IN THE ROYAL COURT OF JERSEY

26th November, 1987 (Reserved: 23Nov'87).

203.

87/75

Before Mr. V.A. Tomes, Deputy Bailiff

Jurat P.G. Blampied

Jurat P.G. Baker

Between	Sarum Hotel Limited	Plaintiff
And	Select Agencies (Jersey) Limited	First Defendant
And	Barry Shelton	Second Defendant

Advocate J.A. Clyde-Smith for Plaintiff
Advocate M.M.G. Voisin for First and Second Defendants

On the 19th September, 1979, the Plaintiff and the First Defendant executed a written lease whereunder the premises known as The Sarum Hotel, New St. John's Road, St. Helier, and the goodwill of the hotel business conducted therefrom and certain furniture, furnishings, effects and equipment in trade, were let by the Plaintiff to the First Defendant for eight years and six months commencing on the 1st May, 1979 and terminating on the 31st October, 1987. The payment of the rental and the performance of the terms of the lease were guaranteed by the Second Defendant inter alia.

This action is concerned primarily with Clause 4 of the Lease, the relevant parts of which read as follows:-

"The said annual rental shall be subject to increase.....secondly as from the first day of May, 1985, in accordance with the proportionate rise in the figures of the Jersey Cost of Living Index (or such other official Index as may succeed it) last published before the said first day of May, 1985 (...taking Sixty-four Thousand Pounds (£64,000) to be the base rent the subject of the increase) compared with those last published before the said first day of May 1979 Provided That if such increase were in the opinion of the Lessee Company to exceed by ten per cent the market rental then prevailing for similar

premises then the Lessee Company shall have the option by giving written notice to the Lessor Company within seven days of such increase being notified by the Lessor Company to the Lessee Company....of referring the matter to a single independent and impartial arbitrator acting as an expert and appointed by the President for the time being of the Jersey Auctioneers and Estate Agents Association who shall ascertain the market rental prevailing for similar premises (taking into account

(i) the furniture furnishing effects and goodwill....

(ii) that the sum of Sixty-four Thousand Pounds (£64,000) per annum is accepted by both parties as being the market rental prevailing for the premises as at the commencement of the present lease) and in the event of the said increase exceeding the market rental prevailing as then ascertained by the Arbitrator by more than ten per cent then the said annual rental shall be reduced to ten per cent above the market rental prevailing Provided Further That:-

(i) pending such reference to an arbitrator the rental shall be payable at the full rate and in the event of the rental being decreased then the Lessor Company shall reimburse the Lessee Company such sums as may have been over paid.

(ii) in any event the rental shall on each review be increased by a minimum of ten per cent.

(iii) the cost of the Arbitrator shall be met by the Lessee Company and Provided Further that the said rental hereinbefore stipulated and any increase thereof hereunder shall never be decreased..."

On the 24th April, 1985, the Plaintiff informed the first Defendant in writing that the annual rental payable with effect from 1st May, 1985, in accordance with the terms of Clause 4 of the Lease would be £108,192.00.

On the 29th April, 1985, the Second Defendant (who as a Director of the First Defendant was undoubtedly writing on their joint behalf) wrote two letters. The first of these was to Mr. David J. Evans F.S.V.A., of Healey & Baker International, who had been appointed as Arbitrator in a dispute between the parties as to the market rental prevailing for similar premises as at the 1st May, 1982. Mr. Shelton wrote to Mr. Evans in the following terms:-

"As you know there is another review due on 1st May, 1985. Mr. Weston (representing the Plaintiff) is again claiming the maximum amount and we ask if you will once again act as arbitrator to determine the market rental".

The second letter was addressed to Mr. Robert L. Weston, Managing Director of St. Helier International Limited, representing the Plaintiff, and said:

"With reference to your recent request for the full cost of living index rise on the rent review, we naturally wish to refer this matter to arbitration.

"In consequence, we have of today's date written to Mr. Evans of Healey and Baker asking him, once again, to act as arbitrator".

