

Privy Council Appeal No. 17 of 1925.

Charles Adeniran Bucknor and another - - - - *Appellants*

v.

Barclay's Bank (Dominion, Colonial and Overseas) formerly called
and sued as the Colonial Bank - - - - *Respondents*

FROM

THE SUPREME COURT OF NIGERIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 21ST JUNE, 1926.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

LORD DARLING.

[*Delivered by* VISCOUNT HALDANE.]

In this case their Lordships have no hesitation in advising that the decision of the Supreme Court of Nigeria should be affirmed. The appellant Bucknor was a produce merchant who carried on business in Lagos. On the 9th March, 1920, he wrote to the respondent Bank that, in consideration of the Bank having (as they had in fact done) advanced to him £5,902 10s., he hypothecated and charged to them certain produce mentioned, undertook to ship such produce when requested, and until reimbursement held it on trust for the Bank and undertook to deliver it to the Bank when requested. On the 12th May, 1920, the Bank called on the appellant Bucknor to give the Bank security for £2,500 at which they valued certain of the said produce which had been retained by him up-country and was not under the Bank's control. As the result a mortgage was granted to the Bank by the second appellant (the first appellant concurring in it). It was dated the 17th May, 1920. This mortgage provided that "in consideration of the Bank continuing a banking account with the

debtor" (the first appellant), the premises specified (being certain buildings belonging to the second appellant) were conveyed by way of mortgage to the Bank to secure payment of all moneys and liabilities already advanced, paid or incurred to or for the debtor by the Bank or that the Bank may at any time advance pay or incur to or for the debtor.

The Bank thereupon kept open the banking account of the first appellant. On the 20th May the first appellant wrote to the Bank asking if he could have an overdraft up to £3,000 in view of the security which had been deposited with them, and on the same day the Bank wrote to him declining to allow "any overdraft until the position of your hypothecated produce had been cleared up and same shipped." Then followed correspondence, extending to February, 1921, in the course of which the Bank informed the first appellant that if the overdraft was not paid off the Bank would realise the mortgage security. On the 28th December, 1922, the Bank demanded payment of £5,168 7s., being the amount then owing on overdraft, and intimated that if it was not paid the security would be realised. On the 16th June, 1923, the Bank advertised the premises mortgaged as for sale, and on the 27th June, the action on which this appeal arises was commenced by the appellants, claiming rescission of the mortgage and an injunction to restrain the sale.

Rescission is not a remedy open to the appellants in the circumstances. Nor does it appear that the respondent Bank have committed any breach of their agreement in the mortgage deed. Evidence has been given that Mr. Miller, the manager of the Bank, said at the time when the mortgage was being negotiated that the Bank would make advances up to £2,000, but after the mortgage had been made the Bank intimated that before any overdraft could be allowed, the position of the hypothecated produce must be cleared up and the produce (which had been left up country and out of the control of the Bank), shipped. In a letter of the 11th February, 1921, the Bank, having inspected the produce in the first appellant's store in Lagos, drew his attention to a substantial shortage. In their Lordships' opinion nothing in the conversation with Mr. Miller nor anything that happened since, precluded the Bank from protecting themselves by insisting on the terms of the mortgage already quoted. The first appellant was under a continuing obligation, apart from these terms, to ship the produce which had been left up country, and there is nothing in the mortgage deed which either interferes with these terms, or imposes on the Bank an obligation to make any particular advances. What the first appellant got by the mortgage was the continuance of his banking account, and the relation of banker and customer appears to have been continued for more than two years, until December, 1922.

Their Lordships agree with the reasons given for dismissing the action by the two Courts below, and they will humbly advise His Majesty that this Appeal should be dismissed with costs.



In the Privy Council.

CHARLES ADENIRAN BUCKNOR AND ANOTHER

v.

BARCLAY'S BANK (DOMINION, COLONIAL AND
OVERSEAS) FORMERLY CALLED AND SUEDE
AS THE COLONIAL BANK.

DELIVERED BY VISCOUNT HALDANE.

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