect of the loss of Pts.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.

(Sgd.) ALBERT R. ISOLA.

This Writ was issued by ALBERT RICHARD ISOLA, Esquire, of Gibraltar, whose address for service is No. 3 Bell Lane, Gibraltar, Solicitor for the Plaintiff who resides at 5 Library Ramp, Gibraltar and who is a Chemist.

The Defendants Credit Foncier d'Algerie et de Tunisie are Bankers 10 and carry on business at 206-210 Main Street, Gibraltar.



No. 2.
Appearance
11th
February
1947.

No. 2.
APPEARANCE.

Enter an Appearance for Credit Foncier d'Algerie et de Tunisie in this action.

Supreme
Court,
Gibraltar.
Entered
11th Feb.
1947.

Dated the 11th day of February, 1947.

(Sgd.) J. A. HASSAN,
of No. 251, Main Street, Gibraltar,
whose address for service is
251 Main Street, Gibraltar, Solicitor 20
for the Defendants.



No. 3.

STATEMENT OF CLAIM.

No. 3.
Statement
of Claim,
30th April
1947.

1. The Plaintiff is a Chemist carrying on business at No. 93 Main Street Gibraltar. The Defendants are bankers carrying on business at Nos. 206-210 Main Street Gibraltar.

2. The Plaintiff kept an account current with the Defendants, which account was opened on the 6th day of June 1929. The Plaintiff operated the account by paying in Spanish Pesetas and drawing on the said account by cheques on the Defendants.

Supreme
Court,
Gibraltar.
Filed
30th Apr.
1947.

10 3. On the 24th day of November 1936 the Plaintiff was induced by the representations made by the Defendants to draw a cheque on his current account for Pts.110,000 and to re-deposit the same with the Defendants in an account marked "To be stamped." A list of Bank of Spain notes to the value of Pts.110,000 was delivered by the Defendants to the Plaintiff.

20 4. The said representations were made verbally by their then Manager Joseph Noguera to the Plaintiff 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.* The said representations were to the following effect viz.: that in order to comply with the Decree of the Government of Burgos in Spain dated the 12th day of November 1936 it was necessary for the Defendants to forward to the Bank of Spain at Burgos their customers' Bank of Spain notes for stamping, that the list of Bank of Spain notes delivered to the Plaintiff did not contain any Bank of Spain notes placed in circulation after the 18th day of July 1936 and that upon the Plaintiff admitting these notes to be held by the Defendants for his account, such notes would be stamped and the said decree complied with.

Amended
by order of
H.H. the
Chief
Justice
made at the
trial of this
action on
the 12th
day of
November
1948.
(Int.)
E. P. Regr.

30 5. The said decree of the 12th day of November 1936 was to the effect that all Bank of Spain notes placed in circulation after the 18th day of July 1936 would cease to have any monetary value, and all Bank of Spain notes placed in circulation before the 18th day of July 1936 would be considered legal currency if presented for stamping within the period stipulated in such decree, and subsequently stamped. The period within which Bank of Spain notes held in Gibraltar were to be presented for stamping was fifteen days from the date of the Decree.

40 6. The presentation of the Bank of Spain notes held in Gibraltar for stamping was to be effected at the Customs House, La Linea, Spain, according to the said Decree of the 12th day of November 1936. Such Bank of Spain notes were to be accompanied by their "guias" i.e. the Government's authority for their previous exportation as required by a Decree of the Spanish Government published in the Madrid Gazette on the 17th day of March 1936.

7. The Plaintiff relied upon the above representations made by the Defendants 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

No. 3.
Statement
of Claim,
30th April
1947,
continued.

Bank of Spain notes placed in circulation after the 18th day of 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 "guias."

8. 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 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. 10

9. The Defendants failed to comply with the said Decree of the 12th November 1936 in that they did not apply for nor made any deposit at La Linea Customs House of the said notes for stamping within the stipulated period or at all.

10. The Defendants failed to inform the Plaintiff that no application for stamping was being made or that the required deposit at La Linea Customs House within the prescribed period would not be proceeded with.

11. The Plaintiff on various occasions after the 24th day of November 1936 verbally enquired at the Defendants' Bank as to the progress made in connection with such stamping and was informed that proper action was being taken. 20

12. On the 8th day of October 1938 the Plaintiff called at the Defendants' Bank and informed the then Manager of the Defendants that by a Decree of the 27th August 1938 it appeared that the Bank of Spain notes still held by them could be exchanged for currency notes of Spain.

13. The Defendants through their then Manager required the Plaintiff to make the necessary application and on the 18th October 1938 gave a Certificate as to the amount standing to the credit of the Plaintiff 30 to enclose with the said application.

14. The Plaintiff duly applied to the Tribunal de Canje Extraordinario de Billetes in Spain for the exchange of the Bank of Spain notes at the Defendants' Bank for legal currency notes of the Bank of Spain.

15. On the 8th day of November 1938 the Tribunal de Canje Extraordinario de Billetes in Spain acknowledged the receipt of the said application and directed the Plaintiff inter alia to deposit the said Bank of Spain notes at La Linea Customs House.

16. The Plaintiff withdrew from the Defendants the said Bank of Spain notes on the 6th day of December 1938 and deposited the same 40 at La Linea Customs House on the 7th day of December 1938.

17. On the 17th day of December 1938 the Bank of Spain at Burgos certified that Bank of Spain notes to the value of Pts. 3325 were placed in circulation after the 18th day of July 1936 and were therefore of no monetary value.

18. On the 12th day of June 1939 the Tribunal de Canje Extraordinario de Billetes dismissed the Plaintiff's application for the

exchange of the said notes on the ground that the said application did not come within articles 2 or 4 of the Decree of the 27th August 1938.

No. 3.
Statement
of Claim,
30th April
1947,
continued.

19. On the 26th day of September 1939 the Plaintiff applied to the said Tribunal de Canje Extraordinario de Billetes for reconsideration of his application and on the 20th day of May 1942 the said application was dismissed.

20. The Plaintiff kept the Defendants informed of the steps taken to secure the exchange of the said notes and of other applications made to the Consul-General for Spain in Gibraltar and the British Embassy in Madrid. Copies of correspondence were supplied to the Defendants.

21. The Plaintiff has suffered damage through the negligence of the Defendants in that they failed in their duty to the Plaintiff as their customer in not taking steps within the period prescribed in the Decree of the 12th day of November 1936 to have the said Bank of Spain notes legalised, stamped and exchanged for currency notes of the Bank of Spain.

22. The representations made by the Defendants in paragraph 3 were false and made fraudulently so as to evade the payment to the Plaintiff of the sum due on his current account.

THE PLAINTIFF CLAIMS—£3,000 damages.

20

(Sgd.) ALBERT R. ISOLA,

Counsel for the Plaintiff.

Delivered this 30th day of April 1947.

No. 4.

DEFENCE.

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim, *but the Defendants had the option of repayment on the said account by cheque on La Linea or Madrid.*

2. The Defendants deny having made any false representations to the Plaintiff to induce the Plaintiff as alleged in paragraphs 3 and 4 of the Statement of Claim or at all.

3. The Plaintiff was informed by the Defendants at the material time of the terms of the Decree of the 12th November 1936 and the Plaintiff voluntarily agreed to draw a cheque for 110,000 Pesetas Bank of Spain Notes whereupon he delivered the said Notes to the Defendants with a letter depositing the said Notes with a view to having the same stamped in accordance with the Decree of the 12th November 1936. To ensure that there was a proper record of the Bank of Spain Notes actually deposited by the Plaintiff with the Defendants for the purpose of having them stamped

No. 4.
Defence,
3rd June
1947.
Supreme
Court,
Gibraltar.
Filed
3rd Jun.
1947.
Amended
by order of
H.H. the
Chief
Justice on
the 26th
day of
January
1948.

No. 4.
Defence,
3rd June
1947.
continued.

lists were made in triplicate of all the numbers and denominations of the said Notes and these lists were signed by the Plaintiff who kept one set of them.

4. No mention was made in the said Decree about Pesetas standing to the credit of customers at Banks outside Spain and in view of the uncertain state of affairs in Spain at the time it was generally thought that the only way in which Pesetas would have any value was by getting them stamped.

5. The Defendants deny having told the Plaintiff that the list of Notes delivered to the Plaintiff did not contain Notes placed in circulation 10 after the 18th July 1936. At the material time it was not known which Pesetas-Notes had been put in circulation after the 18th July 1936 as all Spanish Notes then in circulation bore dates earlier than the 18th July 1936.

Amended
by order of
H.H. the
Chief
Justice on
the 26th
day of
January
1948.

6. The Defendants admit that part of the Decree of the 12th November 1936 was as set out in paragraphs 5 and 6 of the Statement of Claim, but they will refer to the full text of the said Decree. *The Defendants will also refer to a Spanish Decree of the 28th November 1936 whereby the time for the presentation of the Bank of Spain notes for stamping was extended to the 14th day of December 1936.* 20

7. The Defendants do not admit having made any representations or that any representations made to the Plaintiff were false or that they knew they were false as set out in paragraph 7 of the Statement of Claim or at all. The terms of the Decree of the 12th November 1936 did not make it clear whether the Pesetas had to be deposited for stamping in the Spanish Customs House at La Linea, Spain, for the account of the customers or of the Bank.

8. For the reasons stated in paragraph 5 above, the Defendants were not then in a position to make any reference to Peseta Notes placed in circulation after the said date and the Defendants deny the allegation 30 to that effect contained in paragraph 7 of the Statement of Claim.

9. It is admitted as alleged in paragraph 7 of the Statement of Claim that the Bank of Spain Notes delivered to the Plaintiff did not have accompanying "Guias" but the Plaintiff was not entitled to have Pesetas delivered to him with "Guias" because he never presented any "Guias" with his deposits of Pesetas in his account in the Defendants' Bank though since the system of "Guias" was established these deposits amounted to 90,175 Pesetas out of the 110,000 Pesetas drawn on the Defendants' Bank by the Plaintiff. In any case the Defendants were entitled to present the said Bank of Spain Notes for stamping without "Guias" and in 40 accordance with the terms of the Decree of the 12th November 1936 as under an Authority of the Bank of Spain dated the 6th March 1936 the Defendants were permitted to deal in Pesetas and to import them into Spain without "Guias." The Defendants discharged their liability with the Plaintiff by the payment of the 110,000 Pesetas drawn by the Plaintiff by cheque on the Defendants.

10. The Defendants deny having made any false or fraudulent representations to have their position changed as alleged in paragraph 8 of the Statement of Claim or at all.

11. The Defendants deny the statement in paragraph 9 of the Statement of Claim. The Defendants repeatedly requested the Spanish Authorities to allow the deposit of the Bank of Spain Notes in question at La Linea Customs House within the prescribed period and after for the purpose of having them stamped but they were prevented from doing so by the said Authorities who in the confused state of affairs in Spain at the time would not accept the deposit of the said Notes.

No. 4.
Defence
3rd June
1947,
continued.

12. The Defendants deny the Statement contained in paragraph 10 of the Statement of Claim.

10 The Plaintiff was kept informed personally and through his brother Mr. Bernardo Linares who was an employee of the Defendants at the time of all the efforts of the Defendants to get the Bank of Spain Notes stamped.

13. The Defendants admit paragraph 11 of the Statement of Claim.

14. The Defendants do not admit paragraph 12 of the Statement of Claim.

It was the Defendants who called the Plaintiff and informed him of the terms of the Decree of the 27th August 1938.

15. The Defendants admit paragraph 13 of the Statement of Claim.

20 16. The Defendants do not deny paragraphs 14 and 15 of the Statement of Claim.

17. The Defendants admit paragraph 16 of the Statement of Claim.

18. The Defendants do not deny the statement contained in paragraph 17 of the Statement of Claim but the Defendants will say that they did not know that Bank of Spain Notes to the value of 3,325 Pesetas were placed in circulation after the 18th July 1936 or that they were of no monetary value.

19. The Defendants do not deny paragraphs 18 and 19 and 20 of the Statement of Claim.

30 20. The Defendants deny that the Plaintiff has suffered damage through the negligence of the Defendants or at all and they further deny having any duty towards the Plaintiff as alleged or at all or having failed in any such duty as alleged or at all.

They will contend that they did everything in their power to have the said Bank of Spain Notes legalised stamped or exchanged for Currency Notes of the Bank of Spain and that if the said Notes were not so legalised stamped or exchanged it was for circumstances beyond their control.

40 21. The Defendants deny having made any representations as alleged in paragraph 3 of the Statement of Claim or at all or that any representations made by them were false and made fraudulently so as to evade the payment to the Plaintiff of the sum due on his current account or for any other reason.

22. Save and except as is hereinbefore expressly admitted the Defendants deny all the allegations of facts made against them in the Statement of Claim as if the same had been seriatim herein expressly denied.

(Sgd) J. A. HASSAN,
Counsel for the Defendants.

Delivered this 3rd day of June 1947.

No. 5a.
Application
for
Particulars
of Defence,
18th
October
1947.

No. 5a.

APPLICATION FOR PARTICULARS OF DEFENCE.

1947.—L.—No. 5.

IN THE SUPREME COURT OF GIBRALTAR.

Between JEROME LINARES - - - - - Plaintiff

and

CREDIT FONCIER D'ALGERIE ET DE
TUNISIE - - - - - Defendants.

TAKE NOTICE that the above-mentioned Plaintiff intends to apply under the Liberty to apply reserved herein on the 22nd day of April 1947 10 to His Honour the Chief Justice in Chambers on Friday the 24th day of October 1947 at 11 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an order that the Defendants do within five days deliver to the Plaintiff's Solicitor the following particulars in writing of the Defendants' Defence (a notice requesting the same having been given to the Defendants' Solicitor on the 9th day of June 1947) viz. :—

1. Particulars of the information contained in paragraph 3, whether the same was verbal or in writing, what is alleged to be the material time, what were the terms of the decree of the 12th November 1936 communicated to the Plaintiff and whether the Plaintiff's agreement was 20 verbal or in writing and where when and to whom it was communicated.

2. Particulars of what is alleged to be the material time in paragraph 5.

3. Particulars of the Authority of the Bank of Spain dated the 6th March 1936 referred to in paragraph 9.

4. Particulars of the requests made by the Defendants to the Spanish Authorities, whether the same were verbal or in writing, and if in writing full particulars thereof and if verbal by whom and to whom they were made, and the dates when and where they were made referred to in paragraph 11. 30

5. Particulars of the Authorities who would not accept the deposit of the said notes referred to in paragraph 11.

6. Particulars of the Decree of the 27th August 1938 referred to in paragraph 14, what were its terms, when and where and by whom the said information was given.

And that in default the Defendants be precluded from giving evidence in support thereof on the trial of this action and that the costs of this application be paid by the Defendants to the Plaintiff.

Dated the 18th day of October 1947.

ALBERT R. ISOLA, 40
Solicitor for the Plaintiff.

To
J. A. Hassan, Esquire,
Solicitor for the Defendants,
and to
The Registrar, Supreme Court, Gibraltar.

No. 5 (b).

ORDER FOR PARTICULARS OF DEFENCE.

1947.—L.—No. 5.

IN THE SUPREME COURT OF GIBRALTAR.

Between JEROME LINARES - - - - Plaintiff

and

CREDIT FONCIER D'ALGERIE ET DE
TUNISIE - - - - Defendants.No. 5b.
Order for
Particulars
of Defence,
24th
October
1947.

(L.S.)

Friday the 24th day of October 1947.

10 Before HIS HONOUR ROGER SEWELL BACON, M.B.E., Chief Justice
in Chambers.

UPON hearing the Solicitors for the Plaintiff and Defendants, IT IS ORDERED that the Defendants do within ten days from the date hereof deliver to the Plaintiff's Solicitor the following particulars in writing of the Defendants' Defence, viz. :—

1. Particulars of the information contained in paragraph 3, whether the same was verbal or in writing, what is alleged to be the material time, what were the terms of the Decree of the 12th November 1936 communicated to the Plaintiff and whether the Plaintiff's agreement was verbal or in
20 writing and where when and to whom it was communicated.

2. Particulars of what is alleged to be the material time in paragraph 5.

3. Particulars of the Authority of the Bank of Spain dated the 6th March 1936 referred to in paragraph 9.

4. Particulars of the requests made by the Defendants to the Spanish Authorities, whether the same were verbal or in writing, and if in writing full particulars thereof and if verbal by whom and to whom they were made, and the dates when and where they were made referred to in paragraph 11.

30 5. Particulars of the Authorities who would not accept the deposit of the said notes referred to in paragraph 11.

6. Particulars stating when where and by whom the information as to the Decree of the 27th August 1938 referred to in paragraph 14 was given.

And that in default the said Defendants be precluded from giving evidence in support thereof on the trial of this action, and that the costs of this application be the Plaintiff's in any event.

(Sgd.) E. PIZZARELLO,

Registrar.

No. 5c.
Particulars
of Defence,
3rd
November
1947.

No. 5 (c).

PARTICULARS OF DEFENCE.

Pursuant to Order herein dated the 24th day of October 1947.

1. The terms of the decree of the 12th November 1936 referred to in paragraph 3 of the Defence were communicated verbally to the Plaintiff and were to the effect that Spanish peseta notes could be stamped by the Franco Authorities by depositing them at the Customs at La Linea, Spain.

Supreme
Court,
Gibraltar.
Filed
10th Nov.
1947.

The material time was on or about the 24th November 1936. The Plaintiff's voluntary agreement to draw the cheque referred to in paragraph 3 of the Defence was verbal. 10

2. The material time referred to in paragraph 5 of the Defence was on or about the 24th November 1936.

3. The authority of the Bank of Spain referred to in paragraph 9 of the Defence is contained in a letter dated the 6th March 1936 addressed by the Bank of Spain to the Defendants.

4. The requests made to the Spanish Authorities referred to in paragraph 11 of the Defence were verbal and made from the time when the Plaintiff authorised the Defendants to deposit the said notes for stamping until early in 1939. No precise dates can be given since such verbal requests were made continuously by the then Manager, Mr. Noguera, 20 to the Delegado Gubernativo at La Linea, Spain, to the Manager of the Banco Espanol de Credito at La Linea, Spain, to the managers of the Banco Hispano Americano at Seville and Algeciras, Spain, and to the Delegado del Excmo. Sr. General de la 2ª Division Organica at Algeciras, Spain, and to the Administrator of the Customs House at La Linea, Spain.

5. The Authorities referred to in paragraph 11 of the Defence were the Customs Authorities at La Linea, Spain.

6. The information as to the decree of the 27th August 1938 referred to in paragraph 14 of the Defence was communicated verbally to the Plaintiff by Mr. Noguera, the then Manager of the Bank, at the said Bank 30 on the 8th of October 1938.

(Sgd.) J. A. HASSAN,
Counsel for the Defendants.

Delivered the 3rd day of November 1947.

No. 6.
Reply,
10th
November
1947.

No. 6.
REPLY.

1. The Plaintiff joins issue with the Defendants on their Defence.

2. In further answer to paragraph 3 of the Defence, the Plaintiff will allege that the Bank of Spain notes were never paid out by the Defendants nor re-delivered to them on deposit. The Defendants had 40 these notes in their possession before the 24th day of November 1936. The lists in triplicate were made by the Defendants.