Mr. Evans replied to Mr. Shelton on the 30th April, 1985, the relevant paragraphs of which read:-

"I thank you for your letter of the 29th April and note that you would wish us to act as the Arbitrator in determining the 1985 rent review.

"May I respectfully suggest as we are now so close to having all the relevant information to hand to release our award that we wait until the 1982 review has been determined before acting on your further kind instructions".

The Arbitration Award in respect of the market rental prevailing as at the 1st May, 1982, was released on the 19th July, 1985 and assessed the market rental at £62,000. A revised award was released by Mr. Evans on the 3rd January, 1986, which increased the market rental as at 1st May, 1982, very slightly to £62,250.

There was protracted correspondence between the parties between May, 1985 and August, 1987, about the 1985 rent review, almost all of it in one direction, i.e. from Mr. Weston to Mr. A. (Tony) Shelton. On several occasions Mr. Weston, by implication, acknowledged that the rental arrived at by the strict application of the cost of living formula was too high, and invited proposals for arriving at a rental figure by negotiation.

On the 23rd June, 1987, Mr. Voisin, on behalf of the defendants, wrote to Mr. Evans and the relevant parts are:-

"Our client, Mr. B. Shelton of Select Agencies (Jersey) Limited, wrote to you on the 29th April, 1985, requesting that you should act as Arbitrator.....

"You will recollect that you likewise acted as Arbitrator in connection with the rent review as at the 1st May 1982....

"It appears that you have taken no further action since receiving our client company's letter to you of the 29th April 1985 and this may have been because you were still dealing with the rent review of the 1st May 1982 and I shall be obliged if you would kindly take up this matter again with a view to undertaking the arbitration as requested by my client company...."

Mr. Evans replied on the 26th June, 1987, and the relevant paragraphs read:

"I certainly recollect acting as arbitrator in order to determine the revised rent payable as from 1 May 1982. I also recall having been asked by Select Agencies (Jersey) Limited to undertake the arbitration as at 1 May, 1985, but as this request was made at the time we were settling the 1982 review, you may well imagine I felt it essential to complete the 1982 review first.

"Whilst I would be willing to act as arbitrator in determining the 1985 review, this would clearly also require the agreement of Sarum Hotel Limited and I would also require both parties' acceptance of an unreasoned award as opposed to a reasoned award given on the previous occasion".

A copy of that letter was sent to Mr. Clyde-Smith and, on the 30th June, 1987, Mr. Weston wrote to Mr. Voisin. The relevant parts are:-

"Paragraph 4 of the lease....says "Referring the matter to a single independent and impartial arbitrator acting as an expert and appointed by the President for the time being of the Jersey Auctioneers and Estate Agents' Association". Whilst it is always, of course, open to the parties to the lease to agree upon an arbitrator, it is not the prerogative of the tenant to appoint one unilaterally.

".... If your clients, due to their own excessive delay, have not already lost their right now to claim arbitration, we would prefer that a different arbitrator; rather than Healey & Baker, be appointed in respect of this later arbitration...."

Mr. Voisin replied on the 3rd July, 1987, and again we quote the relevant parts:-

"I write....concerning the proposed arbitration....which had been referred by my client company....to Messrs. Healey & Baker.

"This reference was made by my client company for the reason that Messrs. Healey & Baker had acted on the previous rent review and it was assumed that you would agree....

"Will you kindly advise as to your proposed choice of arbitrator or, alternatively, whether you wish us to write formally to the President of the Jersey Estate Agents Association with a view to his nominating an arbitrator".

Mr. Weston replied on the 7th July, 1987, and we quote:-

"Since receiving their notice of intended arbitration, we have frequently asked your clients to begin the relevant procedure and have, on more than one occasion advised them of our preference that a different firm of valuers be appointed. So we are rather surprised that an assumption was made that we would agree to the re-appointment of Messrs. Healey & Baker. Perhaps your clients are belatedly trying to establish that they have not been letting the grass grow under their feet.

