

GM 41672

35, 1956

# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.

BETWEEN

HOTEL DE L'EUROPE LIMITED (Defendants) . *Appellants*

AND

WILLIAM DUDLEY CURRIE-FRYER and  
SYLVIA MARY MARTIN (Married Woman)  
(Plaintiffs) . . . . . *Respondents.*

46070

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## Case for the Respondents.

RECORD.

1. This is an appeal by leave of the High Court of the Colony of Singapore against the judgment of the Court of Appeal of the said High Court dated the 1st July 1955 whereby the appeal of the above-named Appellants against the judgment of Chief Justice Murray-Aynsley dated the 17th May 1955, awarding the Respondents the sum of £250 (and a further sum of \$13.08 which is not material to this appeal) with costs against the Appellants, was dismissed with costs. p. 41. p. 40. p. 20.

20 2. The question arising for determination is whether a contract whereby the Appellants engaged the Respondents to perform in cabaret for two months at the Hotel de l'Europe in Singapore was induced by fraud on the part of the Respondents.

3. On the 18th February 1954 the Respondents (then being in Bombay) wrote a letter to the Appellants offering to appear at the Hotel de l'Europe. The said letter contained the following passages :— p. 42.

“ We work under the name of Sylvia Martin and Bill Currie  
“ and are top flight cabaret in Europe etc., this being our first  
“ trip East.

30 “ Our engagements in London include every top spot such as  
“ the Berkeley Hotel, Café de Paris, Grosvenor House, Dorchester,  
“ Ciro's, Embassy, Bagatelle, Colony, Astor, etc., in Paris, the Lido  
“ and Newaille Eve, New York, Blue Angel, Astor Roof, Hollywood,  
“ Ciro's etc. We are Radio and T.V. Stars of many years standing,  
“ both writing and acting.”

- pp. 43-44. 4. Thereafter the Appellants agreed to engage the Respondents to give nightly performances except on Sundays at "The Cockpit" in the Hotel for two months as from the 24th March 1954 at a salary of £250 per month plus free board and lodging. The terms of the said contract are contained in telegrams exchanged between the parties between the pp. 45-46. 22nd February and the 12th March 1954 and letters dated the 12th and 22nd March 1954. The said contract contained no provisions for its determination by notice.
- pp. 4-5. 5. On the 21st March 1954 the Respondents arrived in Singapore, 10 and from the 24th March to the 14th May 1954 or thereabouts they gave their performances in the Appellants' restaurant in pursuance of the said contract.
- p. 11. 6. On or about the 5th May 1954 the Appellants paid to the Respondents \$2,125.00 as one month's salary.
- pp. 47-50. 7. On the 12th May 1954 or alternatively on the 14th May 1954 the Appellants by letters dated the 12th and 14th May 1954 purported to rescind the said contract owing to alleged misrepresentations by the Respondents in the aforesaid letter dated the 18th February 1954.
- pp. 1-2. 8. On the 19th May 1954 the Respondents issued a writ against the Appellants whereby they claimed damages for breach of contract (and 20 arrears of salary not material to this appeal). A Statement of Claim was p. 3. delivered on the 21st May 1954.
- pp. 11-12. 9. So far as is now material the Appellants by their Defence, delivered on the 3rd June 1954, alleged that they were induced to and did enter into the said contract on the faith of the said letter of the 18th February 1954 and that the parts of the letter quoted in paragraph 3 hereof were calculated to cause and did cause the Appellants to believe :—
- (A) That the Respondents working as Sylvia Martin and Bill Currie together were top-flight cabaret in Europe and elsewhere before their trip East. 30
- (B) That as such cabaret they had been engaged by the various hotels, restaurants and night clubs mentioned by name in the letter, amongst others.
- p. 12. 10. The Appellants allege that the said representations and statements were untrue and fraudulent in the particulars alleged in paragraph 5 of the Defence and that the Appellants were accordingly entitled to repudiate, and did on the 12th May 1954 repudiate, the said contract.
- pp. 17-18. 11. The action was heard by Chief Justice Murray-Aynsley on the 19th April 1955. It was conceded by Counsel for the Appellants that the onus of proof was on the Appellants and that it was for them to open the case. Counsel put in the evidence of the Respondents, which had been taken *de bene esse* on the application of the Respondents by the Deputy Registrar on the 22nd May 1954. 40
- pp. 4-10.

The first Respondent Currie-Fryer had testified (*inter alia*):— pp. 4-8.

(A) That the statements contained in the letter dated 18th February 1954 were true in his opinion. p. 5.

(B) That in his opinion he was in top-flight cabaret. p. 5.

(C) That he and Sylvia Martin had appeared together at Grosvenor House, the Dorchester and Wingfield House in London, and in India and Pakistan; that one or other or both of them had appeared at each of the places referred to in the letter dated 18th February 1954, and at the places set out in a List (Exhibit D) produced at the trial. p. 16.  
p. 59.

(D) That in using, in the letter of 18th February 1954, the expression "our engagements in London include every top spot . . ." he did not intend to mean the engagements of Sylvia Martin and Bill Currie working under that name together in top-flight cabaret; he did mean that they had appeared either together or individually or individually with others at the places named. p. 6.

Counsel for the Appellants also put in the evidence of the Appellants' Manager, Pierce Allix, which had been taken *de bene esse* by the Registrar on the 25th August 1954. The said Allix testified (*inter alia*) as follows:— p. 17.