Supreme
Court,
Gibraltar.
Filed
10th Nov.
1947.

(Sgd.) ALBERT R. ISOLA,
Counsel for the Plaintiff.

Delivered this 10th day of November 1947.

PLAINTIFF'S AFFIDAVIT OF DOCUMENTS.

I, JEROME LINARES of No. 5 Library Ramp, Gibraltar, Chemist, the above-named Plaintiff, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the Schedule hereto.

2. According to the best of my knowledge information and belief I have not and never have had in my possession custody or power or in the possession custody or power of my Solicitor or in the possession custody or power of any other person or persons on my behalf any deed, account, book of account, voucher, or receipt letter or memorandum paper or writing or any document relating to the matters in question in this suit or any of them other than and except the documents set forth in the said Schedule hereto.

No. 7.
Plaintiff's
Affidavit of
Documents,
9th
December
1947.

Supreme
Court,
Gibraltar.
Filed
9th Dec.
1947.

THE SCHEDULE above referred to.

NO.	DATE	NATURE OF DOCUMENT
20	18th March 1936 ..	Circular Letter from Barclays Bank (D.C. & O.) setting forth a statement of the terms and conditions upon which Foreign Currency Accounts are conducted and Form of Acknowledgment of said Circular Letter at foot thereof.
	2 Undated	Customs' Export Permit—Serie C. No. 067664 authorising bearer to export Pesetas 100.
	3 8th September 1936..	Customs' Export Permit—Serie C. No. 110530 authorising bearer to export Pesetas 100.
	4 24th November 1936	Paying-in Slip from Defendants to Plaintiff for the amount of Pesetas 110,000.
	5 7th February 1937 ..	Customs' Export Permit—Serie B. No. 004147 authorising bearer to export Pesetas 500.
30	6 5th March 1937 ..	Customs' Export Permit—Serie C. No. 118257 authorising bearer to export Pesetas 100.
	7 5th March 1937 ..	Customs' Export Permit—Serie C. No. 118258 authorising bearer to export Pesetas 100.
	8 5th March 1937 ..	Customs' Export Permit—Serie C. No. 118259 authorising bearer to export Pesetas 75.
	9 5th March 1937 ..	Customs' Export Permit—Serie C. No. 118256 authorising bearer to export Pesetas 100.
	10 1st October 1937 ..	Copy Letter from Plaintiff to Excmo. Sr. Presidente de la Comision de Hacienda, Burgos.
40	11 8th October 1937 ..	Copy of Plaintiff's Petition to Excmo. Sr. Presidente Comite de Moneda Extranjera, Burgos.
	12 —	Defendants' Statement of Account current with Plaintiff.

No. 7.
Plaintiff's
Affidavit
of
Documents,
9th
December
1947,
continued.

NO.	DATE	NATURE OF DOCUMENT	
13	—	List of Notes prepared by Defendants giving Series, Numbers and Dates of issue.	
14	31st January 1938 .	Letter from Defendants to Plaintiff, showing balance of his Account on the 31st December 1937.	
15	10th August 1938 ..	Letter from Defendants to Plaintiff showing balance of his Account on the 30th June 1938.	
16	18th October 1938 ..	Copy Petition from Plaintiff to the Tribunal de Canje Extraordinario de Billetes, Burgos.	
17	18th October 1938 ..	Certificate of Mr. J. F. Noguera Defendants' Manager at Gibraltar.	10
18	18th October 1938 ..	Copy of Plaintiff's sworn Declaration in compliance with Article 4 of the Decree made on the 27th August 1938.	
19	8th November 1938 ..	Letter from the "Tribunal de Canje Extraordinario de Billetes," Burgos, to Plaintiff.	
20	7th December 1938 ..	Copy Letter from Plaintiff to Excmo. Sr. Secretario del Tribunal de Canje Extraordinario de Billetes, Burgos.	
21	7th December 1938 ..	Sworn Declaration of Jeronimo Linares Lagares and Aval.	20
22	17th December 1938	Receipt from Cashier, Bank of Spain, Burgos, to Plaintiff.	
23	17th December 1938	Certificate of Delivery of Peseta Notes by Bank of Spain.	
24	28th December 1938	Letter from Tribunal de Canje de Billetes Burgos to Plaintiff.	
25	6th January 1939 ..	Copy Letter from Plaintiff to Ilmo. Secretario del Tribunal de Canje Extraordinario de Billetes, Burgos.	
26	12th June 1939 ..	Letter from the Secretary of the "Tribunal de Canje Extraordinario de Billetes," Burgos, to Plaintiff.	30
27	17th July 1939 ..	Letter from Defendants to Plaintiff showing balance of his Account on the 30th June 1939.	
28	17th July 1939 ..	Copy Letter from Plaintiff to the Spanish Consul-General, Gibraltar.	
29	26th September 1939	Copy Letter from Plaintiff to "Tribunal de Canje Extraordinario de Billetes."	
30	20th May 1942 ..	Letter from the Secretary "Tribunal de Canje Extraordinario de Billetes," Madrid, to Plaintiff.	
31	24th May 1943 ..	Copy Letter from Plaintiff to the Spanish Consul-General, Gibraltar.	40
32	3rd August 1943 ..	Letter from Spanish Consul-General, Gibraltar, to Plaintiff.	

NO.	DATE	NATURE OF DOCUMENT	No. 7. Plaintiff's Affidavit of Documents, 9th December 1947, <i>continued.</i>
33	11th July 1943 ..	Copy Letter from "Tribunal de Canje Extraordinario de Billetes," Bank of Spain, Madrid, to the Spanish Consul-General, Gibraltar.	
34	19th July 1943 ..	Letter from "Director-General, Ministerio de Asuntos Exteriores," Madrid, to the Spanish Consul-General, Gibraltar, with Copy Letter attached from Tribunal de Canje Extraordinario de Billetes, Bank of Spain, Madrid, to Ilmo. Sr. Director-General de Politica Exterior, Ministerio de Asuntos Exteriores, Madrid.	
10	35	12th August 1943 ..	Copy Letter from Plaintiff to Defendants.
	36	19th August 1943 ..	Letter from Defendants to Plaintiff.
	37	4th October 1946 ..	Copy Letter from Plaintiff to John Walker, O.B.E., Commercial Secretary, H.B.M. Embassy, Madrid.
	38	14th October 1946 ..	Letter from the said John Walker to Plaintiff.
	39	20th October 1946 ..	Copy Letter from Plaintiff to the said John Walker.
	40	31st October 1946 ..	Copy Letter from the said John Walker to Plaintiff.
20	41	26th October 1946 ..	Copy Letter from Leonardo Cimiano, Banco de Espana, Tribunal de Canje Extraordinario de Billetes, Madrid, to the said John Walker.
	42	31st October 1946 ..	Copy Letter from the said John Walker to Plaintiff.
	43	8th November 1946 ..	Copy Letter from Plaintiff to Defendants.
	44	9th November 1946 ..	Letter from Defendants to Plaintiff.
	45	14th January 1947 ..	Copy Letter from Plaintiff's Solicitor to Defendants.
	46	24th January 1947 ..	Letter from Defendants' Solicitor to Plaintiff's Solicitor.
	47	14th May 1947 ..	Letter from Defendants' Solicitor to Plaintiff's Solicitor.
	48	14th May 1947 ..	Copy Letter from Plaintiff's Solicitor to Defendants' Solicitor.
	49	23rd May 1947 ..	Letter from Defendants' Solicitor to Plaintiff's Solicitor.
30	50	24th May 1947 ..	Copy Letter from Plaintiff's Solicitor to Defendants' Solicitor.
	51	30th May 1947 ..	Letter from Defendants' Solicitor to Plaintiff's Solicitor.
	52	18th August 1947 ..	Copy Letter from Plaintiff's Solicitor to Defendants' Solicitor.

(Sgd.) J. LINARES.

No. 7.
Plaintiff's
Affidavit of
Documents,
9th
December
1947,
continued.

Sworn by the within-named Deponent at the Registry of the Supreme Court of Gibraltar at the Court House, Gibraltar, this 9th day of December 1947.

Before me,

(Sgd.) C. J. WHEELER,
Assistant Registrar.

Filed on behalf of the Plaintiff by ALBERT R. ISOLA, Esquire, J.P., of No. 3 Bell Lane, Gibraltar, his Solicitor.

No. 8.
Order for
Amending
Defence,
26th
January
1948.

No. 8.

ORDER FOR AMENDING DEFENCE.

10

Monday the 26th day of January 1948.

(L.S.)

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice in Chambers.

Supreme
Court,
Gibraltar.
Entered
30th Jan.
1948.

UPON the application of the Defendants by Summons AND UPON HEARING the Solicitors for the parties IT IS ORDERED that the Defendants be at liberty to amend their Defence by (1) adding at the end of paragraph 1 thereof " but the Defendants had the option of repayment on the said account by cheque on La Linea or Madrid " and (2) adding at the end of paragraph 6 thereof " The Defendants will also refer to a Spanish Decree of the 28th November 1936 whereby the time for the presentation of the Bank of Spain notes for stamping was extended to the 14th day of December 1936." AND that the costs of and incidental to this application be the Plaintiff's in any event. 20

(Sgd.) E. PIZZARELLO,
Registrar.

No. 9.

FURTHER PARTICULARS OF DEFENCE.

Of paragraph 11 of the Defence pursuant to Order herein dated the 24th day of October 1947.

No. 9.
Further
Particulars
of Defence,
30th April
1948.

1. The requests to the Spanish Authorities referred to in paragraph 11 of the Defence were also made in writing and are contained in the following document viz. :—

Supreme
Court,
Gibraltar.
Filed
3rd May
1948.

10 (A) Petition addressed to the Ilmo. Senor Delegado del Excmo. Senor General Jefe del Ejercito del Sur dated the 5th December 1936.

(B) Petition addressed to the Ilmo. Senor Delegado del Excmo. Senor General Jefe del Ejercito del Sur dated the 9th January 1937.

(C) Letter addressed to Excmo. Senor Gobernador Militar del Campo de Gibraltar dated the 6th March 1937.

(D) Petition addressed to the Excmo. Senor General Jefe del Ejercito del Sur bearing a date subsequent to the 6th March 1937.

20 2. The verbal requests to the Spanish Authorities referred to in paragraph 11 of the Defence also include a request to the Presidente de la Comision de Hacienda de la Junta de Defensa at Burgos made on behalf of the Defendants by Ramon Marquez Urbano a Spanish lawyer between the 24th and 28th March 1937.

(Sgd.) J. A. HASSAN,

Counsel for the Defendants.

Delivered the 30th day of April 1948.

No. 10.

DEFENDANTS' AFFIDAVIT OF DOCUMENTS.

I, SIDNEY ROBERT CUMMINGS of 210 Main Street, Gibraltar, make oath and say as follows :—

No. 10.
Defendants'
Affidavit of
Documents,
12th May
1948.

30 1. The above-named Defendants Credit Foncier d'Algerie et de Tunisie have in their possession or power the documents relating to the matters in question in this suit set forth in the Schedule hereto.

2. According to the best of my knowledge information and belief the above-named Defendants Credit Foncier d'Algerie et de Tunisie have not now and never have had in their possession custody or power or in the possession custody or power of their Solicitor or in the possession custody or power of any other person or persons on their behalf any deed account book of account voucher or receipt letter or memorandum paper or writing or any document whatsoever relating to the matters in question
40 in this suit or any of them other than and except the documents set forth in the said Schedule hereto.

Supreme
Court,
Gibraltar.
Filed
12th May
1948.

3. I am the Manager of the above-named Defendants Credit Foncier d'Algerie et de Tunisie and am duly authorised by them to make this affidavit.

THE SCHEDULE above referred to.

No. 10.
Defendants'
Affidavit of
Documents,
12th May
1948,
continued.

NO.	DATE	DESCRIPTION OF DOCUMENT
1	1928 to 1937 ..	Statement of Plaintiff's Account with Defendants.
2	26th May 1931 ..	Agreement between the Plaintiff and the Defendants.
3	6th March 1936 ..	Letter from Banco de Espana, Centro Oficial de Contratacion de Moneda, Madrid, to the Defendants.
4	10th March 1936 ..	Copy Letter from the Defendants to the Banco de Espana, Centro Oficial de Contratacion de Moneda, Madrid.
5	17th March 1936 ..	Letter from Banco de Espana, Centro Oficial de Contratacion de Moneda, Madrid, to the Defendants. 10
6	6th April 1936 ..	Letter from Banco Hispano Americano, Madrid, to the Defendants.
7	1st October 1936 ..	Letter from the Defendants to Sr. Administrator Aduana de La Linea.
8	15th October 1936 ..	Paid Cheque to Bearer drawn by the Plaintiff on the Defendants for 4,000 pesetas.
9	24th November 1936	Paid Cheque to Bearer drawn by the Plaintiff on the Defendants for 110,000 pesetas.
10	24th November 1936	Letter from the Plaintiff to the Defendants with List of Peseta Notes annexed thereto. 20
11	24th November 1936	Slip by the Plaintiff depositing 110,000 pesetas with the Defendants.
12	24th November 1936	Certificate by Mr. Norberto Sene.
13	5th December 1936 ..	Copy Application from Mr. Joseph Noguera, Manager of the Defendants, to Ilmo. Senor delegado del Excmo. Senor General Jefe del Ejercito del Sur.
14	9th January 1937 ..	Copy Application from Mr. Joseph Noguera, Manager of the Defendants, to Ilmo. Senor Delegado del Excmo. Senor General Jefe del Ejercito del Sur. 30
15	25th February 1937..	Letter from El Gobernador Militar del Campo de Gibraltar, Algeciras, to the Manager of the Defendants.
16	6th March 1937 ..	Copy Letter from the Defendants to Excmo. Senor Gobernador Militar del Campo de Gibraltar, Algeciras.
17	Undated	Copy Application from Mr. Joseph Noguera, Manager of the Defendants to Excmo. Senor General Jefe del Ejercito del Sur.
18	6th December 1938 ..	Paid Cheque to Bearer drawn by the Plaintiff on the Defendants for 110,000 pesetas. 40

NO.	DATE.	DESCRIPTION OF DOCUMENT
19	3rd April 1939 ..	Circular Letter from the President Du Conseil of the Defendants in Paris.
20	11th April 1939 ..	Letter from the Defendants' Manager in Tangier to the Defendants' Manager in Gibraltar.
21	3rd November 1941 ..	Letter from the Secretary of the Tribunal de Canje Extraordinario de Billetes, Banco de Espana, Madrid, to the Defendants.
22	12th August 1943 ..	Letter from the Plaintiff to the Defendants' Manager.
10 23	19th August 1943 ..	Copy Letter from the Defendants to the Plaintiff.
24	8th November 1946 ..	Letter from the Plaintiff to the Defendants' Manager.
25	9th November 1946	Copy Letter from the Defendants to the Plaintiff.
26	14th January 1947 ..	Letter from Plaintiff's Solicitor to the Defendants.
27	24th January 1947 ..	Copy Letter by the Defendants' Solicitor to the Plaintiff's Solicitor.
28	14th May 1947 ..	Copy Letter from Defendants' Solicitor to Plaintiff's Solicitor.
29	14th May 1947 ..	Letter from Plaintiff's Solicitor to Defendants' Solicitor.
20 30	23rd May 1947 ..	Copy Letter from Defendants' Solicitor to Plaintiff's Solicitor.
31	24th May 1947 ..	Letter from Plaintiff's Solicitor to Defendants' Solicitor.
32	30th May 1947 ..	Copy Letter from Defendants' Solicitor to Plaintiff's Solicitor.
33	18th August 1947 ..	Letter from Plaintiff's Solicitor to Defendants' Solicitor.
34	13th February 1948 .	Letter from Plaintiff's Solicitor to Defendants' Solicitor.
35	23rd April 1948 ..	Letter from Plaintiff's Solicitor to Defendants' Solicitor.
36	30th April 1948 ..	Copy Letter from Defendants' Solicitor to Plaintiff's Solicitor.

No. 10.
Defendants' Affidavit of Documents, 12th May 1948, continued.

(Sgd.) S. R. CUMMINGS.

30 Sworn by the above-named deponent at the Registry of the Supreme Court of Gibraltar this 12th day of May 1948.

Before me,

(Sgd.) C. J. WHEELER,
Assistant Registrar.

This affidavit is filed on behalf of the above-named Defendants CREDIT FONCIER d'ALGERIE et de TUNISIE by their Solicitor Joshua A. Hassan Esquire, of No. 21 Horse Barrack Lane, Gibraltar.

No. 11.
Order for
Trial by
Court and
Special
Jury,
8th June
1948.

No. 11.

ORDER FOR TRIAL BY COURT AND SPECIAL JURY.

Tuesday the 8th day of June 1948.

Before HIS HONOUR ROGER SEWELL BACON M.B.E. Chief Justice
in Chambers.

(L.S.)

Supreme
Court,
Gibraltar.
Entered
17th-Jun.
1948.

UPON the motion heard in Chambers of Albert R. Isola Esquire J.P. of Counsel for the Plaintiff AND upon hearing the said Albert R. Isola and Joshua A. Hassan Esquire, of Counsel for the Defendants IT IS ORDERED that this action be tried by the Chief Justice and a Special Jury and that a Special Jury be struck before the Registrar pursuant to Section 60 of the Supreme Court ORDER and that the costs of and incidental to this application be costs in the cause. 10

(Sgd.) E. PIZZARELLO,
Registrar.

No. 12.
Defendants'
Further
Affidavit of
Documents,
11th
November
1948.

No. 12.

DEFENDANTS' FURTHER AFFIDAVIT OF DOCUMENTS.

I, SIDNEY ROBERT CUMMINGS of 210 Main Street, Gibraltar, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the Schedule hereto. 20

Supreme
Court,
Gibraltar.
Filed
11th Nov.
1948.

2. According to the best of my knowledge information and belief I have not and never have had in my possession custody or power or in the possession custody or power of my Solicitor or in the possession custody or power of any other person or persons on my behalf any deed, account, book of account, voucher, or receipt letter or memorandum paper or writing or any document relating to the matters in question in this suit or any of them other than and except the documents set forth in the Schedule to my former Affidavit herein sworn the 12th day of May 1948 and the documents set forth in the Schedule to this Affidavit.

3. I am the Manager of the above-named Defendants Credit Foncier d'Algerie et de Tunisie and am duly authorised by them to make this Affidavit. 30

THE SCHEDULE above referred to.

No. 12.
Defendants'
Further
Affidavit of
Documents,
11th
November
1948,
continued.

NO.	DATE	DESCRIPTION OF DOCUMENT
1	16th November 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.
2	17th November 1936	Cable from Credit Foncier d'Algerie et de Tunisie Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
10	3 17th November 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
4	18th November 1936	Copy Cable from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.
5	18th November 1936	Cable from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
20	6 18th November 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
7	19th November 1936	Cable from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
8	22nd November 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
9	23rd November 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.
30	10 28th November 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.
11	29th November 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
12	30th November 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.
40	13 2nd December 1936..	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.
14	4th December 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.

