

James Eggay Taylor - - - - - *Appellant*  
v.  
The United Africa Company, Limited - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1937.

---

*Present at the Hearing :*

LORD MAUGHAM.

LORD SALVESEN.

SIR LANCELOT SANDERSON.

[*Delivered by LORD MAUGHAM.*]

---

Consequent upon the preliminary judgment of their Lordships, it now becomes necessary to decide upon the evidence properly called or put in before the trial Judge whether the respondents are entitled to judgment against the appellant for the sum of £7,816 or for some smaller sum as damages for breach of contract by the appellant of his agency agreement with the respondents dated the 28th February, 1933.

By the agreement the appellant agreed to serve the respondents, a limited company registered in England, as their agent in Cape Coast Castle or elsewhere in the Gold Coast Colony or Ashanti as they might require as from the 1st March, 1930, until the employment should be terminated by three months' notice in writing. Among the usual clauses in such an agreement the most important for the present purpose are clauses 2 and 3, which (so far as material) are in the following terms:—

“ 2. The agent shall keep proper books of account containing entries of all moneys received and paid and of all goods received or sold or delivered out by him on account of the Company. . . .

“ 3. The agent shall be responsible for all goods and moneys which shall be received at the factory or factories of which he shall be in charge from time to time and in case of any deficiency which may be due directly or indirectly to his act, neglect, or default shall forthwith pay to the company the selling prices of the goods and/or the amount of the moneys constituting the deficiency.”

It may be added that the remuneration of the appellant was to be £500 per annum and a commission.

At all material times it has been admitted by the appellant that as the result of the frauds of Acquah, the former cashier, and Carr, the former book-keeper, at the branch under the management of the appellant (commonly called “Swanzys”) the respondents had been defrauded

of moneys to the amount of £7,816. The question to be determined may be stated as the question whether this loss can be shown to be due directly or indirectly to the appellant's negligence, meaning by that word his breach of duty under the clauses above set forth. Those duties certainly involved some supervision and checking of the acts of the cashier and book-keeper and some examination of the books and papers which they kept or with which they were concerned. In this connection it is desirable to point out that the first fraud was committed on the 3rd November, 1930, some eight months after the appellant took over the branch, and that the defalcations went on till the 3rd March, 1932, without apparently arousing any feeling of suspicion in the mind of the appellant. The frauds were eventually discovered, not by the diligence of the appellant, but as the result of the head office in London requiring explanations of discrepancies in the accounts sent by the appellant to London. The fact of these discrepancies, as will be explained later, ought certainly to have been observed by the appellant, and when he was urgently and repeatedly required to explain them, he discovered the frauds without difficulty by an examination of the books and the procuring of an interbranch statement from the office of the African and Eastern Trade Corporation, a company which was in effect controlled by the respondents. (See the appellant's letter of the 21st March, 1932, to the respondents.)

Their Lordships in the first place will state some of their general conclusions in relation to the charge of negligence, prefacing them with the remark that they have seen no reason for doubting the evidence given by Alexander Frederick Bray as to the ordinary duties of the agent in charge of a station like Swanzy's in the Cape Coast. Mr. Bray was an independent witness who was at the material time the general manager of the respondents in that part of Africa and he was a person of large experience.

The first point relates to the trial balances sent to London. The appellant admitted in cross-examination at the trial that he signed every month these trial balances and certified them in the following words, "I have checked the balances on the trial balances as they appear in the ledger and have found them in accord. I have also checked and found correct the additions of the trial balances." These certificates were quite untrue. He swore in the course of the trial of Carr and Acquah (referred to in the preliminary judgment) that he considered it his duty to see that the trial balances were correct before he signed them, and further that "in theory every agent is supposed to check the ledger but in practice he only checks those" (*semble*, items) "which are high or suspicious." In cross-examination in this action before the trial Judge he admitted that he had never checked the ledger and that he had never checked the additions on the trial balances, and further, that for four months his branch sent trial balances to London purporting to show that the branch had £4,000 more than in fact they had and

that if he had "checked properly" he would have discovered the loss of the £4,000. Their Lordships are clearly of opinion that but for the appellant's negligence this loss would not have occurred.

