

Privy Council Appeal No. 17 of 1916.

Alfred James Fowler - - - - - *Appellant,*

v.

**The English, Scottish, and Australian Bank
(Limited)** - - - - - *Respondents,*

FROM

THE SUPREME COURT OF THE STATE OF NEW SOUTH WALES.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 12TH FEBRUARY, 1918.**

Present at the Hearing :

EARL LOREBURN.
LORD DUNEDIN.
LORD SUMNER.
LORD PARMOOB.

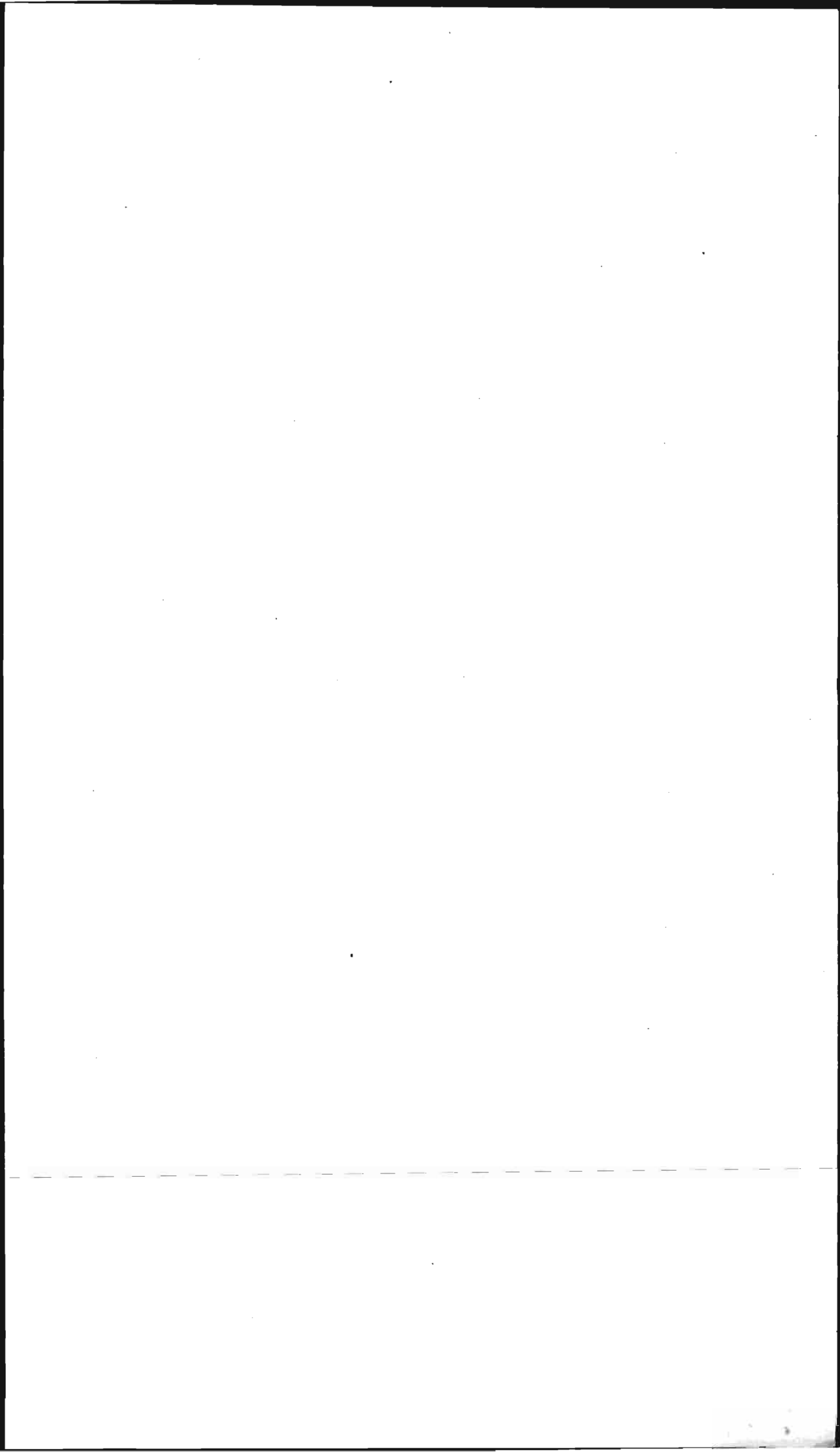
[*Delivered by* EARL LOREBURN.]

THIS has been a deplorable litigation, and their Lordships cannot too much regret that it should have been protracted so long.

There was a contract between the appellant and the respondents, and according to that contract the respondents were to lease certain premises from the appellant. These premises were to be all completed and fit for habitation to the satisfaction of the respondents or their architect. The appellant did not carry out his contract, and therefore the respondents became entitled to specific performance, unless they had so acted as to deprive themselves of that right. Their Lordships are unable to see that they have so acted. There is no trace of this point having been taken in the Supreme Court. But it is said that the obligation referred to in the contract would be satisfied by a Chubb's Patent Strong Door being placed in the building—of which the price was left blank. It is the case that it was to be a door of that description, but it was

also to be a door in a building which was to be completed and fit for habitation to the satisfaction of the respondents or their architect. It may be put in general terms—a satisfactory door of the kind described, conforming to the specification, and, having regard to the clause which has been referred to. Reasonably satisfactory it was to be. It was not that, said the learned Judge in the Court below, and their Lordships see no reason for differing from him, taking the statement by the learned counsel for the appellant of the evidence as being accurate, as their Lordships have no doubt that it was.

Accordingly their Lordships will humbly advise His Majesty that this appeal be dismissed with costs.



In the Privy Council.

ALFRED JAMES FOWLER

v.

THE ENGLISH, SCOTTISH, AND
AUSTRALIAN BANK (LIMITED).

DELIVERED BY
EARL LOREBURN.

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