No. 12. Defendants' Further Affidavit of Documents, 11th November 1948, <i>continued.</i>	NO.	DATE	DESCRIPTION OF DOCUMENT	
	15	7th December 1936 . .	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.	
	16	10th December 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.	
	17	21st December 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.	10
	18	22nd December 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.	
	19	23rd December 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.	
	20	23rd December 1936	Copy Letter from Credit Foncier d'Algerie et de Tunisie, Gibraltar, to Credit Foncier d'Algerie et de Tunisie, Tangier.	
	21	28th December 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.	20
	22	29th December 1936	Letter from Credit Foncier d'Algerie et de Tunisie, Tangier, to Credit Foncier d'Algerie et de Tunisie, Gibraltar.	
	23	—	Copy Letter Book of the Defendants containing Copy Letters Nos. 1, 9, 10, 12, 15, 16, 18, 19 and 20 above.	
	24	—	"Compte Estampillage" List of customers and amounts.	
	25	—	Alphabetical Index of Depositors of Pesetas for Stamping.	30
	26	—	Current Account of the Defendants with Banco Espanol de Credito of La Linea.	
	27	—	Account of the Defendants with Banco Espanol de Credito of La Linea "Compte Especial Interieur."	
	28	—	Account of the Defendants with Banco Hispano Americano of Algeciras "Compte Especial."	
	29	—	Registre Plus Charges.	
	30	—	Two in No. Cash Books of the Defendants from December 1935 to May 1937.	40

(Sgd.) S. R. CUMMINGS.

Sworn by the above-named deponent at the Registry of the Supreme Court of Gibraltar this 11th day of November 1948.

Before me,
(Sgd.) C. J. WHEELER,
Assistant Registrar,

No. 12.
Defendants'
Further
Affidavit of
Documents,
11th
November
1948,
continued.

This Affidavit is filed on behalf of the above-named Defendants CREDIT FONCIER d'ALGERIE et de TUNISIE by their Solicitor Joshua A. Hassan Esquire of No. 21 Horse Barrack Lane Gibraltar.

10

No. 13.
CHIEF JUSTICE'S NOTE OF EVIDENCE.

1947.—L.—No. 5.

JEROME LINARES - - - - Plaintiff
v.
CREDIT FONCIER D'ALGERIE ET DE
TUNISIE - - - - Defendants.

No. 13.
Chief
Justice's
Note of
Evidence,
18th
November
1948.

9th Nov.
1948.

Action for damages. Special Jury.
Isola for Plaintiff Wm. Isola with him.
Benady & Hassan for Defendants.

Jury empanelled :—

20

1. John Porral.
2. Richard Povedano.
3. Lionel Hamlet Codali.
4. George Francis Imossi.
5. Charles Serra.
6. Alfred Henry Sanders.
7. Angel Joseph Rugeroni.

Jury duly sworn.

Jury elect foreman : George Francis Imossi.

Isola opens :—

30

Plff. a chemist in Gibraltar. Plff. a customer of Dfts. On 6 June 1929* Plff. opened a/c in pesetas with Dfts. Banker and customer relationship : money paid in belongs to the bank at once : relationship is that of creditor and debtor. The a/c was operated till 1937. In 1931 Plff. wrote to Bank "agreeing" that they could pay him by cheque on Madrid

*[sic] Error
for 1928.

No. 13.
Chief
Justice's
Note of
Evidence,
18th
November
1948,
continued.

or on La Linea, as well as by cash. On 16 March 1936 Spain decreed that pta. notes over 5000 in value exported from Spain must be accompanied by "guias," which could be used for re-importing the ptas.

On 6 March 1936 Bank of Spain wrote to Dfts. Important letter.

Plff. went to see Dfts.' Manager, Noguera, asked what he was to do about pesetas. Noguera told him to carry on—to accept ptas. in business, which he could deposit without guias. Plff. acted on that till Nov. 1936 : continued as usual.

On 24 Nov. 1936 Noguera asked Plff. to call at Bank. Plff. then had 112,887 ptas. to his credit. N. referred to Decree of 12 Nov. 1936. 10

N. told Plff. :—(i) His ptas. must be sent to be stamped in Spain, (ii) the Dfts. had made lists of notes and had allotted certain notes to him (iii) that those notes were all stampable (iv) that appn. to stamp them would be made in Spain.

Reads Decrees 12 Nov. 1936 and 28 Nov. 1936.

Plff. was allotted 110,000 ptas. in notes by Dfts. from among their pta. notes in hand. Plff. was asked by N. to accept them as his. Plff. did. Dfts. thus became his debtors for 2887 ptas. only, the 110,000 being deposited with them for safe-keeping. See Plff.'s letter to Dfts., 24 Nov. 1936, written at N.'s oral express request. 20

It is untrue

(A) that customers must accept certain notes as their own in order to comply with Decree 12 Nov.

(B) that no Plff.'s notes had been put in circulation after 18 July 1936.

(c) that the notes allotted to Plff. were stampable in Spain without guias.

In fact Dfts. had rashly accumulated many ptas. up to Nov. 1936 and got rid of them by "planting" on customers.

Plff.'s pta. notes remained in Dfts.' hands till 1938 without any 30 stamping in Spain.

Reads Decree 27 Aug. 1938. Plff. saw this Decree at the time and went to see Noguera. N. advised him to take action on it, and gave him a certificate.

Plff. then withdrew the 110,000 ptas. notes, took them to Customs House, La Linea, and tried to get them stamped. But the absence of guias was fatal. All his efforts failed. Many authorities approached by him. He kept Dfts. acquainted with all his steps. Total failure. Total loss.

My case :—

(1) Fraudulent misrepresentation by Dfts. induced Plff. to lose his 110,000 ptas.—Misrepresentations were made on 24 Nov. 1936.

(2) Alternatively negligence in failing to get the notes stamped in Spain.

40

No. 14.

EVIDENCE of Joseph Felix Noguera.

Plaintiff's
Evidence.

JOSEPH FELIX NOGUERA, sworn, says:—3 Crutchett's Ramp, Gibraltar. Now in wine business. Joined Dfts. in 1920. 6 months in Tangier. Then in Gibraltar. Appointed Manager as from at least 1930. Dfts. kept a/cs. in £, ptas. fcs. etc. I know Plff. He had a/cs. in £, ptas. and I think Fcs. I see letter Bk of Spain to Dfts. 6 March 1936 (Ext. 1a). Dfts. received this. I see my initials at top of letter.

No. 14.
Joseph
Felix
Noguera.

I see letter 10 March 1936 Dfts. to Bank of Spain (Ext. 2a). Our
10 reply to Ext. 1.

I see letter 17 March 1936 Bk. of Spain to Dfts. (Ext. 3a).

I see letter 6 April 1936 Banco Hispano Americano to Dfts.
(Ext. 4a).

In March 1936 I saw Raida, our Tangier Manager, in Gibraltar. I was under his instructions. Also consulted Barclays. I saw a Barclays circular to their customers (Ext. 5)—and discussed it with Raida, as well as the decree 6 March 1936 referred to in it. Raida and I also went to La Linea & saw Manager Banco espanol de crédito, and to Algeciras & saw Manager Banco Hispano-Americano. The former told us—

20 [Benady objects to evidence of conversations. Objection overruled.
Dfts.' knowledge, officially obtained, is relevant.]
—that all pta. notes must be taken to Spain within the period decreed,
not may be taken.

Raida instructed me to continue accepting ptas. into a/cs., despite Barclays' attitude to their customers. Raida said I should carry on with old pta. a/cs. and open new ones. Since Barclays had closed pta. a/cs. all ptas. came to us. Most ptas. were paid into us without guias, some with. We kept no record of which ptas. were covered by guias.

30 I see a Guia (Ext. 6). [The guia does not mention any particular
notes—merely the amount of ptas.]

We kept the guias "paid in" by customers in an unidentified bundle
—no names—no records.

There was a market for guias in Gibraltar. In November 1936 we had no guias at the bank. Those received had been sent away—to Tangier, I think.

I was informed of the 12 Nov. 1936 Decree on that day or the day after. Raida came to Gibraltar very soon thereafter. We read the decree.

We then had in our safes over 1,000,000 ptas. in notes.

40 Raida told me these notes had to be assigned to the various customers ;
we went through the a/cs. ; we picked out the largest credit balances
and made a list of the customers and their balances. We decided how
much to assign in notes to each of these important customers. Plff.
was one of them.

I see Plff.'s original a/c. (Ext. 7). On 20 Nov. 1936 Plff. had credit
of ptas. 112,687.20.

I see a list of pta. notes (Ext. 8) made in the Dfts.' Bank, on our
paper, relating to Plff. The numbers on the list were taken from the

*Plaintiff's
Evidence.*

No. 14.
Joseph
Felix
Noguera,
continued.

notes in our safes. I see a letter signed by Plff. depositing with Dfts. the notes so listed, dated 24 Nov. 1936. The list had been prepared before seeing Plff. about it. On 24 Nov. I called Plff. to the Dfts.' office and told him he must sign letter Ext. 8, giving us a cheque for the 110,000 ptas., and paying the ptas. in again to get them stamped. I had to persuade Plff. 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 18 July 1936), I had told the clerks to examine 10 Plff.'s list in relation to that list.

Plff. did not at that moment sign anything. Later that day I sent Bernard Linares, Dfts.' employee, to see Plff. Bernard brought back Ext. 8 signed by Plff., and a cheque (Ext. 9) drawn by Plff. for 110,000 ptas. and a paying-in slip for 110,000 ptas. made out by Bernard L. and signed by Plff.

I see Dfts.' counterfoil of paying-in slip (Ext. 11).

[To the Court :—

We regarded the notes thus deposited as Plff.'s property until they should be stamped. Then they would have been paid into Spanish Bank 20 to our credit and we should have given Plff. a cheque on La Linea.]

Plff.'s notes remained in the bank about 2 yrs. He then took them away.

I see a Certificate dated 18th Oct. 1938 (Ext. 12). Before I gave that, Plff. came to see me and asked whether his ptas. had been stamped. I told him: "No—we still have them. Mr. Raida has the matter in hand: he is the one who has been to Madrid and Paris in connexion with this."

Plff. then said he wanted to take his ptas. away, to comply with decree 27 Aug. 1938, to get them stamped. He asked for a certificate. 30 So I gave him Ext. 12, and he took his notes away.

Plff. had again built up his a/c. immediately after 24 Nov. 1936.

On 8 Feb. 1937, 1,400 ptas. were transferred from Plff.'s current a/c. to a "stamped pta. a/c."—because he had picked up stamped notes in the market and paid them into the bank. The remaining credits to that a/c. represent direct payments into it by Plff. himself.

(Midday adjournment.)

Raida and I corresponded with each other on this matter. We had a copy letter book and files of letters received.

I wrote Gen. Queipo de Llano, C.-in-C. Southern Army. I see a 40 copy of my letter (Ext. 13a). I followed it up. Object of letter: to allow us to take the pta. notes into Spain. The lack of guias prevented us from taking them in.

Xamnd.

I can't say we defrauded Plff. All I said to Plff. was true, according to my instructions. I believed everything I said was true. I said nothing which I knew to be untrue.

Ext. 1 was from Bank of Spain, the only currency authority, before civil war. *Plaintiff's Evidence.*

Ext. 2 was our answer, acknowledging the concession and naming banks. The concession was a special authority. No. 14.
Joseph

I see Decree dated 16 March 1936 [it is agreed between Counsel that the agreed translations of Spanish Decrees are to be put in at later stage]. The Decree was published 17 March 1936. Felix
Noguera,
continued.

Ext. 3 shows that Bk. of Spain treated us as free from guias despite Decree 16 March 1936. Banco Esp. de Crédito, L.L., notified.

10 Ext. 4 shows that Banco Hispano-Amo were also notified by Bk. of Spain of our concession, and acted on it.

The guias were not referable to any particular pta. notes—only to an aggregate sum of money.

I see my letter dated 1st Oct. 1936 to La Linea Customs. We were merely changing pta. notes into smaller denominations. Civil War had started on 18 July 1936. In Oct. 1936 we were allowed to change in that way without guias: an open, official transaction.

We acted many times on the letter of 6th March 1936 (Ext. 1), sending large quantities of Ptas. into Spain without guias, until Decree of 12 Nov. 20 1936. See our statement to Queipo de Llano in Ext. 13.

I agree that there was a market in guias in Gibraltar. A customer could have a "Compte Extérieur" for payment—in of ptas. with guias.

Ext. 7: the Plff.'s current a/c. Large movements from early 1936 onwards, both ways, without guias. Plff. was only entitled to draw ptas. without guias, of course. That position continued till Decree of 12 Nov. 1936.

Decree 12 Nov. 1936: The "A.B.C." of Seville (of 14 Nov. 1936) was our main source of war news. As soon as we heard of this Decree we took legal advice as regards our position in Gibraltar law—I may have 30 consulted you (Benady) on 17 Nov. 1936, before receiving instructions from Tangier. I asked Raida to come to Gibraltar. He reached Gibraltar 20th Nov. I had been taking legal advice before. Then Raida and I took advice together on 20 and 21 Nov. Then Raida returned to Tangier, and I took more advice.

I agree we were taking legal advice at that crucial period. We were advised that we could not then send notes to Burgos to be stamped, as the Burgos "Govt." was not then recognised; and that if a customer wanted his notes stamped he must give instructions expressly. There was more confidence in Burgos than in the Repubn. Govt. at that time.

40 On 26 Jan. 1939 H.M.G. recognised Burgos Govt. as Govt. of Spain.

On 1 April 1939 hostilities ceased.

There were only 20 days from 12 Nov. 1936 in which to deal with all the pta. notes.

As to list of ptas. in Ext. 8 (allotted to Plff.) we had to prepare this and similar lists for all customers in advance of consulting them, so as to be ready.

I see a circular dated "Paris, 3rd April, 1939" (Ext. 15a). It was then that we were told which notes were put into circulation after 18 July 1936.

*Plaintiff's
Evidence.*

No. 14.
Joseph
Felix
Noguera,
continued.

But we knew long before that : we had received lists from the Spanish Banks, before 24 Nov. 1936. It was, I agree, only by "official" information that we could know—i.e. a list given me by the Manager of a Spanish bank : Banco Esp. de Crédito at L.L. A copy was with the cashier, a copy in my office. Bernardo Linares should have access to the list.

[*To the Court* :—We may have received into the bank "bad" notes before the civil war started. We could only have checked by checking every single note with my list. I told the clerks to do it, in Nov. 1936. They may have been able to.] 10

I was not telling Plff. anything false to my knowledge about the validity of the individual notes allocated to him.

As to negligence on the bank's part :—

We took legal advice from you (Benady).

I went to see the Delegado of the General. With him there was an assistant, his legal assessor. I put the case to him.

Later I learnt that the assessor had a lawyer-brother ; Salvador Márquez suggested that Ext. 13 be drafted in their chambers and be sent to Queipo. This was done. It was essential, because L.L. Customs had refused our transactions without guias, consequent on Decree 12 Nov. 1936. 20
To petition Queipo was only way out.

(Adjourned to following day.)

10th Nov.
1948.

Benady : I have now found letters between Gibraltar and Tangier in Nov. 1936. They have now become relevant.

Isola : They should have been disclosed before. I apply for a further afft. of documents.

Benady : There may be other docs. which may be admissible or become so.

Per Curiam : Further afft. to be made by Dfts. Relevance is the test. If surprise arises I will deal later with that. 30

Xxmn. of Noguera continued.

Further as to Ext. 13 (petition to Queipo de Llano). We had up to 2nd Dec. 1936 to act on the decree of 12th Nov. But the time was subsequently enlarged to 14th Dec. inclusive (by Decree of 28th Nov.). Our petition actually went in on 5th Dec.

I may have seen Banco Esp. de Crédito in La Linea after the Petition was sent in. Also Hispano-Americano. Those managers often came to see us here.

Between 12th Nov. and 5th December my whole time was taken up with this question of stamping. 40

I saw Salvador Márquez before and after he drafted the Petition Ext. 13.

On 9th January '37 I sent in another Petition (Ext. 16) to Queipo de Llano, not having had satisfaction on the first. Produced.

I see letter from Military Gov., Algeciras to me dated 25th February 1937, received 2nd March 1937 (Ext. 17). Queipo de Llano asks more questions.

I see my reply to Ext. 17—dated 6th March 1937 (Ext. 18).

I see my third Petition to Queipo de Llano—undated—sent some time after 6th March 1937 (Ext. 19). A résumé of our whole case, with copies of previous communications. No answer was ever received to any of the Petitions.

About the end of March 1937 (probably) Ramon Márquez went to Burgos and I told him to see Minister of Finance about the stamping.

He returned without any result. He told me there was nothing to be done at the moment.

10 Ptas. without guias remained here despite the decree of March 1936 because people preferred to keep them here.

I see cheque for 110,000 ptas. drawn by Plff. on 6th Dec. 1938 (Ext. 20). This was drawn when Plaintiff decided to apply to the Spanish authorities themselves.

[Per Curiam : the exact nature of the Plff.'s transactions in Nov. 1936 and Dec. 1938 is very important.]

On 24 Nov. 1936 Plff. withdrew 110,000 ptas. from his current a/c. ; Ext. 9.

20 On same day Plff. "re-deposited" them for purpose of stamping : Exts. 8 & 10. This was not in an account in the proper sense : a bailment of particular pieces of paper [notes].

On 6th Dec. 1938 he elected to take away his pta. notes and did so.

Plff. had been given a copy of the list of his notes on 24 Nov. 1936.

When he withdrew ptas. on 6 Dec. '38 he never suggested fraud. He was angry about our failure to get them stamped.

From 6th Dec. 1938 we could do nothing more for Plff. His ptas. had gone.

30 In April 1939 I left the bank and went to Spain—thence to Italy—brought back to Gibraltar—prosecuted for embezzlement but acquitted. But I have no grudge against Raida, or the Dfts. The case was misrepresented against me to the A.-G.—but I don't know by whom. I'm here to speak the truth. The Plff.'s counsel asked me to give evidence.

Re-examd.

Ptas. came from Tangier to Gibraltar about March 1936 to Nov. 1936—without guias. No record of those particular notes kept.

Re Ext. 1 :—2nd para. thereof refers to those ptas. They could only be disposed of by drawing them for use in Spain. Ext. 4 shows 500,000 ptas. taken by us out of our general pool and placed in Spain—we couldn't touch them again—they were at the disposal of Tangier.

40 We had an "Exterior a/c." in the Banco Esp. de Cr. in La Linea. The ptas. therein could be used for foreign exchange transactions.

The effect of Ext. 1 was this : thereafter the ptas. in the L.L. bank could be used by us for any purpose in Spain except (i) buying foreign exchange or (ii) re-exporting the ptas. themselves to Gibraltar. Thus, up to 12 Nov. 1936 we could have moved all our pta. holdings into Spain for those purposes.

When customers brought us ptas. with guias, the guias were kept separately by us, but not identified. If a customer wanted a special

*Plaintiff's
Evidence.*

No. 14.

Joseph
Felix
Noguera,
continued.

Plaintiff's Evidence. "Exterior" a/c. [ptas. covered by guias] he had one. Otherwise his guias were put in the common pile and lost sight of: no records.

No. 14. Customers signed "agreements" to accept cheques on L.L. or on Madrid in lieu of cash in Gibraltar.

Joseph
Felix
Noguera,
continued.

(Midday adjournment.)