(E) The Plaintiffs said they had performed in several cabarets in London; I saw their letter of application. They appeared to have worked in first class cabarets in London and the Continent . . . My opinion was that the act was far from being first class. p. 14.

Evidence was given by Chi Chye Fong, a director of the Appellant Company. He said that he had discussed the letter of 18th February 1954 with Mrs. Hilborne (a director or managing director of the Appellant Company) and that he (or he and Mrs. Hilborne) "thought they (the Respondents) should be artistes of standing" and that engagements were offered. p. 17.

No evidence was given by Mrs. Hilborne, and it does not appear from the Record that any evidence was given by Chi Chye Fong as to the interpretation which he put upon the letter of the 18th February 1954, or as to the importance which he attached to the several statements therein made.

12. In a reserved judgment, delivered on the 17th May 1954, the Chief Justice gave judgment for the Respondents for £250 one month's salary, and for a sum of \$13.08 underpaid on the 5th May 1954, with costs. The Chief Justice, after referring to the letter of the 18th February 1954, said:— p. 19.

"The facts appear to be that, though one or other of the Plaintiffs had appeared in all the places named, in almost all cases they had not appeared together and both of them had not appeared at all of them.

"After giving the matter careful consideration I have come to the conclusion that the construction put upon that passage by the Plaintiffs is a possible one. Therefore I do not think the charge of fraud is established."

13. From the judgment of Chief Justice Murray-Aynsley the Appellants appealed to the Court of Appeal for the Colony of Singapore, Island of Singapore.

pp. 37-40. 14. On the 1st July 1955 the Court of Appeal (Mr. Justice Taylor, Mr. Justice Storr and Mr. Justice Knight) delivered judgment dismissing the said appeal with costs.

pp. 37-39. 15. Mr. Justice Taylor, delivering the judgment of the Court, rejected the Appellants contention that the letter of the 18th February 1954 meant that the Respondents had been engaged by the managements of the hotels mentioned and that appearance at private parties there was irrelevant. 10

On the main question whether the Appellants were entitled to repudiate the contract on the grounds of fraudulent misrepresentation by the Respondents Mr. Justice Taylor said :—

p. 38. “ It is clear on construing the letter in the ordinary sense of  
 “ the language used that the Plaintiffs represented themselves as  
 “ top flight cabaret performers, which is a matter of personal opinion,  
 “ and as a team of two who had appeared as such at the places  
 “ named, which is a matter of pure fact and is substantially  
 “ false . . . 20

“ It is clear that the Defendants acted on the letter—indeed  
 “ there was nothing else before them—but it does not appear that  
 “ they were in the slightest degree influenced by the falsity. Their  
 “ complaint was not that the Plaintiffs were a poor team but that  
 “ they were poor individually and that their repertoire was inade-  
 “ quate. The manager, p. 13, said that they appeared from the  
 “ letter to have worked in first class cabarets but in his opinion  
 “ their act was not first class . . .

“ Furthermore it has not been shown that the Plaintiffs had any  
 “ intention to deceive when they framed the letter. It was never 30  
 “ put to them that the distortion was intended or likely to improve  
 “ their chances of an engagement. If they had written : ‘ Currie  
 “ ‘ appeared at A, B, C and D, Sylvia at P, Q, R and S. Since we  
 “ ‘ combined we have had success at the Dorchester and other places  
 “ ‘ in London and on our present tour,’ would the probability of  
 “ engagement by the Defendants have been any less ?

“ It seems impossible to hold either that the distortion was  
 “ intended to deceive in a business sense, or that the distortion  
 “ induced the contract, or that it enhanced the loss.

“ To engage a professional entertainer on his own description 40  
 “ of himself as ‘ top flight ’ involves the risk of engaging a waning  
 “ star.”

16. Leave to appeal to Her Majesty in Council was granted by the High Court of the Colony of Singapore on the 22nd August 1955.

17. The Respondents humbly submit that this Appeal should be dismissed with Costs for the following among other

### REASONS

- (1) BECAUSE the Appellants failed to establish by evidence (A) that the Respondents with intent to induce the Appellants to enter into the said contract wilfully made any statements of fact which were false in a material particular or (B) that the Appellants were induced thereby to enter into the said contract.
- 10 (2) BECAUSE the Respondents' statement that they were top-flight cabaret was a matter of opinion not of fact.
- (3) BECAUSE, if as is submitted on behalf of the Respondents, the words "our engagements . . . include every top spot . . ." were capable of two meanings, the one attached to them by the Respondents and acknowledged by Chief Justice Murray-Aynsley as a possible one, and the other attached to them by the Court of Appeal, the Appellants failed to adduce any evidence to show what construction was put upon the said words by the Appellants before they entered into the said contract.
- 20 (4) BECAUSE the Appellants have failed to establish any right to repudiate the said contract.
- (5) BECAUSE the Order appealed against is right and should be confirmed.

F. H. LAWTON.

**In the Privy Council.**

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AND

**WILLIAM DUDLEY CURRIE-FRYER**

and **SYLVIA MARY MARTIN**

(Married Woman) (Plaintiffs)

*Respondents*

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**Case**

FOR THE RESPONDENTS

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*Solicitors for the Respondents.*