"In the meanwhile, perhaps the current President of the Jersey Estate Agents' Association could be asked to supply you with a list of two or three suitable valuers...."

Finally, Mr. Voisin reacted to that letter on the 10th July, 1987, when he wrote two letters. In one to Mr. Weston he said:-

"....you were formally advised on the 29th April, 1985, of our client company's reference of the arbitration to Messrs. Healey and Baker International and it has taken you some two years to advise that you would not agree with that course of action.

"I have had cause to examine the lease, which provides that the reference to arbitration shall be "to a single independent and impartial arbitrator acting

as an expert and appointed by the President for the time being of the Jersey Auctioneers and Estate Agents Association".

"I do not accordingly think it appropriate to write to the President for a list of two or three suitable valuers and I have taken the step of writing to the President....requesting that he should appoint an arbitrator pursuant to the terms of the lease...."

The other letter was addressed to the President of the Association and was a formal request that he should nominate a Jersey Estate Agent, particularly one with hotel experience, to act as arbitrator.

Thereafter, matters progressed speedily; Mr. David M. Hunter, F.R.I.C.S., of Jones Lang Wooton was appointed to be arbitrator; submissions and counter-submissions were lodged by the parties; and the arbitrator made his award on the 21st October, 1987.

The case for the Plaintiff is that, under Clause 4 of the Lease, the full rent in accordance with the Cost of Living Index became payable on the 1st May, 1985, and continued to be payable until the award of the arbitrator was delivered. Then, under paragraph (ii) of the first proviso to Clause 4, the excess rent payable by the First Defendant, i.e. the rent in excess of ten per cent above the market rental prevailing, fell to be reimbursed by the Plaintiff to the First Defendant. However, in the meantime the Plaintiff would have had the use and enjoyment of the excess rent.

The first Defendant failed to pay the full rent but paid the minimum increase in rental due under Clause 4 of the lease i.e. the rental previously payable as a result of the review of the market rental prevailing as at the 1st May, 1982, plus ten per cent.

In the event, the arbitrator determined that the market rental prevailing as at the 1st May, 1985, was £75,000, which, under clause (ii) of the second proviso to Clause 4 of the lease, has to be increased by ten per cent. Because the First Defendant never paid the full rent in accordance with the Cost of Living Index, no reimbursement falls to be made. Further, because there was a shortfall in the amount actually paid by the First Defendant, the First and/or Second Defendants are indebted to the Plaintiff for the difference between the amount actually paid and the market rental prevailing plus ten per cent. The period for which that shortfall is due is the 1st May, 1985, to the 31st October, 1987, when the lease terminated. The parties agreed that the amount due is £15,180.

However, Clause 13 of the lease is in the following terms:-

"The Lessee Company shall pay interest to the Lessor Company on any sum or sums outstanding under the terms of this lease at the rate of five per cent per annum above the Bank of England minimum lending rate (or such other official rate as may succeed it) prevailing at the time from the date the same shall have become due to the date of repayment".

Accordingly, the Plaintiff claims interest due on overdue rental instalments on the basis that the full rent on the basis of the Cost of Living Index should have been paid and the excess rent reimbursed after arbitration.

The Defendants deny the claim of the Plaintiff; they rely on paragraph (i) of the second proviso to Clause 4 of the lease which provides that "pending such reference to an arbitrator the rental shall be payable at the full rate". They contend that the full amount of the annual rental increase never came into effect. They rely on the two letters of the 29th April, 1985, which, they say, constituted a reference to an arbitrator. They contend that the full rental of £108,192 "proposed" by the Plaintiff was not payable by the First Defendant

as it would only have been payable from the 1st May, 1985, and, even then, only "pending such reference to an arbitrator" and that the rental is not payable at the full rate "pending arbitration".