Benady puts in, by agreement, translations of the Spanish "Decrees" (Ext. 21).

Re-examin. of Noguera, continued:—

Exts. 13, 16 and 19 were drafted for me on my instructions. Ext. 18 must have had a date on the original. I signed each Petition. I submitted 10 no other Petition.

Ext. 19 had the certificate of P. G. Russo & Wm. Thomson. The persons therein referred to numbered 30 or 40, including Plff., being those who like Plff. had accepted allocations of particular notes. But Defts. owed other ptas. to some of them, and to other persons also. We honoured liability in respect of those other debts by issuing pta. notes (ordinary—unstamped) received from our Tangier Branch.

Plff.'s notes did not leave the bank on 24th Nov. 1936, and he never saw them to check them with his list.

No. 15.
Bernard
Linares.

No. 15.

20

EVIDENCE of Bernard Linares.

BERNARD LINARES, sworn, says:—Joined Dfts. in 1920. Resigned in 1940. On 24 Nov. 1936 Noguerra called me and asked me to see customers, including Plff. (my brother) to complete transactions he had arranged that morning.

I see Exts. 10 and 11 and 8. I took these docs. to Plff. I told him he had to sign the cheque and the paying-in slip, to pay in to a special account marked "for stamping." He asked if I thought everything was in order. I said "Yes." I tendered him Ext. 9 (cheque) for his signature. He signed everything, inclg. every page of the list of notes. I left a copy 30 of the list.

I next saw Louis Stagnetto. I took similar documents. He signed too. He and other customers (Alfred Vazquez and others) signed reluctantly—after hearing my brother had signed.

I never saw the notes myself.

During previous days most of Dfts.' staff were typing lists of notes till late hour. Victory the cashier handed me bundles of notes; I copied their numbers. Dfts. had large quantity of pta. notes.

I was really only concerned with Bills of Exchange.

We did not bother about the question of certain notes being put into 40 circulation after 18 July 1936. The cashier had a list of "black" notes.

Xamnd.

I resigned from Dfts. to better myself.

Plff. was the first customer to sign the lists to me. Others may have signed previously to other employees of Dfts.

I thought the transaction was quite in order: N. had told me so; he was my manager; I took it for granted he was right. I had no personal knowledge. The cashier was near my office, and, I think, knew nothing about Plff.'s matter.

10 The cashier had his list of "illegal" notes (circd. after 18 July 1936) in order to check and refuse bad notes tendered for payment in. That list was provided for him in September 1936. But he never used it. He disregarded it. I was working just near him.

I did not know why lists of pta. notes were being prepared, till some were handed to me on 24th Nov. Then I knew. I knew that the stamping was required. I knew that notes put in circn. after 18 July 1936 were not valid. I knew the Bank had a note, as from Sep. 1936, of those "illegal" notes. I knew the cashier did not bother about it. I took no precautions to protect Plff. in this respect. I did not think the Dfts. dealt with black-marketeters, so I did not think any of Plff.'s allocated notes were illegal; also N. had told me everything was in order; I had asked him whether
20 that was so—i.e. whether there was probability of the notes being stamped.

I see Ext. 15 (provided to Dfts. in April 1939). That is not the list the cashier had. His list was cut from a newspaper—it was printed.

I have discussed this case with Plff. I know his essential points.

I should believe N. if he said he was not deceiving Plff. There was no reason why N. should pick out Plff to deceive him.

Plff never spoke to me about this matter before I went to see him on N's instructions. I saw 5 or 6 customers that day. I saw Plff first because his shop was on my way down from the bank. Plff was not
30 reluctant—he signed because I told him it was in order.

After 24 Nov. 1936 :—I was interested as to how Plff's affair was progressing. But I was not aware of N. going to La Linea etc about it. N. was frequently absent. I never asked N. how the matter went. Raida came from Tangier, and talked with N. about the stamping, before Plff signed on 24 Nov.

My duties were not concerned with this matter except (a) as a typist to make up the lists in Ext. 8 and (b) to go to see Plff on 24 Nov.

Re-examd.

40 As to (a) above; I received bundles of notes of mixed denominations; I had to sort them and then to type out their numbers. I was not given any list of "illegal" notes nor any instructions as to excluding them. Then I handed back my typed list to the cashier. I did not allocate to any particular customer.

Access to manager was by passage outside ground floor premises.

*Plaintiff's
Evidence.*

No. 15.
Bernard
Linares,
continued.

Plaintiff's
Evidence.

No. 16.

EVIDENCE of Emilio Perez Manzuco.

No. 16.
Emilio
Perez
Manzuco.

EMILIO PEREZ MANZUCO, sworn, says :—Advocate of Univ. of Granada. Have practised at Bar. Have been a State Lawyer. Am now Chief State Lawyer at Almeria. Conversant with monetary laws.

Bank of Spain is a Ltd Coy which has for years had exclusive right to issue notes in Spain, under control of Government. Bank is run by a Board ; majority elected by shareholders, others nominated by Govt.

An issue [emisión] is actually put into circun when the previous issue is worn out, generally a few years after printing. They are put into circun 10 as required, by degrees, or as a whole, to cover withdrawals.

On 18 July 1936 some notes were in circun, some were in vaults of the Bank ready for issue except for signature.

After that date the instructions issued by the Bk of Spain emanated from Burgos, and from Madrid, Valencia etc on the Republican side. I myself was in Algeciras.

(Adjourned to following day)

11th Nov.
1948.

I see Ext. 21 (1) : Decree of 16 March 1936. Effect of Article 1 : If tourists left Spain taking ptas out with them they must provide themselves with Guias to be issued by the Spanish Customs. 20

In 1931 the control of money commenced—gold & silver coin exports prohibited, as also notes amounting to more than 5000 ptas. By this 1936 decree, guias were required for amounts up to 5000 ptas—amounts over that continued to be prohibited.

Effect of Art. 2 is consequence of Art. 1. If a guia had been issued on going out, the guia had to be returned on re-introducing the notes into Spain.

On publication of this Decree a time-limit of 5 days applied to Gibraltar for “legalizing” notes there. [Art. 5 of the Decree]. It is a “logical consequence of the decree” that guias were required for 30 importation into Spain of ptas by anyone.

I.e. 5 days were granted for bringing into Spain all the ptas in Gibraltar which happened to be there on 16th March.

I understand that, as from 22nd March 1936, Dfts could only introduce ptas into Spain with guias. The Decree was later than Ext. 1 [letter 6th March] and was binding on the Bk of Spain as on all others in Spain. The last sentence of the preamble of the Decree does not refer to Ext. 1—only to clearing arrangements made internationally by Bk of Spain with other central banks.

I see Ext. 21 (2) : Decree 12 Nov 1936. Art. 1 gave effect of law 40 to a previous decision of Bk of Spain. Art. 2 said in effect : notes in circun before 18th July 1936 are invalid ; notes in circun after 18 July 1936 had to be “stamped” to become valid.

Art. 3. Since the Decree was officially published on 13th Nov. there was time till 3rd December to take notes into Spain to be stamped.

Art. 4 para 2 shows that the notes had to be taken physically to Spanish Customs, accompanied by guias.

Art. 7 shews machinery for sending notes to Burgos and verification there. *Plaintiff's Evidence.*

Art. 8 shews the prohibition against use by Banks in Spain of unstamped notes after the 5 days' grace. No. 16.

General effect of this decree : unstamped notes became useless. Emilio

I see Ext. 21 (3) :—Previous time-limit i.e. 3rd Dec was thereby extended to 14th December. Perez Manzuco, *continued.*

I see Ext. 8 :—the list given to Plff to sign. Also Ext. 15—the list of illegal notes furnished to Dfts in April 1939. Cf. (A) the 25 ptas Series, letter A, issue 15 Aug 1928 referred to in Ext. 15 with notes listed on p. 9 of Ext. 8—ditto p. 10 thereof and p. 11 thereof and p. 12 (top) thereof. Cf. (B) the 50 ptas Series, letter A, issue 15 Aug 1928 referred to in Ext. 15 with notes listed on p. 6 of Ext. 8.

[Benady : it is admitted that 3325 ptas out of the 110,000 in Ext. 8 were in fact put into circulation after 18 July 1936]

Xamnd.

In chief, I was referring to the Bk of Spain functioning in Franco Spain as from 18 July 1936—but that is where it was. Outside that there were offices and buildings of the Bank which functioned.

20 The Governor of the Bk of Spain is nominated by the Government—and he is one of the three signatories of bank-notes.

As to Ext. 21 (1) :—the preamble is not of operative effect—the Articles are the op. part. The preamble explains the need and justification for the Decree.

The last sentence of the preamble refers only to credits of foreign currencies for international commerce. Some countries had clearing arrangements, but, where they had not, the foreign purchaser did not pay the Spanish vendor direct, but paid the Official Centre for Currency Transactions which then paid the vendor in ptas.

30 A preamble cannot create an exception. It is explanatory and for the avoidance of doubt.

I see Exts. 3 and 4—and I appreciate that Noguera said he had often taken ptas into Spain up to November 1936 without guias. I agree that the Bank of Spain in fact continued to act on Ext. 1 after the Decree of 16th March 1936 : see Ext. 4. But I think they were wrong in law.

(Mid-day adjournment.)

I correct myself as to the time-limit under Decree 12th Nov. : it must have been no sooner than 5th, not 3rd, December. But the extension was till 14th Dec. in any event.

40 On the footing (as was the fact) that Dfts. were bringing their ptas. into Spain after 16th March without guias, the decree of 12th Nov. 1936 Art. 4 para. 2 does not change the law—it merely ratifies or confirms the necessity of having guias for importation of ptas. into Spain. This was an operation anterior to that of the actual stamping. Whatever may have been the position before, one now had to have the guias attached to the ptas. to introduce them into Spain.

*Plaintiff's Re-examd.
Evidence.*

No. 16.
Emilio
Perez
Manzucó,
continued.

If ptas. had been introduced into Spanish banks from Gibraltar before 12th Nov. 1936, even without guias, they would have been stampable under Decree 12 Nov. 1936, Art. 4, para. 1 thereafter: no guias would have been required. So Dfts. could have taken 1,000,000 ptas. in notes without guias say during October, and could have had them stamped later.

No. 17.
Jerome
Linares (the
Plaintiff),

No. 17.

EVIDENCE of Jerome Linares (the Plaintiff).

JEROME LINARES (Plff.), sworn, says:—Chemist. Library Ramp. 10
Opened a/c with Dfts. 6 June 1928 in ptas. In March 1936 I had a credit. I heard of Decree 16 March 1936 introducing "guia" system. I went to Dfts. to ask Noguera whether I should continue to accept ptas. He said I could, and could pay them into Dfts. bank and receive them out again. He explained that Dfts. were exempt from producing guias at L.L.

So I continued as before. Dfts. were my only bankers. I nearly always went personally to pay ptas. into my a/c.

On 24th Nov. 1936 I was asked by N. by phone to go to see him. I went that morning. He told me that in order to comply with the 20 Decree of Burgos it was necessary for me to sign a letter drafted by Dfts. and a few sheets of lists of ptas., etc. in order to take those ptas. to L.L. for stamping. He said everything would be all right: I should get my money back, legalized. I asked him whether any of the notes had been put into circn. after 18th July 1936. He said: "No." I was satisfied.

My brother Bernard [2nd Witness] came to see me, with Exts. 10 and 11 and Ext. 8. I signed them. Bernard filled up cheque Ext. 9—110,000 ptas. to "bearer"—and I signed it. I did not see the pta. notes themselves.

I continued to operate my pta. a/c.

30

I had, before 24 Nov., seen guias in Gibraltar. I don't think any were brought to me.

The rate in Gibraltar for buying ptas. in Nov. 1936 was £1 = 50 ptas.

I saw N. several times after Nov. 1936 and asked him. He said he had taken the matter up.

In Aug. 1938 another decree: Ext. 21 (4). Noguera recommended me to apply under it. I did. I see my applicn. dated 18 October 1938 (Ext. 22) to the Tribunal for the Special Exchange of Bk. Notes. I had no success. I took the pta. notes to L.L. and deposited them there.

I also approached British Embassy, Madrid and Spanish Consul 40 here.

No success.

Ultimately, on 27 June 1941, the then balance of my a/c, 6,850 ptas., was paid to me in Tangier—to my wife on my order—paid in good ptas. usable in Spain or anywhere.

Dfts. allowed me 1% interest also: see Ext. 7 (a/c). I have lost that too, between 24 Nov. 1936 and 27 June 1941.

*Plaintiff's
Evidence.*

No. 17.
Jerome
Linares (the
Plaintiff),
continued.

Xmnd.

I see the "agreement" between Dfts. and me dated 26 May 1931. (Ext. 23). I signed it. It was made because movement of ptas. had
10 already become difficult in some ways.

As to Ext. 7 (my a/c):—

By end of 1930 I had credit of about 13,000. On 17 March 1936 my credit was 16,430.30. I was continuing to accept ptas. without guias. From 18 July 1936 my credit rose steadily. On 24 Nov. 1936 it had reached 112,887.20.

I agree that Dfts. were to pay me out in ptas. without guias, since I paid my ptas. in without them. That was the arrangement.

I see my letter dated 4th Oct. 1946 to British Embassy, Madrid. (Ext. 24). The second para. is admittedly untrue, but was not deliberately
20 untrue. [Plff.'s bundle, p. 37.]

Probably there was a different rate in the market for ptas. with guias as compared with ptas. without guias.

Even after Decree 12 Nov. 1936 I was accepting ptas. without guias.

I could not have got my guia-less ptas. stamped, I admit. I was requiring the Dfts. to do something for me that I could not do.

I agree that the commercial community generally had more confidence in Franco than in the Republicans—and so in Franco's currency.

"A.B.C." printed in Seville was our main source of war news. I
30 read Spanish completely. I also read "El Anunciador" and "El Calpense."

I see "El An." dated 16 Nov. 1936 (Ext. 25). It published the full text of the decree of 12 Nov. 1936. I read it at that time, i.e. before Noguera approached me. So on 24th Nov. I knew as much as he did about it.

The "fraudulent misrepns." made by N. to me were (1) that all notes in my list had been in circn. before 18 July 1936, (2) that if I signed the various documents my notes would be stamped—all would be in order—owing to Dfts.'s exemption from need to produce guias.

I do not think that he said those things dishonestly, without believing
40 them to be true. I do not believe so.

(Adjourned to following day.)

On 24 Nov. 1936 Bernard Linares left with me a copy of the list of
notes, for my record presumably. 12th Nov. 1948.

On 6 December 1938 I removed my bundle of pta. notes from the bank. I could have checked their numbers. I don't suggest that the notes had been changed.

*Plaintiff's
Evidence.*

No. 17.

Jerome
Linares (the
Plaintiff),
continued.

In Dec. 1938 I was able to deposit my pta. notes at the Aduana at L.L. without guias, due to an order of the Tribunal at Burgos. Things were, by then, much more settled than at end of 1936.

I did not then make any charge against Dfts., i.e. in Dec. 1938.

I believe my ptas. are now in Burgos : they are certainly in Spain.

I never had a list showing "illegal" post-18-July-1936 notes. All notes bore an old date : nothing on their face to show when put into circulation.

From July—November 1936 I may have accepted many notes in the shop which were thus "illegal." 10

Before bringing this action on 4th Feb. 1947 I never complained to the Defts. of their fraud or negligence.

Re-examd.

I always kept Dfts. informed of my efforts by correspondence.

I see my letter dated 8 Nov. 1946 to Dfts. enclosing reply from British Embassy, Madrid (Ext. 26).

[Benady : It is admitted that Plff. kept Dfts. informed of all his efforts.]

I believed Noguera absolutely on 24 Nov. 1936. In Dec. 1936 I discovered that nothing effective had been done. In 1938 I discovered 20 that there were post-18-July-1936 notes among mine.

N. never told me the lack of guias stood in his way.

My object in taking the notes out in Dec. 1938 was to help get this matter settled and avoid this action.

In 1946 my failure was final, so I took legal advice.

I never knew, till this hearing, that Dfts. had been petitioning Queipo de Llano.

I deposited from time to time notes of all denominations with possible exception of 1,000 pta. notes.

Victory and Romero, the cashiers, always accepted my notes without 30 question.

I see letter before action, dated 14th January 1947 (Ext. 27).

I see Dfts.' reply dated 24th Jan. 1947 (Ext. 28).

Isola : Plff.'s case is closed.

At Benady's request I ask jury to retire.

Benady : Submits no case to answer.

(1) As to negligence : Clerk & Lindsell, 10th Edn., p. 381. There is no evidence on which jury could reasonably find negligence. Noguera showed that he did everything in his power—everything that could be done. Supported by mass of documents : e.g. Petition of 5 Dec. 1936 40 to Queipo (Ext. 13) ; 2nd Petn. of 9 Jan. 1937 (Ext. 16) ; letter (Ext. 18) ; 3rd Petn. of March 1937 (Ext. 19) ; also N. says he instructed Ramon Marquez Urbano to take matter up with Minister at Burgos. Dfts. did all in their power, promptly and within time.

(2) As to fraud : See Hals. 2nd Edn., Vol. 23 at p. 82 para. 114 : elements of action for deceit. Plff. himself said that in his opinion N.

did not speak dishonestly or fraudulently. Moreover, Noguera is the Plff.'s own witness and he himself swears that he was honest—he believed in the truth of what he said. Thus the Plff.'s case collapses. Also Noguera himself must be believed.

*Plaintiff's
Evidence.*

No. 17.

Jerome
Linares (the
Plaintiff),
continued.

Isola : The action is against Dfts., not against N. personally. As to the elements in Hals. (supra) : the elements are all present here. The 3,300-odd ptas. point is strong enough by itself. Then also there is evidence of fraud as regards the statement that Plff. must withdraw and re-deposit his notes.

- 10 As to negligence : under decree 12 Nov. 1936 the Dfts. should have taken the ptas. to L.L. within a few days, but they kept them for 2 years till Plff. himself withdrew them in Dec. 1938. Gen. Queipo de Llano was not the proper authority to whom to submit petitions : see Ext. 17, opening words : “ In order to submit the Petition . . . ”

[Note : See particularly Noguera (in chief) at p. 156 : “ Raida told me these notes had to be assigned ” etc. ; at p. 161 (in Xxmn) : “ But we knew long before that ” etc. ; and at p. 162 : “ It was essential, because L.L. Customs had refused our transactions without guías.”]

- 20 Benady : As to the 3,300-odd ptas. there is no evidence to show fraud. The effect of the decree of 12 Nov. 1936 was to cause Customs at L.L. to refuse admittance of pta. notes without guías. In 1936 there was no Tribunal de Canje. Petitions had to be submitted to the Govt. in Burgos through the local Highest Authority. And Dfts. had taken legal advice.

(Mid-day adjournment.)

Jury still kept out of court.

Ruling : Submission of “ no case ” rejected. Case to go to the jury.

- 30 Per Curiam : Negligence apart, this case has been fought throughout on every possible aspect of fraud. But S/C lacks express allegation of one aspect : “ recklessness.” I have power to amend “ as may be necessary for the purpose of determining the real questions in controversy between the parties ” : R.S.C. O. XXVIII r. 1. I think amendment necessary. What does Plff. say ?

Isola : I apply for amendment.