The second general matter of importance relied on by the respondents is that during the whole of the relevant period the appellant, although he signed the cash book, never properly checked the amount of the cash in the safe to see whether it agreed with the amount shown by the cash book. The branch was a large one. The appellant had between 15 and 20 clerks under him, exclusive of store-keepers. Very large sums were received in cash, particularly at the end of each month. It was proved by Mr. Bray and by one Hopkins to be the duty of such an agent as the appellant regularly to check the cash in the safe with the cash book on the morning following the closing of the cash book. This indeed is the only practical method of ascertaining that the entries in the cash book are true and genuine. The appellant at the trial of Acquah and Carr said that he had never checked the cash in the safe, and it was proved that he made the same statement to Mr. Bray. At the trial he sought to go back from these statements; but he admitted that he "did not actually count the cash during the relevant period" whatever that may mean. It seems evident, apart from his statement, that in fact he did not regularly count the cash for, if he had, some if not most of the frauds could not have taken place, or if they had been effected would have been discovered and have been followed by the prompt dismissal of Acquah and Carr. The appellant's negligence in this respect seems to their Lordships to have been clearly established.

In the third place it should be added that the abstraction of moneys was greatly facilitated by the default of the appellant in permitting large sums to be or to appear to be in the safe contrary to the express instructions which had been given to him. The proper course was daily to pay into the bank all but a small amount of the cash received.

Another fact of general importance on the issue of negligence should now be mentioned. Counsel for the appellant, in his able argument, relied greatly on the circumstance that the appellant's branch at the relevant dates had no separate account with the bank and therefore no pass book from which the considerable amounts alleged to have been paid into the bank could be checked. The system had been altered shortly before the appellant was appointed, and there was thereafter only one account with the bank, that of the African and Eastern Trade Corporation. It was urged that it was impossible for the appellant to ascertain whether the amounts appearing from counterfoil pay-in slips stamped by the bank to have been paid into the bank had really reached the bank, since these slips had been fraudulently altered. Their Lordships are unable to accept this contention as applying to the whole of the period during