On the other hand the Plaintiff argues that the words "as and from" the 1st May, 1985, in clause 4 shows a clear intention of the parties that the rental is to be increased with effect from that date and not from the date of the arbitrator's award - and that it would require very clear words in the proviso to take away the effect of the words "as and from" in the main body of the clause; that the use of the word "such" in paragraph (i) of the second proviso, in preference to the word "the" implies a reference back to the first proviso, which provides for the ascertainment of the market rental prevailing; that the clause envisages only a reduction in rent - see paragraph (ii) of the first proviso "in the event of the said increase exceeding the market rent prevailing as then ascertained by the arbitrator by more than ten per cent then the said annual rental shall be reduced to ten per cent above the market rental prevailing" - thus, the Plaintiff contends, in the eyes of the parties when they entered into the lease they anticipated the full cost of living index rental being charged and paid and contemplated only a subsequent decrease in rental coupled with a reimbursement; and that paragraph (i) of the second proviso merely provided the mechanism for reimbursement by the Plaintiff to the First Defendant, there being no provision for an underpayment which is what has transpired.

The Defendants envisaged firstly, an automatic increase in accordance with the cost of living index, lasting only for the few days that it might take the First Defendant to "refer" the matter to an arbitrator - indeed in this case the increased rent would not take effect at all since the "reference" was made on the 29th April, 1985, and the increase would not have come into force until the 1st May, 1985; secondly, that the "reference" would have for effect the decrease in the rental to the minimum increase i.e. ten per cent above the market rental previously prevailing; and thirdly, that when the arbitration award was made the rental payable would again be increased.

Both parties agreed that the crux of this case falls around the interpretation of the words "pending such reference to an arbitrator" in paragraph (i) of the second proviso. The Defendants argued that those words must be construed in their normal and ordinary sense and that because there was a 'reference' on the 29th April, 1985, the Court need look no further. The Plaintiff relied on the interpretation of clause 4 as a whole, arguing that there is nothing in paragraph (i) of the second proviso to say that the increase in rental ceases to be payable pending arbitration. The Plaintiff's "fall-back" position was that there had been no 'reference' to arbitration on the 29th April, 1985, because the Defendants must show that they had complied with clause 4 and had applied to the President of the Jersey Auctioneers and Estate Agents Association, which happened only on the 10th July, 1987.

The Defendants also urged that the Plaintiff was trying to obtain an improper advantage by having the use of monies that the Plantiff well knew would not be payable; and that because the Court is a court of equity it should deny the Plantiff interest on monies that should never have been paid.

The Court can briefly dispose of the last point first. It is an established principle of Jersey law that "la convention fait la loi des parties" and the Court will enforce agreements provided that, in the words of Pothier (Oeuvres de Pothier, Traité des Obligations, 1821 edition, at p.91) "elles ne contiennent rien de contraire aux lois et aux bonnes moeurs, et qu'elles interviennent entre personnes capables de contracter." Where an agreement is freely entered into between responsible persons, good cause must be shown why it should not be enforced. (v. Wallis v. Taylor (1965) J.J. 455 at p.457).

In Basden Hotels Limited v. Dormy Hotels Limited (1968) J.J. 911, at page 919, the Court said:-

"But we cannot leave this matter without referring to another maxim. It is the often quoted maxim " La convention fait la loi des parties". Like all

maxims it is subject to exceptions, but what it amounts to is that courts of justice must have high regard to the sanctity of contracts and must enforce them unless there is good reason in law, which includes the grounds of public policy, for them to be set aside".

The Court has judicial knowledge of the fact that the practice grew up in this Island of including, in leases, provision for the upward periodical revision of rentals on the basis of the increase in the Jersey cost of living index. Because for a time inflation was rampant and the cost of living index thus showed substantial increases, some rentals were increased far beyond the fair market rent for the premises. The provisos to clause 4 of the lease were devised to give some relief to the Defendants in the event of that happening. Thus, the clause cannot be said to be against public policy. On the contrary it is against public policy that an agreement of this nature should be avoided. This is not a case for the application of the inherent equitable jurisdiction of the Court; it is merely a question of interpretation.