Benady : I must formally oppose.

Per Curiam : “ Recklessness ” has clearly in fact been “ in controversy.” Witnesses have been questioned at length on this aspect. Allegations of fraud already appear in paras. 7, 8 and 22 of S/C. But convenient amendment seems this :—

- 40 [I read amendment of para. 4 of S/C]. General traverse in para. 22 of Defence covers denial of this. If by chance Dfts. desire time, I offer to adjourn now (Friday 3.10 p.m.) till Monday morning. Do Dfts. desire the adjournment offered ?

Benady : No.

Per Curiam : Or to apply for re-call of any witnesses for further Xxmn ? This is the convenient time.

Benady : No.

(Note : See Annual Practice, 1946–47 Edn., notes to O. XXVIII, r. 1 at p. 483, top.)

Plaintiff's Evidence. Jury return to Court.

Hassan opens defence :—

No. 17. What Noguera said in Xxmn. represents the defence : no fraud, no negligence. Raida, Tangier Manager, will be called. Also Dfts.' Spanish legal adviser at that time. Also an expert on Spanish law. I say no more at this stage.

Jerome Linares (the Plaintiff), continued.

No. 18.

EVIDENCE of Maximilian Francis Raida.

Defendants' Evidence.

No. 18. Maximilian Francis Raida.

MAXIMILIAN FRANCIS RAIDA, sworn, says :—Manager of Dft. bank in Tangier for the last 20 yrs. Tangier branch has administrative 10 jurisdiction over Gibraltar branch.

In Nov. 1936 Noguera called me over to G. to study the repercussions of a Decree concerning stamping of notes. I came here on 20th Nov. I first saw Noguera, at the bank.

N. stated to me that "the customers desired to stamp," & that he had consulted the lawyer. We then went to see the lawyer, i.e. Benady, with the object of remaining within the law, or rather to reconcile the wishes of the customers with English law. Thus we consulted Benady.

Possibly we saw Benady twice—I'm not sure. If so, our second consultation must have been on 21st Nov. 20

After consulting Benady, from which it resulted that we should accede to the customers' wishes, we could not refuse the mandate entrusted to us.

So I told N. to do everything through our lawyer so that all should be regularly and legally done.

We decided to accede to our customers' wishes and "to get them to sign their applications." It was a question of acceding to the customers : they had to come and sign a letter of request. I see Ext. 8. That was the form of request, as settled with Benady, to be presented for signature by the customer. In Plff.'s case this form was accompanied by a list. "The 30 procedure was to wait for the clients to come and make their applications." I do not know of other steps which the customers were to take. The customers who were concerned were to "individualize" their ptas. by means of lists.

I never told N. to make any false representations. I never told N. that the ptas we had must be assigned to customers. It is not true that amounts of ptas 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.

We did not speak of pre- or post-18-July-1936 circulation, because 40 nothing was known at that time as to this. Had I known I should have passed on my knowledge to Gibraltar. I am certain we never spoke of it.

I could not give orders in a matter essentially local : my instructions were to follow Benady. I never gave instructions to defraud !

Defendants' Evidence.

Xamnd.

I never gave evidence in this court before—not in *Stagnetto v. Credit Foncier*—not in *R. v. Noguera*.

No. 18.
Maximilian
Francis
Raida,
continued.

Gibraltar branch was under administrative control of Tangier. N. was under me as Tangier manager. But N. himself used his initiative as regards Gibraltar matters, and his decisions were examined and sent on by Tangier.

10 In March 1936 I met Bank of Spain authorities to obtain, and I obtained leave to introduce ptas into Spain without guias : see Ext. 1. I arranged to have a Special a/c—an “Interior a/c”—opened in Spain : this meant we had right to take ptas into Spain and to bring them back from the account into Gibraltar. The object of having such an account was to reduce risks by reducing our cash in hand in Gibraltar. Also our Tangier branch was entitled to use ptas taken from Gibraltar into the a/c in Spain. Our Tangier branch also had a/cs in Spanish banks in Madrid.

20 Gibraltar branch took ptas to L.L. and placed them in Banco Esp. de Crédito. They were then moved to credit of Tangier branch in the Spanish bank in Madrid. It was then at the disposal of Tangier branch.

Thus from 6th March 1936 the ptas in Madrid standing to our credit were at our disposal—we took them to Tangier and used them. Conversely we could move ptas from Tangier to Gibraltar via the Madrid a/c.

But the civil war interrupted this. Nationalist Forces occupied Algeciras & La Linea. As from 18th July 1936 I don't think it was possible for Dfts in Gibraltar to go on transferring ptas to L.L.

30 I see the a/c of Dfts' Gibraltar branch with Crédito Esp. in L.L. (Ext. 29). I see a number of payments from Gib into that a/c during latter part of March 1936. All such payments went to the credit of the “Interior a/c”—and all those that went to Banco Hispano-Amo in Algeciras were credited to the Tangier a/c. The concession obtained on 6th March 1936 enabled Gib branch to move ptas into Spain without guias.

Tangier always received periodical statements of balances standing in Spain to credit of Gibraltar branch.

I see the a/c of Dfts' Gib branch with Banco Hispano-Americano in Algeciras (Ext. 30).

(Adjourned to 15th November)

40 I see the a/c of Defts' Gib branch with Dfts' Tangier branch, kept by Gib branch (Ext. 31). I see that, after 18 July 1936, namely on 21st October 1936, 400,000 ptas were sent direct from Gibraltar to Tangier. On the 16th July 1936 I see 300,000 ptas. transferred from Gibraltar through Banco Hispano-Americano to Tangier branch. 15th Nov. 1948.

[Benady : It is admitted that after 18th July 1936 no transfers of pta notes from Gibraltar to Spanish banks, or from Gibraltar to Tangier via Spanish banks, took place. But there were transfers direct between Gib and Tangier, and between Tangier and Gibraltar after that date.]

Defendants' Evidence.

No. 18.
Maximilian
Francis
Raida,
continued.

I did not come to inspect the Gib branch books in 1936. My sub-manager was the inspector thereof. I came to Gib. at beginning of or during December.

There was no need to draw up lists of pta notes allocated to individual customers in Nov. 1936. "I have never to this day heard of that having been done." I have never seen the Gib branch a/cs at all since 1936: that is the sub-manager's job. I see Ext. 8 and I know the form of that letter. I see the lists attached to it. I knew that the customers of the bank who desired to do so signed this form of letter. "I did know on 21st Nov 1936 that lists of notes were to be made in the bank for customers 10 who voluntarily came forward wanting them. I was told that such lists had been made." I came on 20th Nov 1936 exclusively to see what steps were to be taken to get stamped the pta notes we held in our Gib branch. I read the decree of 12th Nov 1936. I went with Noguera to see Benady. I personally took no steps to get the notes to Spain: it was a "local question." Noguera assured me he had been to L.L. Customs before my arrival to see how the 12 Nov decree affected pta notes unaccompanied by guias. I don't know whether he actually took the notes there with him. On reading that decree it was clear that the notes could not be taken in without guias except under Ext. 1. Noguera told me he had 20 approached the L.L. Customs and had been told it could not now be done at all without guias. That was clear to us on 20th/21st Nov 1936. I personally do not know whether the notes were ever taken physically to L.L. Customs for deposit.

The origin of the pta notes in our Gib branch on 24 Nov 1946 may have been partly our Tangier branch. I see Ext. 31: under date 21st Oct 1936 I see a remittance of banknotes from Gib to Tangier; under 5th Oct 1936 I see a remittance of 100,000 ptas from Tangier to Gibraltar.

At the critical period we had to send pta notes from Tangier to Gib, 30 i.e. from 18th July 1936 till 12th Nov 1936, to build up the cash balance in Gib.

In 1936 we had a branch in Larrache, Spanish Morocco. Larrache was occupied by Nationalist troops on or about 18th July 1936: I don't think—I suppose—we could have done any business after that between Tangier and Larrache. The pta notes in Larrache must have been stamped automatically.

In Tangier the majority of public were Republican. We had pta notes there. None of them were stamped. We had no guias. It is the fact that the ptas held by us in Tangier were "free money." We held 40 about 100,000 ptas. We held them for a/c of our customers. We, the bank, lost nothing.

(Ten minutes' adjournment at noon while royal salute is fired: birth of a son to H.R.H. Princess Elizabeth.)

The customers withdrew ptas. And if Gibraltar branch asked us for ptas. we sent them if we had them to send.

I knew from the decree of 12 Nov. 1936 that post-18-July-1936-circulation were "illegal." Our Larrache branch had no data shewing which series were illegal, so far as I know. Larrache informed me they had presented their pta. notes to Bk. of Spain in Larrache and that they 50

had been stamped. We did not ask Bk. of Spain in Larrache or in Tetuan for the data shewing "illegal" notes. Nor did I ask N. to obtain data from a bank in L.L. Noguera did not mention to me at all that he had such data. The matter did not attract our attention. I do not know where the "illegal" notes were mostly to be found.

To the Court :

I agree that in Tangier there was a free market at the material time for all kind of notes.

Xcmmn. continued :

10 Our bank did not operate at all in the free or street market. When we had a surplus of ptas. we deposited them in local Spanish banks, e.g. Banco de Bilbao. When the Bk. of Bilbao paid us ptas. due to us after 12 Nov. 1936 they paid us in unstamped notes.

Noguera told me nothing about having summoned Plff. to see him. N. told me there were many customers who wanted to have their notes stamped.

I agree that we had no guias, and therefore could not take pta. notes to Spain at all after 12 Nov. 1936. All we could do was to petition Spanish authorities on the basis of the letter granting concession (Ext. 1, 20 6th March 1936). I could not guarantee to get notes stamped by taking them to L.L. in those circumstances. It would be deceiving the customer to tell him so. "It would be inducing an error."

If the customer had refused to take over the pta. notes in the form followed by Plff. the bank would have said to them that the notes were at their disposal: the money belonged to the customers. "The uncertainty of the situation caused confusion." I agree that the decree was clear: a fixed period was laid down, and the notes had to be accompanied by guias if they were to be taken to Spain.

I see the "Compte d'Estampillage," the Account for Stamping, 30 kept by Dfts. Gib. branch (Ext. 32).

(Mid-day adjournment.)

I see from it that about 2,500,000 ptas. were included in the lists signed by customers. [Benady: Some of them were brought to the bank by new customers in order to get them stamped.] In April 1945 there was a bce. left in this a/c. of about 888,000 ptas. The difference had been deposited by customers at L.L. Customs accompanied by Petitions.

I see the Dfts.' book containing list of customers who had ptas. with us for stamping (Ext. 33), I see the name Albert Ferrary in that book. I did not intervene in the matter of obtaining signatures. I do not 40 remember Albert Ferrary [produced in court]. I did not call to see him on Dec. 8th 1936. I see 3,850 ptas. paid out to Albert Ferrary on 31st July 1937 (shewn in Ext. 32). I see that other amounts were paid out to other customers after November 1936.

I see Ext. 7 (Plff.'s a/c.): under date 23rd Nov. 1936 Plff. had 112,887.20. And he only signed his list for 110,000 ptas. Thus he left 2,887.20 ptas. in the bank at that time. I see that in June 1941 Plff. had credit balance of 6,874.40 in his Gibraltar a/c., and that Plff. was paid 6,850 ptas. by our Tangier branch on June 27th 1941—perhaps in another

Defendants' Evidence.

No. 18.
Maximilian
Francis
Raida,
continued.

Defendants'
Evidence.

No. 18.
Maximilian
Francis
Raida,
continued.

foreign currency—but at any rate in good money, despite the fact that Plff. had deposited ptas. with us in Gibraltar before the civil war. The notes so paid to Plff. were unstamped. I do not know why we paid Plff. that sum in 1941. I do not know whether Plff. has lost his money ; he says so. I admit that the pta. notes still left with us from 1936 have lost their purchasing power as from 1936—I would give nothing for them ! Plff. was free to do what he wanted with his bank-notes !! My information is that this customer wanted his notes stamped.

I remember the Stagnetto case : they had deposited ptas. in 1936. They said that a marginal note had been added after they opened their 10 a/cs. giving bank option to pay them out by cheque on Madrid. That was the disputed paragraph. The then C.J. believed the Stagnettos.

To the Court :

There was nothing to prevent a transfer, at any time between Dec. 1936 and Aug. 1938, of Plff.'s credit balance from Gib. to Tangier. If done, we should have been his debtors in Tangier—debt payable in notes having purchasing value for which I admit there was a market.

Re-examd.

Stamped and unstamped notes circulated in Tangier after the decree 20 of 12 Nov. 1936.

If on 24th November 1936 Plff. had asked us to transfer his credit from Gib. to Tangier, we could probably have paid him out in Tangier as we had cash at that time.

If Plff. had withdrawn his ptas. in Gib. in notes, the Dfts. would have had no further interest in him.

In Nov. 1936 N. and I resolved to follow Benady's advice and to continue to get him to keep us within the law.

At the "critical period" (18th July 1936—12 Nov. 1936) we had to be sure to have enough ptas. in Gib. to meet demands payable on sight.

I see Dfts.' Cash book shewing ptas. in hand in Gibraltar (Ext. 34). 30 Under date 16 Nov. 1936 we had 1,177,288.20 ptas. there.

I see Ext. 32 (Compte d'estampillage) : on 1st May 1937 2,813,750 ptas. had been deposited (for stamping) with us.

Thus a quantity of money had been deposited (for stamping) by outsiders.

I personally had nothing to do with the Stagnetto case. It was N. who was acting for the bank.

If we had wanted to deceive customers we shouldn't have had resort to Benady.

We went to him for advice.

I deceived nobody.

EVIDENCE of Norberto Sené.

Defendants'
Evidence.

NORBERTO SENÉ, sworn, says :—Employee of Dfts. in Gib. for last 28 years. In 1936 Secretary of Gib. branch. Cummings (present manager) arrived 1939, after Noguera left.

No. 19.
Norberto
Sené.

N. and I had joint-signing authority. So I worked closely with him. I knew everything that happened.

I see Ext. 1. The concession was fully operated till 18 July 1936 : large payments into Spain without guias.

10 I see Decree 12 Nov. 1936. When it was published N. asked Raida to come to Gib. It was decided that if people were willing to leave notes for stamping we were to accept them. Numerous customers approached us for that purpose. We created the procedure—cheque, payment-in-letter & lists. We were not to bring any pressure to bear.

N. often went to Spain to arrange about stamping : I was left in charge.

We knew nothing in the bank about which notes were post-18-July-1936—nothing till late in 1937. I see Ext. 15 (April 1939) which eventually gave us the information.

20 Outsiders brought in more than 1,000,000 ptas. for stamping.

I see Ext. 32. I see that Alfred Vazquez and Luis Stagnetto signed the lists & forms on 9 Dec. 1936. The Plff.'s name appears under date 24 Nov. 1936. All those who deposited ptas. (five in number) on 23rd Nov. were outsiders. We arranged no charge. We should have made a charge later. Plff. was the first customer of the Bank to deposit ptas. for stamping.

(Adjourned to following day.)

Xxmnd.

16th Nov.
1948.

30 I see Ext. 5 (circular letter issued by Barclays 18 March 1936). Noguera did not consult me on the effect of it. N. wrote to Tangier on it, saying he proposed to act in same way as Barclays [“ We are unable to accept pta. notes for credit unless accompanied by the authority required by the Decree ” :—fresh conditions for foreign currency a/cs in future] but Tangier wrote back : “ No ; carry on as before.”

I was one of those engaged on the typing of the pta. lists. Raida had come to Gibraltar just before that. None of the pta. notes were physically taken to L.L. Customs, but Customs had told N. that they declined to accept them.

The customers spoke with N. about this matter. The outsiders spoke with me.

40 Albert Ferrary signed form and list like Plff. Later he changed his mind and wanted his previous position reinstated. We acceded by instalments—i.e. little by little his notes were taken off his hands and given to others who wanted them (outsiders).

I see Ext. 6 (form of guia). Dfts. kept no record of guias in their hands, except by placing ptas. which had guias into a “ Compte Extérieur ” in the Banco Esp. de Crédito in L.L.—up to but not after 18 July 1936—and that bank still has them.

Defendants'
Evidence.
No. 19.
Norberto
Sené,
continued.

Late in 1937 we took notes of the numbers of "illegal" notes— from a newspaper. But we were no longer accepting pta. notes by then, so were not very concerned. I see Ext. 32 ("Compte d'Estampillage") —we were then accepting pta. notes but only at the risk of the customer. We did not type copies of the notes we made. What we saw in the newspaper was much the same as Ext. 15.

When we saw Art. 1 of the Decree of 12 Nov. 1936 (making post-18-July-notes illegal) Noguera did not write to any bank or authority anywhere asking which series of notes were referred to. "The first thing is to learn about the numbers" when notes are declared invalid. That is what any reasonable person would do. Meanwhile one would not accept any notes of the type that might be illegal. "But N. was in touch with the Spanish banks." 10

In Nov. 1936 we had no list in the bank, despite what Noguera and Bernard Linares say. We could have asked the Bank of Spain itself in Algeciras, but we didn't.

If Noguera obtained the information, he never told us so in the bank.

When Plff. took away his notes in Dec. 1938 nobody, so far as I know, checked his list for "illegal" notes.

Re-exam'd.

20

The reason why we did not follow Barclays' example in March 1936 was because we had the concession. We had Exts. 1, 3 and 4.

I see Ext. 5: Barclays' circular. They refused to take the risk any longer.

Raida was called here by Noguera.

We helped Alberto Ferrary at his request to change places with a Spanish customer of ours who wanted to.

Plff. never had a *Compte Extérieur*: never brought in any guias.

The ptas. accepted in 1938 were accepted for stamping only.

N. was seeing bank managers and lawyers almost daily.

30

I never saw or heard of a list of illegal notes in the bank in 1936.

No. 20.
Ramon
Marquez
Urbano.

No. 20.

EVIDENCE of Ramon Marquez Urbano.

RAMON MARQUEZ URBANO, sworn, says:—Barrister of University of Granada. Practised for 35 years: many years in Córdoba: from 1934 in La Linea. I have acted professionally in relation to monetary cases.

I have a brother: Salvador Marquez, also a lawyer.

In 1936 my brother and I shared chambers; he was legal adviser to Delegate of Queipo de Llano. I did most of the professional work. My brother was advising Dfts. regarding stamping of notes: I took part, because my brother had a clash of interests, being Queipo's adviser also. 40

I see Ext. 13: original carbon copy of 1st Petition to Queipo. Petition was drafted in our chambers.

I see Ext. 16 : 2nd Petition. Sent because 1st Petition not answered, and because it was desirable to attach the certificate. We drafted this too—in fact I did. *Defendants' Evidence.*

I see Ext. 17 : I remember it. Questions put to us on behalf of Queipo. No. 20.
Ramon
Marquez
Urbano,
continued.

I see Ext. 18 : Our reply. I drafted it on Noguera's instructions.

I see Ext. 19 : 3rd Petition : to Queipo personally. I drafted it. I don't remember its exact date. It must have been a few days after 6th March 1937—some 8 or 10 days later at the most.