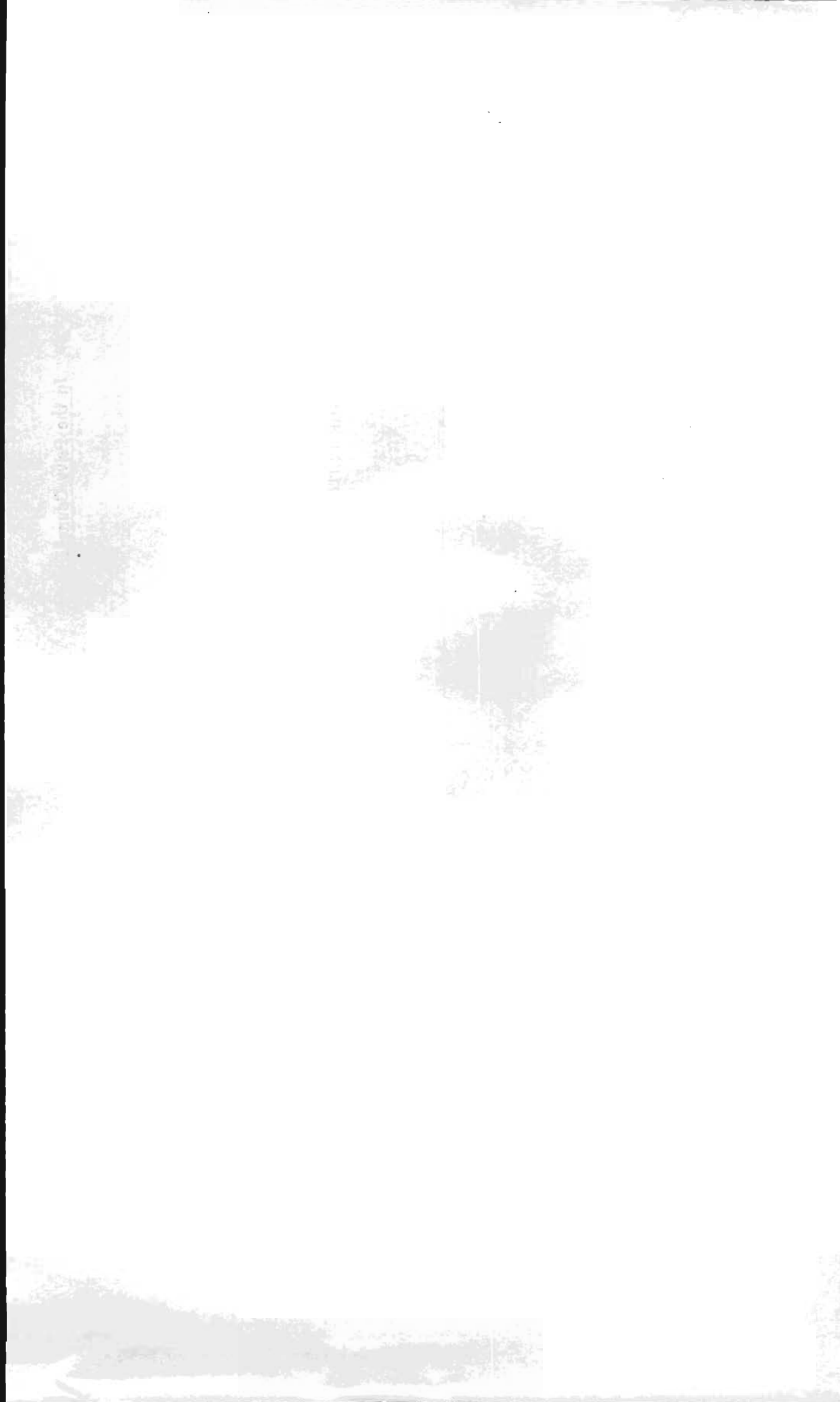
which the frauds were being committed. Verbal instructions had apparently been given for the sending monthly of what were called "interbranch statements" which would have shown the amounts paid by a branch to the credit of African and Eastern Trade Corporation. The appellant denied that he had received such instructions, though he admitted that the statements should be sent if interbranch cheques were being sent and he said he sent none, and though he received at least a dozen interbranch cheques he received no interbranch statements, nor did he send any. Accepting this statement, it remains the fact that there were other ways of checking the payments into the bank; apart from the counterfoil pay-in slips stamped with a banker's stamp (which will be referred to in detail later) inquiry could have been made either from the bank or from African and Eastern Trade Corporation. The absence of a pass-book made it all the more desirable from time to time to ascertain that the whole of the amounts alleged to have been paid into the bank in cheques and cash were reaching it. This point, like several others, cannot be considered without reference to other circumstances which should have shown the appellant that something was wrong. It is not in dispute that in numerous instances the balances shown on the trial balances certified by the appellant did not accord with those shown in the ledger. Their Lordships plainly cannot accept the suggestion that the certificates signed by the appellant were only formalities and they must come to the conclusion that if the appellant had regularly carried out his duty and done that which he certified he had done, he would have discovered that actual defalcations had taken place and he would doubtless have taken the steps which he put off in fact till April, 1932.