In L. Shuler A.G. v. Wickman Machine Tool Sales Limited (1973) 2 All E.R. 39 H.L. at page 53, Lord Wilberforce said this:

"The first qualification involves the legal question whether this agreement may be construed in the light of certain allegedly relevant subsequent actions by the parties. Consideration of such actions undoubtedly influenced the majority of the Court of Appeal to decide, as they did, in the respondent's favour; and it is suggested, with much force that, but for this, Edmund Davies L.J. would have decided the case the other way. In my opinion, subsequent actions ought not to have been taken into account. The general rule is that extrinsic evidence is not admissible for the construction of a written contract; the parties' intentions must be ascertained, on legal principles of construction, from the words they have used. It is one and the same principle which excludes evidence of statements, or actions, during negotiations, at the time of the contract, or subsequent to the contract, any of which to the lay mind might at first seem to be proper to receive. As to statements during negotiations

this House has affirmed the rule of exclusion in Prenn v. Simmonds (1971) 3 All E.R. 237 and as to subsequent actions (unless evidencing a new agreement or as the basis of an estoppel) in James Miller and Partners Limited v. Whitworth Street Estates (Manchester) Ltd (1970) 1 All E.R. 796."

The Royal Court has applied the same general rule. In In the Estate of Sydney Edgar Matthews deceased (1980) J.J. 139 the then Deputy Bailiff said at page 142 (in construing a will):-

"The only question for me is what is the meaning of the words used and I cannot give effect to any intention which is not expressed or implied in the will."

The same general rule was applied by the then Deputy Bailiff in Ex parte the Right Honourable Ivor Fox Strangways, Viscount Wimborne (1983) J.J. 17.

We respectfully approve and adopt the same general rule and in deciding the only question before us which is the meaning of the words "pending such reference to an arbitrator" we exclude from our consideration the whole of the subsequent correspondence.

Mr. Voisin argued that the two letters of the 29th April, 1985, constituted the "reference" and that the "reference" was complete on that day. In support he cited only two authorities: the first was Russell on Arbitration Edition 19, p.p. 4 and 5 and p.p. 104 and 105 and the second was Halsbury's Laws of England Vol.2 paragraphs 514 to 516 inclusive.

At page 4 Russell says this:-

"For the purposes of the Limitation Act an arbitration is deemed to be commenced when one party to the arbitration agreement serves on the others a

notice requiring the appointment of an arbitrator, or alternatively (when the arbitrator is designated by the agreement) serves a notice requiring them to submit the dispute to the designated arbitrator".

At page 104 Russell says this:-

"For several purposes it is necessary to know precisely when an arbitration may be considered to have been commenced, or when it could have been commenced. It is by no means the case that the date of commencement is the same for all purposes.

"For the purposes of the Limitation Act an arbitration is deemed to be commenced when one party serves on the other a notice requiring the appointment of an arbitrator.

"For the purposes of time bar clauses such as the 'Centrocon' clause it is deemed to be commenced when the arbitrator has indicated his willingness to accept his appointment."

At paragraph 516, Halsbury says this:-

"For the purposes of the Limitation Act 1939, and of any other enactment relating to the limitation of actions, an arbitration is deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement...."

It is worthy of note that the word "reference" is used only once in that extract from Halsbury and not at all in the extracts from Russell. These authorities are dealing with the question of the commencement of an arbitration

for the purposes of the Limitation Act. It is unnecessary for us to decide whether the arbitration between the parties "commenced" with the two letters of the 29th April, 1985, or with the two letters of the 10th July, 1987. It would have been different if the Plaintiff had pleaded that the letters of the 29th April, 1985, did not constitute a valid notice under clause 4 of the lease, which was required to be given within seven days of the rent increase being notified, and that the letters of the 10th July, 1987, were time barred, with the result that the Defendants were not entitled to any arbitration but were bound to pay the full rent on the cost of living index basis, but the Plaintiff has not so pleaded.