10 I advised Noguera we should know views of Finance Minister in Burgos. Noguera agreed. I was to go to Burgos. I saw Don Andres Amado, now dead, the then President of what corresponded to to-day's Cabinet of Ministers, in the presence of the then President of the Committee of Justice. Amado told me the difficulty was that all the transactions since 18 July 1936 would have to be examined, because of the suspicion that current a/c holders had "illegal" ptas.

Xamnd.

Noguera first came to see me two or three days before 25 Nov. 1936.

20 When I saw Amado nothing was said about notes put in circulation after 18 July 1936 being included in the lists.

They suspected the speedy build-up of certain accounts : thought there must be "illegal" notes.

I read the decree of 12 Nov. 1936. This decree was the result of "illegal" notes being put into circulation. Dfts. told me nothing about in fact having "illegal" notes in their possession. I would have ceased to act for Dfts. had I known it—I always thought I was defending a just cause. I would never have carried "illegal" ptas. !

30 I myself owned ptas in Spain at that time. I handed them in for stamping. They were duly stamped. Procedure was this : the bank in Spain gave me a printed form. I only had 7 or 8 100 pta-notes. I think the form required one to state the denomination, serial number, etc. and to sign it. I did it in the Banco Espanol de Crédito, who sent the notes to Bank of Spain, Algeciras.

Re-examd.

We petitioned Queipo because he was the proper channel for approaching Burgos. We knew that.

40 Although the person to decide was the Minister, the procedure was to go through Queipo. It was exclusively a Finance Ministry matter. Someone who had gone direct to Burgos had had his applicn returned and had been told to forward it through Queipo.

Further Xamnd on that, with leave.

That other instance had nothing to do with money or the Finance Ministry. The procedure for stamping is laid down in the Decree 12 Nov itself, and nothing is therein said about applying to a General. But it was not to get Queipo's mere moral support. Queipo had a Delegate who had all his authority except as regards the Ministry of War. If L.L. Customs prohibited the introduction of the ptas, one had to go to Queipo's delegate to get at Queipo and through him to Burgos.

(Mid-day adjournment)

Defendants' Evidence.

No. 21.

EVIDENCE of Ricardo Munoz Carrera.

No. 21.
Ricardo
Munoz
Carrera.

RICARDO MUNOZ CARRERA, sworn, says :—Spanish lawyer of University of Seville. Practised for past 12 years, of which 8 in La Linea. I have particularly studied law restricting movement of ptas.

I see Decree 16 March 1936. The preamble is a statement of reason for enacting the Decree. In this preamble are stated the distinguishing features and exceptions relating to the Decree. The last clause of the preamble establishes an exception to the general effect of the Decree: it upholds agreements already made by the Official Centre for Currency. Ext. 1 is one such agreement; the words "to credit ptas in account" are identical with words used in the Decree. 10

I see Ext. 3: the Official Centre for Currency Transactions was situated in the Bank of Spain. The letter was written the same day as the public of the Decree. This Ext. confirms my opinion.

I see Ext. 4: this letter does also.

From 16th March to 12th November no relevant decree was made.

I see Decree 12th November. It confirms the Decree of 16 March in several places, particularly in para 4. This November Decree did not repeal the earlier one. Consequently the concession was still alive. 20

I see Decree 28 Nov 1936: this clearly prolonged the period for stamping Gibraltar's notes till 14 Dec.

Under Decree 12th Nov the origin of the notes had to be enquired into.

I see Ext. 17. It ties in with the terms of the Decree 12 Nov. Art. 4.

I see Exts. 13, 16 and 19 (the three petitions).

Ext. 13—addressed to the Delegate of Queipo on 25 Nov—it was sent in time, according to the Decree. It was a step to prevent L.L. Customs from placing difficulties in the way.

Ext. 16 follows naturally on Ext. 13.

Ext. 19, addressed to Queipo, follows logically. 30

These petitions represent the procedure followed in Spain in legal matters in order to reach the Supreme Authority. I should have taken exactly the same steps.

Xamnd.

I'm not sure where the Official Centre for Currency Transactions was in Nov 1936: either in Burgos or in Salamanca—indeed part in one and part in the other.

The Bank of Spain was tied up with the Centre.

Anybody could, in Nov 1936, have written direct to the Centre from Gibraltar. I see Art. 4 of Decree 12 Nov and Art. 7, setting up a Committee. But that did not make it possible to write direct. Queipo was the proper channel, the inevitable channel for reaching the top. It was so laid down, with the force of law. I cannot produce now an actual law to that effect. 40

Re-examd.

I know from memory that the authority of Queipo was supreme and unlimited in the South of Spain. His Delegate had delegated

authority from him in all respects except in matters of war. The Delegate was the proper channel to Queipo. A direct letter to Burgos would either bring no reply or a reply to the effect that the proper channel must be used.

Benady applies for a re-call of Bernard Linares by the court for certain questions to be put. They relate to a statement made by him in chief. Further documents have now come to light.

Isola : I oppose. Phipson, 8th Edn., 475.

Benady : This is vital—not merely a matter of credit but of fact.

10 Ruling : I shall recall the witness.

[Note : This matter had been mentioned early in the previous day's hearing and had been deferred until the remaining evidence was disposed of.]

BERNARD LINARES, recalled by the court :—

To the Court :

I see the letters of instruction to Dfts (in the same terms as letter in Ext. 8) signed by Stagnetto (Ext. 35) and Vazquez (Ext. 36) respectively, each dated 9th Dec 1936. I modify my previous evidence thus : while I am certain I called on Stagnetto and on Vazquez on 24th Nov 1936 immediately after calling on Plff, and that Stagnetto and Vazquez were reluctant to sign, it appears that they did not in fact sign until 9th Dec—not on 24th Nov as I said before.

Xamnd.

I am positive I called on them re this matter on 24th Nov, and that they were reluctant to sign.

No questions by Isola.

(Adjourned till following day.)

[Note : I see Counsel in chambers and settle with their concurrence* the questions to go to the jury, as follows :—

30 1. Did the Dfts make to the Plff the representations mentioned in para 4 of the S/C, or any of them ? (Extract from para 4 attached.)

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

3. If so, was the Plff thereby induced to alter his position in the manner mentioned in para. 8 of the S/C ? (Copy of para 8 attached.)

4. If so, did the Dfts make such repn (or repns) fraudulently, in the sense that they knew it (or them) to be false ?

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

40 6. Were the Dfts. negligent as regards taking steps between the 24th Nov. 1936 and the 14th Dec. 1936 to have the Bank of Spain notes mentioned in Ext. No. 8 stamped ?

7. Damages (if this question arises) ?]

Defendants' Evidence.

No. 21.

Ricardo Munoz Carrera, *continued.*

2nd W. Plff. (re-called).

No. 22. Questions for Jury.

* Subject to Benady's objection to amendment of S/C at trial—see Q 5.

No. 22.
Questions
for Jury,
continued.

17th Nov.
1948.

Questions, as settled, handed to jury.

Benady addresses jury : 10.37 a.m. to 12.17 p.m.

(Short adjournment.)

Isola addresses jury : 12.30 p.m. to 1 p.m. and (after mid-day adjournment) 2.50 to 4 p.m.

(Adjourned till following day.)

18th Nov.
1948.

Shorthand writer, procured by Dfts., duly sworn.

I sum up : 10.37 a.m. to 12.15 p.m.

Jury retire 12.16 p.m.

Jury return 1.45 p.m.

10

Foreman announces that verdict is unanimous. Written answers as follows :—

No. 23.
Jury's
Answers.

1. Yes. 2. Yes. 3. Yes. 4. Yes. 5. (No answer.) 6. Yes. 7. £2,200.

Isola moves for judgment for Plff. for £2,200 and costs.

Per Curiam : Yes.

Benady : I apply for a stay pending motion for appeal.

Per Curiam : Yes. Stay for 21 days or until motion for appeal brought, whichever the shorter.

Case certified fit for special jury.

(Sgd.) ROGER BACON, C.J. 20

18th Nov. 1948.

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948.

No. 24.

CERTIFIED TRANSCRIPT of Chief Justice's Summing Up on the 18th November, 1948.

Gentlemen,

You and I are here to do justice, according to law, between these parties. That is, of course, the meaning of the oaths which we have taken. And we are not concerned at all with the fact that one of the parties consists of a private individual and the other of a collection of persons in a trading concern, or banking concern ; nor are we concerned to consider their respective wealth or positions or commercial activities except in regard to the facts of this case as proved by the evidence which you have heard. The consequences, the ultimate consequences, of any verdict which you may give, over which you have no control, are not our concern either. All we have to do is to strive to reach the truth, and to bring in a verdict and to give judgment accordingly. It has been a long case and you have exercised great patience in listening to it, as is your duty as representatives of the public ; and it has, in many ways, been a case of surprises, and I want, first of all, to attempt to cut away the fringes of the matter and leave in your minds only the essentials which you have to consider.

30

The mere fact that the ex-manager of the Defendants was called by the Plaintiff is not of superlative importance. What is of superlative importance is what he said, and the extent to which you believe what he said, and so it is with every one of the witnesses called before you.

There were expert witnesses. They differed on what is one of the questions of fact that you have to take into account. It may have been surprising to hear a Spanish lawyer give it as his expert opinion that the views of Spanish authorities were wrong so far as the law of Spain was concerned at that time. Never mind. What you have to do is to arrive
 10 at the facts as you see and believe them, sifting the evidence which has been given before you. And of course it is essential, after a seven days' hearing, that I should address you at some little length, reminding you shortly of the facts which have been spoken to before you.

Now, let me first mention a few general principles by which you must be guided.

First of all, the burden of proving this case is on the Plaintiff both as to the fraud which is alleged and as to the negligence which is alleged. It is a principle common to all such cases as this, and it means that he is to establish in your minds by means of all the evidence which you have
 20 heard—of the evidence in the case—he is to establish in your minds that his case is proved. It is said: "He who affirms or alleges a fact must prove it." That is the basic, simple, principle.

Then there is another matter. More stringent proof is required in criminal than in civil proceedings. That is a rule of prudence rather than a rule of law. It is hard to put it into words by way of explanation, but you must, at any rate, be satisfied as to the Plaintiff's case being proved before you can bring in a verdict in his favour. Imagine (if it helps you) a pair of scales and put all the evidence which you have heard in one scale or the other, and, if the evidence which is favourable to the Plaintiff
 30 on any given issue that you have to decide substantially outweighs the remainder, then the Plaintiff has proved his case on that issue.

As regards the weight of evidence, it must of course be judged largely by common sense. No rule can be laid down in that respect. The mere number of witnesses on one side or the other is not a true test. Independent witnesses, witnesses who have no possible axe to grind in the case, are naturally, at first blush, more valuable than others. And it has also been said a number of times that a credible witness, a witness whom you can believe who swears positively to a fact which he has seen or heard may perhaps receive more credit than one who simply says: "I never heard of
 40 it," or "I did not see it."

Now, credibility of witnesses—the extent to which you believe them—is of course of great importance and it is for you, and you alone, to make up your minds as to that. I shall not tell you, or try to tell you, whom you are to believe or are not to believe on this or that matter. Motive or absence of motive for speaking the truth is, of course, a factor which you must take into account; but there is also the question of memory, powers of observation, accuracy of thought and so on. You have seen these men in the box and you have weighed them up; and you must decide what you believe and what you reject. And of course, in a case
 50 like this, each of those wrongs which are said to have been committed by the Defendants stands alone and must be split into its various elements,

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

and each element of the wrong must be established before it can be satisfactorily settled that the wrong has been committed. This is why questions have been put before you which you will now be called upon to answer, which split this matter into its constituent parts.

And, finally, let me remind you, which may not be necessary, but I think I should, that such things as gossip, rumour, discussion, prejudice, pity, sympathy, all these things must be excluded. It may be very difficult in a case like this, after years of talk, no doubt, in clubs and cafés as to what happened in 1936, but you must do it and you must decide this case upon the evidence. 10

Now, who are the parties? That may seem a very stupid question, but it is important to remember that Mr. Noguera is not a party to this case, and neither is Mr. Raida, nor is any individual person whom you have seen here except the Plaintiff. The Plaintiff is the one party, and this banking concern, known as the Credit Foncier, is the other. Mr. Noguera was, of course, the Defendants' agent. He was fully authorised by them, as manager of this branch to represent them, and in that capacity alone you must regard him.

Well, now something of the law with regard to this kind of issue known as fraud:—The first point is this. There have been suggestions 20 to the effect that there was a form of contract between the parties in this case, between the bank and their customer, the Plaintiff. But you must remember that no matter of contract between parties can stand in a Plaintiff's way when he comes complaining of fraud or deceit, as it is called. It has been said by an extremely eminent Judge, the Earl of Halsbury, in a case called *S. Pearson & Son Ltd. v. Dublin Corporation*: "No subtilty of language, no craft or machinery in the form of contract, can estop a person who complains that he has been defrauded from having that question of fact submitted to a jury."

Now, this second point to which I may call your attention is this: 30 that a principal is liable in law for fraud committed by his agent in the course of that agency, even though the agent himself was not authorised to make the misrepresentations or to commit the fraud. If I, being a corporation, appoint X as my manager, I must stand by what that manager says and does, when he is acting as manager. And conversely, if an innocent agent is used by a fraudulent principal as a mouthpiece the principal is still liable for the fraud. Supposing a fraudulent person (or body of persons) in the background who puts forward that agent, however innocent that agent may be of what he is doing or saying—if 40 there be that body of persons in the background it is a fraud and they must be held liable for it. And on this question, which is very relevant to this present case, I am going to refer you to a short passage from the judgment of the Earl of Halsbury in that same case to which I have already referred. He said: "I cannot conclude without saying that I desire to associate myself entirely with the observations which have been made by the Lord Chancellor, that it matters not in respect of principal and agent (who represent but one person) which of them possesses the guilty knowledge or which of them makes the incriminating statement. If between them the misrepresentation is made so as to induce the wrong, and thereby damages are caused, it matters not which is the person who makes the 50 representation or which is the person who has the guilty knowledge."

An important point to remember in general is that a plaintiff complaining of having been deceived, who himself knew the whole truth at the material time when the deception is said to have taken place, cannot be regarded as having been deceived at all—a plaintiff who knew the whole truth.

This Plaintiff's case rests upon the proposition that although, admittedly, he knew the terms of the decree, the decree of the 12th November, 1936, which was published in a newspaper which he read on the 16th November, nevertheless he did not know, he says, about
 10 the other essential aspect of the matter, that is to say the bank's position vis-à-vis the Plaintiff arising out of all that had happened since their concession of the 16th March exempting them from the requirement of "guias" and of which concession he says he had been told by the bank itself. In other words, the Plaintiff's case rests upon this: "True, I knew of the decree of the 12th November, 1936, because I read it myself, but I did not know what the real position of the bank was resulting from that and from other matters which had happened leading up to that; and not only did I not know it but I was misled as to what the truth of the matter was."

20 Now let me pass to remind you of the elements of the cause of action for deceit. First of all it must be proved that the alleged representation or representations were statements as to something past or present, not a mere promise for the future, not a mere prophecy of something that might or would occur. Secondly, that they were made by the Defendants to the Plaintiff. Thirdly, that the representation or representations was or were false, that is to say, misleading, untruthful as statements. Fourthly, that the Plaintiff was thereby induced or persuaded to take certain action and that, fifthly, he did in fact alter his position as a result. Next, that
 30 the Defendants, in making these representations, these false representations, were fraudulent, not merely that they were speaking an untruthful thing, but that they were doing it fraudulently. I shall say more about that later. And, lastly, that as a result of all that, as a natural direct result of that, the Plaintiff suffered certain damage—and as to damage I shall also have something to say later. So that the question for you on this issue of fraud is whether the evidence establishes each of those elements. The alleged misrepresentations here, of course, were not in writing, not by conduct, but by word of mouth, and are said to have been uttered by Mr. Noguera on the 24th November 1936. I shall not delay you now
 40 to remind you of what has been pleaded because you have in your possession a copy of that part of the Statement of Claim.

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.

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
 50 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

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

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.

It will be for you to decide, according to what has been proved before you, first of all what has been said, secondly what did it mean exactly. I am only seeking to help you by suggesting what is perhaps a fair paraphrase.

Now let me come to the question of law on the element of an action for deceit which is called fraud, that is to say, the element that the Defendants acted fraudulently when they made representations. Now deceit may arise as a matter of law in one of several ways. First of all, it may arise from a deliberate statement of a lie; that is perfectly plain. Secondly, it may arise from the deliberate expression of an opinion not honestly entertained and intended to be acted on, especially when the Defendant knows the facts better than the Plaintiff, for he may be implying that he knows facts which justify his opinion. The way it has been put in one of our leading text-books (Halsbury's Laws of England, 2nd Edition, Vol. 23, page 13) is this: "The proposition, or assumption, that statements of opinion can never be statements of fact is quite incorrect and unsustainable." Thirdly, deceit may arise from a fragmentary or partial statement of the material facts, true so far as it goes, but suggesting that which is false and intended to suggest that which is false. Let me illustrate that: Supposing I make two perfectly true statements to you as to a certain state of affairs, and deliberately suppress a third point which makes all the difference in the world; even though what I actually said to you is true, I should, nevertheless, be deceiving you because I should be deliberately telling you a half-truth intending thereby to mislead you.

Now, all that arises under the fourth question, in the questions which you have to answer. That fourth question is: Did the Defendants make such representation or representations fraudulently in the sense that they knew it or them to be false? Put briefly, it means: did the Defendants say something deliberately misleading, what you may call a case of positive fraud?

And then there is the other point which arises under Question 5. Question 5 is alternative 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?" This envisages yet another kind of fraud or deceit which the law recognises—reckless indifference to the truth or otherwise of what you are saying, the making of some vital statement which it is intended that the other party should act on, without caring in the least whether it is true or not and having no foundation for belief in its truth. When you come to deal with these two questions, bear that distinction in mind and answer them if you will, dealing individually with each of these three alleged misrepresentations, if, of course, your answers to the previous questions are in the affirmative, that is, if you find that they were said and that they were false and that the Plaintiff was induced thereby to alter his position. It may be—I do not say for a moment that it will be—that you will come to the conclusion that question 4 applied to one or more of these alleged misrepresentations and that question 5 applied to some other of these representations. If so, please say so.

And now, arising out of that I must warn you of this point of law: if the Defendants honestly believed in the truth of all they gave the Plaintiff to understand by what they said, they cannot be liable in fraud even though they had no adequate grounds for their belief. For that would be merely a matter of lack of good judgment, which is a very different thing indeed from dishonesty. But, in the absence of any reasonable foundation for their alleged belief—supposing you come to the conclusion that there was no foundation whatsoever upon the facts as then known to them for holding any such belief—then you may be thereby convinced that the belief was not really entertained at all and it will be open to you to come to that conclusion. And again, let me tell you this point: If a statement made by the Defendants to the Plaintiff was ambiguous—could have two or more meanings—the Defendants are only liable in fraud if they intended it to be understood in a sense in which it was untrue. That again is another aspect of the same proposition, that if the Defendants were completely honest throughout they cannot be said to have been fraudulent. No witness, and certainly not counsel, and certainly not I, can dictate to you as to whether anything was fraudulently said in this case. You have to decide that matter, you alone.