As appears from the above conclusions their Lordships have no hesitation in finding that the charges of negligence and breach of contract brought against the appellant have in the main been established. The only question that has called for very careful consideration is the question of the date at which the defalcations and forgeries of Acquah and Carr should have been discovered by the exercise of reasonable supervision and scrutiny of relevant documents. The respondents in the particulars delivered on the 30th October, 1936, for the purpose of assisting their Lordships in dealing with the case as to damages relied (*inter alia*) on frauds specified in six items, namely, (1) £600 misappropriated on the 3rd November, 1930, (2) £67 10s. on the 12th November, 1930, (3) £32 10s. on the 15th November, 1930, (4) £2,110 shown as paid into the bank on the 3rd and 5th December, 1930, (5) £2,110 shown as paid into the bank on the 2nd January, 1931, (6) £1,208 10s. shown as paid into the bank on the 6th January, 1931. (The total loss was not the whole amount but amounted to £3,300, some sums having been repaid.) Taking the first item, the earliest of all in date, the nature of the fraud was as follows:—£1,610 was shown in the cash book as paid by the Swanzy branch to the bank; in fact £1,010

only was so paid. The £600 difference had already been stolen. As regards the second item £67 10s. was shown in the cash book as paid into the bank on the 12th November; in fact nothing was paid in as regards that amount. As regards the third item £90 10s. was shown as paid in; in fact £55 was actually paid in. As regards the fourth item £1,010 was shown by the cash book as paid into the bank on the 3rd December and £1,100 as paid into the bank on the 5th December; in fact nothing was paid in on those dates. These items will serve to test the matter. The appellant's case, as already indicated, was that he could not effectively check the payments-in because he had no pass-book; but he alleged that he did verify the cash book by looking at the counterfoil pay-in slips stamped by the bank. No such pay-in slips were, however, forthcoming in respect of the first six items above mentioned, and their absence was not explained. With respect to other and later items, in reference to which such slips were produced, it is clear that the counterfoil pay-in slips were fraudulently altered to make the slips appear to agree with the cash book. The alterations were not in all cases very skilfully effected, and in some cases the amounts purporting to have been paid in were so much in excess of the true amounts (e.g., £595 instead of £95) that it seems strange that the appellant, if in truth he compared the items in the cash book with the slips, was not rendered suspicious and led to make inquiries at the bank. It is indeed strange that he did not see at once on scrutiny that the counterfoil pay-in slips had in some cases been tampered with. But another and a more serious criticism of the appellant's conduct is that with regard to some of the items (e.g., those numbered 2 and 4 above mentioned) nothing had been paid into the bank and there was therefore no counterfoil pay-in slip available for fraudulent alteration. Taking this fact together with the unexplained absence of the pay-in slips for the first six items, the clumsiness of some of the forgeries, the fact that none of the usual marks of cancellation were found on the counterfoil pay-in slips which were produced, and the unsatisfactory nature of the evidence given by the appellant on this and other matters their Lordships are driven to the view that the explanation of the whole affair is that there was no proper scrutiny, examination, check or precaution taken by the appellant, that he trusted implicitly to his subordinates Acquah and Carr, and that they took advantage of his lack of ordinary care to commit all these gross and generally clumsy frauds on the respondents. Their Lordships must come to the conclusion that a reasonable compliance with his duties would have led the appellant to detect the theft of £600 out of cash shortly after the 3rd November, 1930, and that the appellant is responsible for the whole of the subsequent defalcations, namely, £7,816 less this sum of £600, i.e., for the sum of £7,216.

Pursuant to the decision of the West African Court of Appeal the respondents recovered judgment against the appellant for the sum of £7,816 and costs both in that Court

and in the Court below. This judgment should be varied by reducing the amount to £7,216. The question of costs has been carefully considered by their Lordships. The final result of the litigation is that the appellant remains liable for a large sum; but he has been wholly relieved by their Lordships from any judgment based on fraud. On the other hand it was not the fault of the respondents that the issue of fraud, with such unfortunate results as to expense, came to be introduced into the case. On the whole their Lordships think that justice will be done by leaving undisturbed the judgment of the Court of Appeal as to costs, and by making no order as to the costs of the appeal to His Majesty in Council. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

---

---

JAMES EGGAY TAYLOR

v.

THE UNITED AFRICA COMPANY,  
LIMITED

---

---

DELIVERED BY LORD MAUGHAM

Printed by His Majesty's Stationery Office Press,  
Pocock Street, S.E.1.

1937