In the judgment of this Court the Defendants have acted (as indeed has the Plaintiff in respect of its 'fall-back' position) under the misconception that "reference" is synonymous with "commencement" (and have thus argued that the reference was complete as at the 29th April, 1985) whereas "reference" is synonymous with "arbitration" and includes the whole of the proceedings up to the making of the award.

There is no Arbitration (Jersey) Law in existence; in practice arbitrations conducted in Jersey are based, to a lesser or greater extent, on the Arbitration Act 1950 of the United Kingdom. Where arbitration terminology is used in Jersey contracts it is reasonable to have regard to the meaning of that terminology in England.

Upon examination of the Statute we are left in no doubt that the term "reference" embraces the whole of the arbitration proceedings up to the moment of the delivery of the award. Section 7(b) refers to an arbitrator "to act as sole arbitrator in the reference". Section 8(2) and (3) relating to the appointment of umpires provide for the umpire to "enter on the reference". Section 10, which vests a power in the court, in certain cases, to "appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all

parties." Section 12(1) and (2) refer to "the parties to the reference", "the proceedings on the reference" and "witnesses on the reference". Section 12(b) enables the High Court "for the purpose of and in relation to a reference" to make certain orders which include orders "(f) securing the amount in dispute in the reference" and "(g) the detention, preservation or inspection of any property or thing which is the subject of the reference...." Section 13(3) provides that "the High Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award". Section 18(1) provides that "Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire...." And Section 20 provides for the statement of a case to the High Court on any question of law arising "in the course of the reference".

Last it be said that the Court is relying only upon an English statute we note here that it was stated in Hamlyn v. Betteley (1880) 6 Q.B.D. 63 at 65 C.A. per Lord Selborne, that a party who protests that the arbitrator is acting either without authority or beyond the scope of the agreement of reference, but nevertheless attends the reference, does not thereby waive his protest.

We also find, on examination of Halsbury's Laws of England 4th Edition Volume 2, Chapter entitled "Arbitration", that the term "agreement of reference" is synonymous with the term "arbitration agreement".

Thus, this Court has no hesitation in finding that the words "pending such reference to an arbitrator" in paragraph (i) of the second proviso to Clause 4 of the lease mean "pending such arbitration".

However, we must go on to decide whether the paragraph in question means "pending the commencement of such arbitration", contended for by the Defendants, or "pending the completion of such arbitration", contended for by the Plaintiff.

As Lord Upjohn said in Whishaw and Another v. Stephens and Others (1970) A.C. 508, at p. 522:-

"It is (then) the duty of the Court by the exercise of its judicial knowledge and experience in the relevant matter, innate common sense and desire to make sense of the settlor's or parties' expressed intentions, however obscure and ambiguous the language that may have been used, to give a reasonable meaning to that language if it can do so without doing complete violence to it."

The reference to Pothier to which we were directed is Article 7 of his Traité des Obligations, 2me édition, Tome 2me, where the Articles begin at page 48. They are rules 91-97 inclusive, and the important parts of them are as follows:-

"91. On doit, dans les conventions, rechercher quelle a été la commune intention des parties contractantes, plus que le sens grammatical des termes.

"92. Lorsqu'une clause est susceptible de deux sens, on doit plutôt l'entendre dans celui dans lequel elle peut avoir quelque effet, que dans celui dans lequel elle n'en pourrait avoir aucun.

"93. Lorsque dans un contrat des termes sont susceptibles de deux sens, on doit les entendre dans le sens qui convient le plus à la nature du contrat.

"94. Ce qui peut paraître ambigu dans un contrat, s'interprète par ce qui est d'usage dans le pays.

"96. On doit interpréter une clause par les autres clauses contenues dans l'acte, soit qu'elles précèdent, ou qu'elles suivent.

"97. Dans le doute, une clause doit s'interpréter contre celui qui a stipulé quelque chose, et à la décharge de celui qui a contracté l'obligation".