Now a word or two as to the damage resulting from fraud. The damage must be linked with the misrepresentation; the misrepresentation must actually have caused the damage. It must have induced the Plaintiff to take certain action to alter his position and thereby inevitably to suffer damage. If the misrepresentation substantially contributed to deceive the Plaintiff, that is enough. It need not have been the sole cause of his being deceived. If it substantially contributed to setting him on the wrong course it is enough in law. And if he was thus deceived and the damage was inflicted on him it is no defence to say or to suggest that he might have discovered the falsity for himself if he had exercised care so to do. In other words, a defendant brought before a court of law is liable for a deception of the kind which I have mentioned, is liable for his dishonest deception of the Plaintiff, and cannot come here saying or suggesting that the Plaintiff could have discovered the truth if he had cared to take the trouble to do it.

Now, of course, if the question of damages arises it is to be turned into pounds, shillings and pence. The evidence which you have before you is that in the Gibraltar market at the material time pesetas were at about 50 to the pound. No other figure has been suggested, no other evidence fixing the rate of exchange has been given. And I conceive that owing to a decision of the Privy Council in a case which went from this very court some few years ago, a case, a pair of cases, known as *Marrache v. Ashton* and *Marrache v. Onos*, which was Privy Council Appeal No. 55 of 1940, it is proper to regard the legal equivalent in sterling in Gibraltar of an amount of Spanish pesetas as the equivalent judged by the market rate ruling at that time for pesetas in Gibraltar, not elsewhere. The question, then, as regards damages, if it arises, is really this: was the Plaintiff prevented by the Defendants' fraud from having in his hands 110,000 marketable pesetas? That is really the matter which arises on the issue of damage. There have been suggestions that you should take into account other elements, if you come to assess damages. There was a suggestion, I think, that the distress, or worry, or waste of time caused to the Plaintiff by all this is a matter which you might take into account in

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

assessing the figure, but you must not do that. That would not be right in such a case as this. And it has been suggested that there was expense to which the Plaintiff was put in trying to set all this right—you remember he took steps himself in the later stages—but there is no evidence whatsoever of any particular sum of such expense to which he was put—nothing in terms of money—so don't take that into account either.

And, finally, it has been suggested that you ought to consider the question of interest upon this capital sum. I am bound to say that I think it somewhat difficult, but I think it is very doubtful whether it would be proper to take interest into account in this particular case. 10
 I need not go into all the technicalities of that, but I would advise you and direct you to disregard any question of interest and to confine yourselves to the capital sum lost in November 1936 as a direct result either of fraud or of negligence, as the case may be, whatever that sum may appear to you to have been.

Now something as to the law on the second issue, negligence. Question 6 deals with that, and in considering this issue you must confine yourselves to what that question asks. Do not go outside it, do not consider other matters that may appear to you to have been negligently handled at other times and in other respects. Confine yourselves exactly 20
 to the question whether the Defendants showed negligence "as regards taking steps between 24th November 1936 and 14th December 1936 to have the Bank of Spain notes mentioned in Exhibit No. 8 stamped." This is what is pleaded. That is the case on negligence, and that is the only thing you have to consider.

Now, negligence is something negative; it is the omission to take due care, such care as in the circumstances of the particular case it was the legal duty of the Defendant to take. There are, as a matter of law, no degrees of negligence. The test is always the same, and on the facts of every individual case the jury has to decide the matter. There are no 30
 degrees of negligence, because negligence is always the failure to take the due and proper care in the circumstances of the particular case. But there are, of course, degrees of care which are required according to the persons and circumstances concerned, and what you have to take into account is the fact that there was a relationship of banker and customer between these parties at that time, and there is a certain degree of care, a considerable degree of care, which is expected of bankers vis-à-vis their customers, regarding bankers as reasonable and prudent persons. That is the criterion which you must apply. What should a reasonable and prudent banker have done in the circumstances, vis-à-vis a customer 40
 of theirs? Here again it is for the Plaintiff to show, of course, if you come to the conclusion that there was negligence in that respect, that he suffered damage as the natural, logical, direct effect of that negligence. And if you came to that conclusion on this aspect of the case, then again it would be a question of converting that damage into pounds, shillings and pence. Of course, it goes without saying that the Plaintiff in this case could not possibly recover double damages, one in respect of fraud and the other in respect of negligence, both being the capital sum lost in 1936. He could only recover at most, and all told, what he has lost. In a sense, the claim on the basis of negligence is thus alternative to the 50
 claim on the basis of fraud, because if you come to the conclusion that

he was defrauded of the sum of money amounting to 110,000 pesetas, that would be the end of the matter so far as damage is concerned.

Now, the last question of law to which I want to refer you is not really a question of law at all. It is a question of fact. It is the question of what has been called in this case Spanish law. I do not think we need go at any length into the fine points as to whether at the time these decrees were law or were mere edicts issued by some authority. The fact is that they were issued, that they did have a certain operative effect in a certain part of Spain known as the Nationalist Zone, and that they had an effect upon the Defendants' activities and dealings at that time. Whether you regard them as Spanish law at that moment in the true sense, or whether you regard them merely as edicts, their effect is part of the facts which you have to take into account in arriving at your decisions. There is, of course, a conflict of expert opinion as to the effect of the decree of the 16th March 1936. That decree affected all Spain and was undoubtedly Spanish law at that time. And no doubt it remained Spanish law for some considerable time thereafter. It was before the Spanish Civil War broke out. Do not forget, in considering the effect of these decrees, do not forget the evidence as to what the Defendants in fact did or could not do. All that must be closely linked with the question of the Spanish decrees. It is not merely, in other words, a theoretical question. You must consider the actual position in which the Defendants found themselves from time to time as the story moves forward over that material period. I do not propose to go into the details of these decrees and of the opinions which the expert witnesses have expressed. But I may perhaps briefly remind you that Sr. Don Emilio Perez Manzuco, called for the Plaintiff, said that that decree of the 16th March, as a matter of law, rendered the Defendants unable to take their pesetas into Spain without "guias" although he agrees that in fact they continued so to do. Sr. Don Ricardo Munoz Carrera, called for the defence, said that the Defendants were not only doing it in fact, but, as a matter of Spanish law, they were right in so doing. The fact is they were able to continue and did continue to take their pesetas into Spain by virtue of their concession of the 6th March, despite the passing of the decree of the 18th March 1936. And as for the decree of the 12th November 1936, it appears on the face of it that "guias" must accompany all notes introduced into Spain for stamping; that is the consequence of paragraph 2 of Article 4. It is true that Sr. Carrera suggested that the Defendants' concession was still alive despite that, but the other expert, Sr. Perez Manzuco, expressed the contrary view. The fact is, as proved, that Mr. Noguera at once discovered at La Linea Customs that he could do nothing without "guias" as from the date from which that decree of the 12th November took effect.

Now I pass to consider the actual facts, the evidence, and I shall have to refer to a number of extracts from the notes which I have taken in the hope of assisting you to have fresh in your minds all the salient features of what has been said on one side and the other in the course of this case.

The story, for present purposes, commenced in March, 1936, and the position then was that the Plaintiff had been a customer of the Defendant bank for nearly eight years. He had a peseta account as well as a sterling account, and he had never at that time paid in any pesetas with "guias"

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948,
continued.

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

accompanying them. He had a plain peseta account without "guias," and was a customer of the bank. Then comes the 6th March, 1936, the next milestone. Defendants were granted the concession which appears in the exhibits, the letter of the 6th March, from the Bank of Spain. The concession enabled them to take pesetas into Spain from Gibraltar without restriction and to place them in an account in a bank in Spain, any bank they liked, on mere proof that the pesetas came from Gibraltar; and the Defendants proceeded to act on this and had and operated banking accounts in La Linea and Algeciras. Mr. Raida says about that that "from the 6th March, 1936 the pesetas in Madrid standing 10 to our credit were at our disposal—we took them to Tangier and used them. Conversely, we could move pesetas from Tangier to Gibraltar via the Madrid account." To put it briefly, there was a good deal of freedom of operation open to the Defendants as regards taking pesetas into or out of Spain.

Then, next, the 17th March when the "guias" decree was published. At that time the Plaintiff's credit balance in his peseta account was, admittedly, only 16,430 pesetas, and the Plaintiff in his evidence said this: "In March, 1936, I had a credit. I heard of the decree of the 16th March, 1936, introducing the 'guia' system . . . He explained that Defendants were exempt from producing 'guias' at La Linea. So I continued as 20 before. Defendants were my only bankers. I nearly always went personally to pay pesetas into my account." Well, whatever the strict rules may have been, it is down in evidence that, in fact, the Defendants continued to operate without "guias." Exhibits 3 and 4 show that. They operated, as you know, with the Bank of Spain's full acquiescence; and also, after Mr. Noguera had consulted Mr. Raida on the matter, the bank continued to operate their peseta accounts here in Gibraltar despite the fact that Barclays Bank had otherwise decided.

Then comes the 18th July, 1936. The Spanish Civil War broke out. There was, of course, an immediate change in the physical conditions 30 on the southern frontier of Spain. Algeciras and La Linea were in Nationalist hands within a day or two and the position was in fact altered in that way and altered very materially. But at that time there was no legal change. There was no official recognition of the Nationalist movement as a Government of Spain or of any part of Spain.

Now, there is an admission which was made in the course of this case which you should bear in mind, which relates to the changed conditions. "It is admitted that after 18th July, 1936, no transfers of peseta notes from Gibraltar to Spanish banks, or from Gibraltar to Tangier via Spanish banks, took place, but there were transfers direct from Gibraltar to Tangier 40 and from Tangier to Gibraltar after that date." That is admittedly the actual result as far as the Defendants were concerned, at the outbreak of the Spanish Civil War. Accordingly, Plaintiff continued to accept pesetas in the course of his business and to pay them into the bank and the Defendants continued to accept them, that is to increase their indebtedness to the Plaintiff in terms of pesetas. But, as I say, the Defendants ceased to be able to take pesetas into Spain. The concession under which they had been working no longer worked.

Then comes the stamping decree of the 12th November, 1936, issued by the Nationalist Authorities. Again note the facts, whatever the strict 50 legal position may have been, the facts in this region of southern Spain

where a change took place. There were three main provisions of this decree. First there was the ratification of a decision of the Bank of Spain to regard as illegal in Nationalist Spain the notes put into circulation after the 18th July, 1936; but there was no indication, you must remember, no indication in the decree itself, as to what notes, what categories or numbers of notes were affected. Secondly, the decree fixed a short period, which was later extended to the 14th December, for getting notes stamped by the Burgos authorities so as to give them operative value in Nationalist Spain. And thirdly, the decree set forth machinery for carrying out the operation of stamping, including the necessity to take the notes physically into Spain accompanied by "guias." And that is the decree which the Plaintiff admits to having read in full in the newspaper "El Anunciador" on the 16th November, 1936, that is, some days before his conversation on the 24th with Mr. Noguera.

The Defendants were thus faced with an immediate problem of great importance to them. When the decree came out, was it any longer possible for them to take their pesetas into Spain without "guias"? They had something substantially over a million pesetas in notes on their hands at that moment, that is to say on the 16th November, and these notes were their property from the moment that they were paid in. They were debtors to their customers. There is no doubt about that. The relationship of banker and customer which existed between them was the relationship of debtor and creditor, nothing more, nothing less.

Mr. Noguera tells us that they had no "guias" in their possession in Gibraltar at that time. They had over a million pesetas and no "guias." Mr. Sené later said that they had just a few, but a mere handful, comparatively speaking—nothing comparable to the over 1,000,000 pesetas in notes which they had. So Mr. Noguera went to see the La Linea Customs Authorities, as you would expect him to do, and it is established, you may think beyond any doubt, that at that moment the La Linea Customs Authorities told him that it was no longer possible or practicable for him to take pesetas into Spain without "guias." That vital change had taken place so far as the Defendant bank was concerned. Mr. Noguera says so himself in evidence, and Mr. Raida confirms it. He affirms that they knew it when they were having those conversations, he and Mr. Noguera, on the 20th and 21st November. This is what Mr. Raida said on that: "Mr. Noguera told me he had approached the La Linea Customs and had been told it could not now be done at all without 'guias.' That was clear to us on the 20th/21st November, 1936." And Mr. Sené confirms in his evidence that that was so also. So what did the bank do? Of course, they mobilised all the resources at their disposal to find a way out. Among other things they took legal advice. You have been told a number of times in the course of this case they consulted counsel who now appears for them, Mr. Benady.

Of course, no one has suggested for one moment and nobody could suggest for one moment that Mr. Benady has been a party to anything fraudulent or deceitful, and of course the mere fact that a person takes legal advice does not in any way decide the question as to whether thereafter he makes up his mind to act fraudulently and acts fraudulently. Lawyers' offices and lawyers' chambers are full of all sorts of people from time to time. Plenty of rogues have gone to take legal advice, and plenty

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948,
continued.

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

of honest people. It signifies nothing, the mere fact that legal advice was taken, because the Defendants may have made up their minds among themselves to act honestly or dishonestly, as the case may be.

Well, then, as is natural, steps were taken to find a way out. Mr. Noguera summoned Mr. Raida to come over from Tangier. He came and there were a series of conversations and they took decisions. Somehow they took decisions to act in a certain way. Now we have reached a point where there is an important conflict; there is an important conflict of evidence between Mr. Noguera and Mr. Raida on this subject. Mr. Noguera said this: "Raida told me these notes" (he is speaking of their conversation at this vital moment) "Raida told me these notes had to be assigned" ("had to be assigned," those were his words) "to the various customers; we went through the accounts; we picked out the largest credit balances and made a list of the customers and their balances. We decided how much to assign in notes to each of these important customers. Plaintiff was one of them." And now let us hear what Mr. Raida says about that. I am going to read to you the whole of his evidence-in-chief, because, after all, that is one of the main pillars of the defence, and it is right that you should be reminded of what he said:

"In November, 1936, Noguera called me over to Gibraltar to study the repercussions of a decree concerning the stamping of notes. I came here on the 20th November. I first saw Noguera at the bank. 20

"Noguera stated to me that 'the customers desired to stamp' and that he had consulted the lawyer. We then went to see the lawyer, that is, Mr. Benady, with the object of remaining within the law, or rather to reconcile the wishes of the customers with English law. Thus we consulted Mr. Benady. 'Possibly we saw Mr. Benady twice—I am not sure. If so, our second consultation must have been on 21st November.' 30

"After consulting Benady, from which it resulted that we should accede to the customers' wishes, we could not refuse the mandate entrusted to us.

"So I told Noguera to do everything through our lawyer so that all should be regularly and legally done.

"We decided to accede to our customers' wishes and to get them to sign their applications. It was a question of acceding to the customers: they had to come and sign a letter of request. I see Exhibit 8. That was the form of request, as settled with Mr. Benady, to be presented for signature by the customers. In Plaintiff's case this form was accompanied by a list. The procedure was to wait for the clients to come and make their applications. I do not know of other steps which the customers were to take. The customers who were concerned were to individualize their pesetas by means of lists. 40

"I never told Mr. Noguera to make any false representations. I never told Mr. 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 requests of customers themselves. I did not tell Noguera to call customers and persuade them to sign. 50

"We did not speak of pre- or post-18th July, 1936, circulation, because nothing was known at that time as to this. Had I known I should have passed on my knowledge to Gibraltar. I am certain we never spoke of it. I could not give orders in a matter essentially local: my instructions were to follow Mr. Benady. I never gave instructions to defraud."

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948,
continued.

Later, in cross-examination, he said this: "The Gibraltar branch was under the administrative control of Tangier. Noguera was under me as Tangier manager. But Mr. Noguera himself used his initiative as regards
10 Gibraltar matters, and his decisions were examined and sent on by Tangier."

And then comes Mr. Raida's somewhat tangled evidence as to the making of these much-talked-of lists, the lists of peseta notes. In cross-examination he said this on that subject: "There was no need to draw up lists of peseta notes allocated to individual customers in November, 1936. I have never to this day heard of that having been done." That is what he said. "I have never seen the Gibraltar branch accounts at all since 1936: that is the sub-manager's job. I see Exhibit 8 and I know the form of that letter. I see the lists attached to it. I knew that the
20 customers of the bank who desired to do so signed this form of letter. I did know on 21st November, 1936, that lists of notes were to be made in the bank for customers who voluntarily came forward wanting them. I was told that such lists had been made." I say tangled evidence, because in that short passage there is a direct contradiction of himself. You must make what you can of it all. That is the evidence as to what occurred in their conversations at that vital moment before the Plaintiff was sent for to see Mr. Noguera.

Now, what actually emerged from all that? In fact, we know (assuming that you accept the evidence on it) that the available staff of
30 the bank was set to work, working overtime until late at night, allocating individual notes to the customers and typing out these long lists of numbers of the notes.

Next, it is said in evidence by the Plaintiff that he was summoned by Mr. Noguera to come to see him on the morning of the 24th November. At that moment Plaintiff had a credit balance of 112,887 pesetas 20 centimos. The balance had been very substantially built up since the early days of March.

Now comes this all-important question of the making of the representations. It is, of course, the basis of the Plaintiff's case for fraud
40 that Mr. Noguera on that occasion, on the morning of the 24th November, made the three representations, copies of which you have. The evidence as to 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 list had been prepared before seeing the Plaintiff about it. Mr. Noguera said this: "On the 24th November I called Plaintiff to the Defendants' office and told him he must sign the letter, Exhibit 8, 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
50 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

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

Franco Government, that is, in circulation too late Plaintiff did not at that moment sign anything. Later that day I sent Bernard Linares, Defendants' employee, to see Plaintiff." And further he says, in cross-examination : "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." Then comes the Plaintiff's evidence. Listen to what he says : "On the 24th November, 1936, I was asked by Mr. Noguera by phone to go to 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 10 and a few sheets of lists of pesetas, etc., in order to take these 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." And then further on in his evidence he said this : "I believed Noguera absolutely on the 24th November, 1936 . . . Noguera never told me the lack of guias stood in his way." That is the case as far as the making of the representations is concerned.

As to the second representation, Mr. Noguera's explanation was this, and I think you should be reminded of it. In cross-examination, that is 20 to say, in answer to a question from Mr. Benady, he said this : "As to the list of pesetas in Exhibit 8 (allotted to Plaintiff) we had to prepare this and similar lists for all customers in advance of consulting them, so as to be ready. I see circular dated "Paris, 3rd April, 1939." It was then that we were told which notes were put into circulation after the 18th July, 1936. But we knew long before that ; we had received lists from the Spanish banks, before 24th November, 1936. It was, I agree, only by official information that we could know—that is a list given me by the manager of a Spanish bank ; the Banco Espanol de Crédito at La Linea. A copy was with the cashier, a copy in my office. Bernardo Linares 30 should have access to the list." And then, in answer to a question from me, he said this : "We may have received into the bank 'bad' notes before the Civil War started. We could only have checked by checking every single note with my list. I told the clerks to do it, in November, 1936. They may have been able to. I was not telling Plaintiff anything false to my knowledge about the legality of the individual notes allocated to him." Mr. Raida on this subject said this : "We did not ask the Bank of Spain in Larache or in Tetuan for the data showing 'illegal' notes. Nor did I ask Noguera to obtain the data from a bank in La Linea. Noguera did not mention to me at all that he had such data. The matter did not 40 attract our attention. I do not know where the 'illegal' notes were mostly to be found." And Mr. Sené had this to say : "We knew nothing in the bank about which notes were post-18th July, 1936—nothing till late in 1937. I see Exhibit 15 (April, 1939) which eventually gave us the information." And further he said this in cross-examination : "When we saw Article 1 of the decree of 12th November, 1936 (making post-18th July notes 'illegal'), Noguera did not write to any bank or authority anywhere asking which series of notes were referred to. The first thing is to learn about the numbers when notes are declared invalid. That is what any reasonable person would do. Meanwhile one would not 50 accept any notes of the type that might be illegal. But Noguera was in touch with the Spanish banks. In November, 1936, we had no list

in the bank, despite what Noguera and Bernard Linares say. We could have asked the Bank of Spain itself in Algeciras, but we didn't. If Noguera obtained the information, he never told us so in the bank. When Plaintiff took away his notes in December, 1938, nobody, so far as I know, checked his list for 'illegal' notes." So you see there is a conflict there as to whether or not the vital information existed in the bank in November, 1936, which would have enabled Mr. Noguera to make any statement as to whether or not Plaintiff's notes, the notes taken over by the Plaintiff, were what was known as illegal ones. And you must decide as to what is

10 the truth of the matter.

Now, as to the third of the alleged misrepresentations, Mr. Raida expressed his view of the position as follows: "I agree that we had no 'guias' and, therefore, could not take peseta notes to Spain at all after the 12th November, 1936. All we could do was to petition the Spanish authorities on the basis of the letter granting the concession (Exhibit 1, 6th March, 1936). 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." And further he said: "I agree that the decree was clear: a fixed period was laid

20 down, and the notes had to be accompanied by 'guias' if they were to be taken to Spain."

Then the next thing that happened was that the Plaintiff's brother was sent by Mr. Noguera to get the Plaintiff's signature; and, according to Mr. Sené, the Plaintiff was the very first regular customer of the bank whose signature was put to the letter of deposit which had been drafted by the bank. The Plaintiff, of course, never saw the peseta notes which thus became his property. The bank got rid of its ownership and the Plaintiff assumed the ownership at that time. Mr. Bernard Linares may perhaps, no doubt, be perfectly innocent of any fraudulent intention or dishonesty of any kind. He was sent as an agent for this purpose—

30 in this particular respect, and what he said about it, I think, is worthy of note. He said this: "I see Exhibits 10, 11 and 8. I took these documents to Plaintiff. I told him he had to sign the cheque and the paying-in slip, to pay in to a special account marked 'for stamping.' He asked if I thought everything was in order. I said 'Yes.' I tendered him Exhibit 9 (cheque) for his signature. He signed everything including every page of the list of notes. I left a copy of the list." Then, later, in cross-examination: "I thought the transaction was quite in order; Noguera had told me so; he was my manager; I took it for granted he

40 was right. I had no personal knowledge." And then a little later: "The cashier had his list of 'illegal' notes (circulated after 18th July, 1936) in order to check and refuse bad notes tendered for payment in. That list was provided for him in September, 1936. But he never used it. He disregarded it. I was working just near him." And then a little later: "I knew that notes put into circulation after 18th July, 1936, were not valid. I knew the bank had a note, as from September, 1936, of those 'illegal' notes. I knew the cashier did not bother about it. I took no precautions to protect Plaintiff in this respect. I did not think the Defendants dealt with black-marketeers, so I did not think any of the

50 Plaintiff's allocated notes were illegal; also Noguera had told me everything was in order; I had asked him whether that was so—that is, whether there was probability of the notes being stamped... Plaintiff was not

No. 24.
 Certified
 Transcript
 of Chief
 Justice's
 Summing
 Up on the
 18th
 November
 1948,
continued.

reluctant—he signed because I told him it was in order.” And finally, in re-examination, he said this : “ As to my being concerned, as a typist, in the preparation of the lists, I received bundles of notes of mixed denominations ; I had to sort them and then to type out their numbers I was not given any list of ‘ illegal ’ notes nor any instructions as to excluding them. Then I handed back my typed list to the cashier. I did not allocate to any particular customer.”

Mr. Noguera, in answer to a question from me, said in regard to that matter : “ We regarded the notes thus deposited as the Plaintiff's property until they should be stamped. Then we should have paid them into our account in Spain.” And of course it must be so : that they were transferred to the Plaintiff for what they were worth or for what they were not worth. But it is admitted as a fact that 3,325 pesetas out of that bundle of notes so handed to the Plaintiff were illegal in the sense that they were no use in Nationalist Spain, having been put into circulation after the commencement of the Civil War. 10

After that the Defendants began petitioning the Spanish authorities, continuing their efforts to get the matter straightened out. It is obvious that they would have been only too glad to get the whole thing straightened out ; they were moving heaven and earth in the ways which seemed to them to exist. They sent in these petitions, and of course here you are brought to that aspect of the case which is covered by question 6, the question of negligence. They first sent in that petition which was originally dated 25th November, but whose date was ultimately made 5th December, and with what object ? Mr. Noguera tells us what the object was : these are his words : “ I wrote to General Queipo de Llano, Commander-in-chief, Southern Army. I see a copy of my letter (Exhibit 13) I followed it up. The object of this letter was to allow us to take the peseta notes into Spain. The lack of ‘ guias ’ prevented us from taking them in.” The bank, among themselves, were fully aware that as from the 16th or 17th November they were prevented from doing what they had previously been doing, namely taking pesetas into Spain without the trouble of attaching “ guias.” Mr. Noguera says this also : “ Later, I learnt that the assessor had a lawyer brother ; Salvador Marquez suggested that Exhibit 13 be drafted in their chambers and sent to General Queipo de Llano. This was done. It was essential, because La Linea Customs had refused our transactions without ‘ guias,’ consequent on the decree of the 12th November, 1936. To petition General Queipo de Llano was the only way out.” They say the same thing over and over again. Later he says this : “ Between the 12th November and the 5th December my whole time was taken up with the question of stamping.” 20 30 40

Now you may think that, in regard to the matter referred to in question 6, at that particular period the Defendants acted vigorously; you may think they acted vigorously in several ways. The Plaintiff's contention is that they were barking up the wrong tree, that it was no good sending a petition to a General on a financial matter—that you may just as well send a petition anywhere else—that it was worthless—that they were not doing the obvious necessary things. But, of course, the Defendants barked up several trees. They took a lot of steps and appear to have taken a lot of trouble. And they did not think it was essential to send these petitions direct to General Queipo de Llano in the first 50

instance, but they did think the General was the proper channel, the only channel, by which the petition could be sent on. And one of the lawyer witnesses, a Spanish lawyer, protested that that must be so.

The Plaintiff says that the Defendants could and should have taken steps to take the actual notes inside Spain, steps which they did not take. But you heard in evidence over and over again that the Defendants knew full well that they could not take their notes into Spain, having no "guias" to accompany them. The question is: should they have done more than they did in the circumstances? Or did they act fully and properly as reasonable, prudent bankers doing their best to assist a customer? In any event, this question of negligence is, as I have mentioned previously, in a sense only an alternative to the main case, which is based on fraud. Then, of course, as regards these steps to get this matter put right, Sr. Urbano, called for the defence, took steps culminating in the call which he personally paid on Don Andres Amado in Burgos, one of the persons at the head of State affairs, corresponding to a Cabinet Minister. He was making that call on Mr. Noguera's express instructions and I may perhaps, finally, on this topic, remind you of what he said in chief: "Sr. Amado told me the difficulty was that all the transactions since 18th July, 1936, would have to be examined, because of the suspicion that current account holders had 'illegal' pesetas." And in cross-examination he said this: "I read the decree of the 12th November, 1936. This decree was the result of 'illegal' notes being put into circulation. Defendants told me nothing about in fact having 'illegal' notes in their possession. I would have ceased to act for Defendants had I known it—I always thought I was defending a just cause. I would never have carried 'illegal' pesetas."

Now you move next in the story to August, 1938. Still no progress had been made, and another decree came out. Powers were given to a tribunal set up in Burgos (Tribunal de Canje) to authenticate these notes. The Plaintiff says that he was advised by Mr. Noguera to try to get his notes passed by that tribunal. He did so. He took his notes out. Nothing came of it. He strove and strove, as you know. He was, according to the evidence, then able to deposit his notes in La Linea. Of course that was in December, 1938—two years later when the state of affairs had changed greatly as compared with November, 1936—but he got no further and there he left them. And he sent off various letters in an effort to get the tribunal to settle the matter in his favour.

The next date, and almost the last, is the 27th June, 1941. The Plaintiff's balance in his deposit account then stood at 6,850 pesetas or thereabouts. That balance had been built up even after the 24th November, 1936, and it was partly built up on the credit of 2,877 pesetas which remained in the Plaintiff's account after the transaction of 110,000 pesetas on the 24th November, 1936, because you will remember the Plaintiff did not take over notes to the full amount of his then balance. He left those 2,877 pesetas in his account in the ordinary way, the bank apparently not having suggested he should take over more than 110,000 pesetas.

So in June, 1941, he found himself with this total balance of 6,850 pesetas and they were paid out to his order in Tangier in good pesetas. Mr. Riada said that there had been nothing to prevent the same being done as regards his balance in 1936. That is what in fact happened in June,

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948,
continued.

No. 24.
Certified
Transcript
of Chief
Justice's
Summing
Up on the
18th
November
1948,
continued.

1941, but the 110,000 pesetas remained somewhere in Spain and it is not suggested by anybody—nobody has been so bold in the course of this entire case to suggest—that they will ever be seen again. You may regard them as a total loss to the Plaintiff. But the question is: what brought that loss about?

Well, on the main issue of fraud which is alleged (which of course you must distinguish from the minor issue of negligence), on the main issue, the big question is: were the Defendants honestly striving for a satisfactory solution without deceiving their customer, the Plaintiff? Is that all they were doing? Or, on the other hand, did they stoop to deceit to 10 save themselves from actual or possible loss at their customer's expense, and thereby succeed in passing on any loss that there might be to him? That is the crux of the whole case, so far as the alleged fraud is concerned.

Gentlemen, will you now consider your verdict, and, when you retire, will you take with you all the Exhibits in case you wish to refer again to any of them.

I certify the foregoing to be a transcript of my notes.

Dated this 25th day of November, 1948.

V. E. DUMAS,
Sworn Shorthand-Writer. 20

No. 25
Judgment,
18th
November
1948.

No. 25.
JUDGMENT.

Dated and entered the 18th day of November, 1948.

(L.S.)

Supreme
Court,
Gibraltar.
Entered
25th Nov.
1948.

This action having on the 9th, 10th, 11th, 12th, 15th, 16th, 17th and 18th days of November, 1948, been tried before His Honour Roger Sewell Bacon, M.B.E., Chief Justice, with a Special Jury and the Jury having found:—

1. That the Defendants made to the Plaintiff the representations mentioned in paragraph 4 of the Statement of Claim;
2. That the said representation (or representations) was or 30 were false;
3. That the Plaintiff was thereby induced to alter his position in the manner mentioned in paragraph 8 of the Statement of Claim;

4. That the Defendants made such representation (or representations) fraudulently in the sense that they knew it (or them) to be false ;

5. That the Defendants were negligent as regards taking steps between the 24th day of November, 1936, and the 14th day of December, 1936, to have the Bank of Spain notes mentioned in Exhibit No. 8 stamped ;

6. That the damages suffered by the Plaintiff amount to £2,200 ;

10 and the Chief Justice having ordered that judgment be entered for the Plaintiff for £2,200 and costs :

Therefore it is adjudged that the Plaintiff recover against the Defendants £2,200 and his costs to be taxed.

And it is certified that this was a cause proper to be tried by a Special Jury and that the costs thereof be paid by the Defendants.

And on the application of Counsel for the Defendants the Chief Justice ordered that execution of this judgment be stayed for 21 days.

By the Court :

(Sgd.) E. PIZZARELLO,

Registrar.

20

No. 26.

ORDER dismissing Motion for New Trial.

Wednesday, the 1st day of December, 1948.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.
UPON MOTION this day made unto this Court by Counsel for the Defendants for an Order that the judgment on the trial of this action be set aside and a new trial be had between the parties or alternatively that judgment be entered for the Defendants AND UPON HEARING Counsel for the Defendants and for the Plaintiff THIS COURT DOTH
30 ORDER that the said motion do stand dismissed with costs to be taxed and to abide the result of the appeal.

By the Court.

(Sgd.) E. PIZZARELLO,

Registrar.

No. 26.
Order
dismissing
Motion for
New Trial,
1st
December
1948.

(L.S.)
Supreme
Court,
Gibraltar.
Entered
7th Dec.
1948.

No. 27.
Order
giving
Conditional
Leave to
Appeal,
1st
December
1948.

No. 27.

ORDER giving Conditional Leave to Appeal.

Wednesday the 1st day of December, 1948.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

UPON HEARING Counsel for the Defendants and for the Plaintiff
IT IS ORDERED that the Defendants have conditional leave to appeal
to His Majesty in Council from the Judgment herein dated the 18th day
of November 1948 upon the following conditions :—

(L.S.)

Supreme
Court,
Gibraltar.
Entered
7th Dec.
1948.

1. Entering within seven days after the date of this Order into
good and sufficient security to the satisfaction of the Court in the sum 10
of £500.— for the due prosecution of the appeal and the payment of all
such costs as may become payable to the Plaintiff in the event of the
Defendants not obtaining an order granting them final leave to appeal
or of the appeal being dismissed for non-prosecution or of His Majesty
in Council ordering the Defendants to pay the Plaintiff's costs of the
appeal.

2. Taking the necessary steps within three months after the date
of this Order for the purpose of procuring the preparation of the Record
and the dispatch thereof to England.

AND UPON Counsel for the Defendants undertaking that the 20
Defendants will enter within fifteen days after the date of this Order
into good and sufficient security in the sum of £3,000.— or will deposit
that sum into Court for the payment of the said Judgment and costs in
the event of the appeal being dismissed for non-prosecution or of
His Majesty in Council dismissing the said appeal and ordering the
Defendants to pay to the Plaintiff the said Judgment and costs IT IS
ORDERED that the execution of the said Judgment be stayed pending
the appeal herein AND IT IS FURTHER ORDERED that the costs
of this motion abide the result of the appeal.

By the Court,

(Signed) E. PIZZARELLO,

Registrar.

30

No. 28.
Bond
for £500 for
Respon-
dent's
Costs of
Appeal,
7th
December
1948.

No. 28.

BOND for £500 for Respondent's Costs of Appeal.

KNOW ALL MEN by these presents that BARCLAYS
BANK (Dominion, Colonial & Overseas) a Banking Company
whose registered office is situate at No. 54 Lombard Street
in the City of London and who carry on business at Nos. 83,
85, 87 and 89 Irish Town Gibraltar are bound to JEROME
LINARES the above-named Plaintiff Respondent for the 40
payment to him of the sum of Five hundred pounds sterling.

SEALED with the Seal of George Ivens Paul of
Gibraltar Acting Bank Manager as the attorney of the
above-named Barclays Bank (Dominion, Colonial & Overseas)
at Gibraltar the Seventh day of December One thousand
nine hundred and forty-eight.

Ten
Shillings
Stamp
Duty.
Supreme
Court,
Gibraltar.
Filed
7th Dec.
1948.

(Signed)
E. Pizzarello
Registrar,
Supreme
Court.

WHEREAS in an action which came for hearing at the Supreme Court
of Gibraltar on the 9th, 10th, 11th, 12th, 15th, 16th, 17th and 18th days

of November 1948 wherein the Respondent was Plaintiff and the Appellants were Defendants His Honour the Chief Justice delivered Judgment in favour of the Respondent on the 18th day of November 1948 AND WHEREAS on the 26th day of November 1948 the Appellants gave Notice for leave to appeal to the Judicial Committee of the Privy Council against the said Judgment of the Supreme Court of Gibraltar AND WHEREAS upon the hearing of the said Motion on the 1st day of December 1948 it was ordered that the Appellants have conditional leave to appeal to His Majesty in Council from the said Judgment upon entering

10 within seven days after the 1st day of December 1948 into good and sufficient security to the satisfaction of the Court in the sum of Five hundred pounds sterling for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellants not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellants to pay the Respondent's costs of the appeal and procuring within three months from the date of the said Order the preparation of the Record and the dispatch thereof to England AND WHEREAS the Court has approved of and is satisfied

20 with the above-written bond with the condition hereunder written as a proper security to be given in pursuance of the said Order and in testimony whereof the Registrar has signed his name on the margin hereof NOW THE CONDITION of the above-written Bond is such that if the Appellants and Barclays Bank (Dominion, Colonial and Overseas) or either of them or their assigns do pay or cause to be paid unto the Plaintiff the Respondent in this appeal his executors administrators or assigns all such costs as may become payable to the said Respondent in the events aforesaid THEN this obligation to be void and of no effect otherwise to be and remain in full force and virtue.

No. 28.
Bond for
£500 for
Respondent's
Costs of
Appeal,
7th
December
1948,
continued.

30 SIGNED sealed and delivered by the above-named George Ivens Paul as the attorney of the within-named Barclays Bank (Dominion, Colonial & Overseas) by virtue of a Power of Attorney of the said Barclays Bank (Dominion, Colonial & Overseas) dated the 4th day of December 1946 in the presence of :—

Barclays Bank (Dominion,
Colonial & Overseas) by
their attorney

(Signed) G. I. PAUL

40 (Signed) S. BENADY
Barrister-at-Law

(Signed) H. J. COELHO
Accountant

No. 29.
Order
giving Final
Leave to
Appeal,
24th
February
1949.

No. 29.

ORDER giving Final Leave to Appeal.

Thursday the 24th day of February, 1949.

Before His Honour ROGER SEWELL BACON, M.B.E., Chief Justice.

IN COURT

(L.S.)

Supreme
Court,
Gibraltar.
Entered
26th Feb.
1949.

UPON HEARING Samuel Benady Esquire of Counsel for the Defendants Appellants and William Martin Isola Esquire of Counsel for the Plaintiff Respondent IT IS ORDERED that the Defendants Appellants have final leave to appeal to His Majesty's Privy Council from the Judgment herein dated the 18th day of November 1948 AND 10 IT IS FURTHER ORDERED that the costs of this Motion abide the result of the appeal.

By the Court,

(Signed) E. PIZZARELLO,

Registrar.

No. 30.
Registrar's
Certificate
verifying
Transcript,
14th March
1949.

No. 30.

REGISTRAR'S CERTIFICATE verifying Transcript.

IN THE SUPREME COURT OF GIBRALTAR.

1947. L. No. 5.

Between JEROME LINARES - - - - - Plaintiff, 20
Respondent

and

CREDIT FONCIER D'ALGERIE ET DE
TUNISIE - - - - - Defendants,
Appellants.

I, ERNEST PIZZARELLO, Registrar of the Supreme Court of Gibraltar, HEREBY CERTIFY, that the foregoing is a true copy of the original documents in this action of which it purports to be a copy, that the fees and expenses incurred and paid by the Appellants for the preparation of this transcript amount to the sum of £16 16s. 8d., and 30 that a Bond for £500 for security for costs has been entered into by the Appellants.

Dated the 14th day of March, 1949.

(Signed) E. PIZZARELLO,

Registrar.