Applying all those principles to the present case the Court is persuaded that the interpretation put forward on behalf of the Plaintiff is the correct one. We look to clause 4 as a whole. It was the intention of the parties that the rent should be increased "as and from the 1st May, 1985". That increase, in the first place, would be on the basis of the proportionate rise in the figures of the Jersey Cost of Living Index. Then, and only then, if the First Defendant was of the opinion that the increase exceeded by ten per cent the market rental then prevailing for similar premises could the First Defendant invoke arbitration. Pending the completion of the arbitration the rental would continue to be payable at the full rate. If the increase should exceed the market rental prevailing, as then ascertained by the arbitrator, by more than ten per cent, the rental would then, and only then, be reduced to ten per cent above the market rental prevailing. The rental having been thus reduced, and only then, would the Plaintiff reimburse the First Defendant the overpaid amount.

That interpretation, in the exercise of the Court's judicial knowledge and experience, accords with the intention of the parties to grant relief to the First Defendant from the onerous burden of an automatic cost of living increase in times of inflation; it accords with common sense; it gives a reasonable meaning to all the language used in the whole of clause 4; it is, in the words of Pothier "le sens qui convient le plus à la nature du contrat"; and it does not offend Pothier's rule 97 because the provisos to clause 4 are intended to give relief to the First Defendant and clause 4 as a whole has mutual advantages and disadvantages to both parties.

As to the quantum of interest payable, the Plaintiff produced detailed calculations, indicating a claim of £19,895.35. The Defendants had not had the opportunity to examine the claim and did not accept any of the figures shown. The Court is not in a position to determine the amount of interest due.

Accordingly, the Court makes the following orders:-

1) The First Defendant and/or the Second Defendant will forthwith pay to the Plaintiff the sum of £15,180 by way of balance of rental.

2) The First Defendant and/or the Second Defendant will pay interest to the Plaintiff in accordance with Clause 13 of the lease; in the event that the parties cannot agree the amount due, the matter is referred to the Judicial Greffier for determination, with liberty to re-apply to the Court if necessary.

3) The First Defendant and/or Second Defendant will pay the taxed costs of the Plaintiff.

Authorities cited in the judgment :-

Pothier (Oeuvres de Pothier, Traité des Obligations, 1821 édition at p. 91)

Wallis -v- Taylor (1965) JJ 455 at p. 457

Basden Hotels ltd -v- Dormy Hotels ltd (1968) JJ 911 at p 919

L. Shuler A.G. -v- Wickman Machine Tool Sales Limited (1973) 2 AER 39 H.L. at p. 53.

Prem -v- Simmonds (1971) 3 AER 237

James Miller and Partners limited -v- Whitworth Street Estates (Manchester) ltd (1970) 1 AER 796

In the Estate of Sydney Edgar Matthews deceased (1980) JJ 139 at p. 142

Ex Parte The Right Honourable Ivor Fox-Strangways, Viscount Wimborne 1983 JJ 17

Hamlyn -v- Betteley (1880) 6 QBD. 63 at p. 65 CA

Whishaw and another -v- Stephens and others (1970) AC 508 at p. 522

Pothier - Article 7 of "Traité des Obligations, 2me édition, Tome 2me at p. 48 (rules 91-97 inclusive)

Texts construed :-

Russel on Arbitration - edition 19 p. 4, 5, 104 and 105

Halsbury's Laws of England - Volume 2 - para's 514 to 516 inclusive

Halsbury's Laws of England - Volume 2 (4th edition) - chapter entitled "Arbitrat

Other authorities referred to :-

C.H. Bailey ltd -v- Memorial Enterprises ltd (1974) 1 AER at p. 1003 et seq.

Tradax Export SA -v- Volkswagenwerk AG (1970) 1 AER at p. 420 et seq.

Antaios Compania Naviera S.A. -v- Salen Redarierna A.B. (1985) 1 A.C. at p. 191 et seq.