

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL OF 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.*

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1
20 FEB 1957
INSTITUTE OF ADVANCED
LEGAL STUDIES

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Solicitors for the Appellants.

SMITH & HUDSON,
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3/9 SOUTHAMPTON ROW, W.C.1,
Solicitors for the Respondents.

20 FEB 1957

RECORDS & FINANCE

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>IN THE HIGH COURT OF THE COLONY OF SINGAPORE. ISLAND OF SINGAPORE.</i>		
1	Writ of Summons	19th May 1954 ..	1
2	Statement of Claim	21st May 1954 ..	3
	<i>Plaintiffs' evidence de bene esse.</i>		
3	William Dudley Currie-Fryer	22nd May 1954 ..	4
	Examination		4
	Cross-examination		5
	Re-examination		8

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
4	Sylvia Mary Martin	22nd May 1954 ..	9
	Examination		9
	Cross-examination		9
	Re-examination		10
5	Defence and Counter-claim	3rd June 1954 ..	11
6	Reply and Defence to Counter-claim	14th June 1954 ..	13
	<i>Defendants' evidence de bene esse</i>		
7	Pierce Allix	25th August 1954 ..	14
	Examination		14
	Cross-examination		14
	Re-examination		15
8	Analysis of Plaintiffs' evidence put in at the trial by consent		16
9	Notes of Evidence by Murray-Aynsley, C.J.	19th April 1955 ..	17
10	Judgment of Murray-Aynsley, C.J.	17th May 1955 ..	19
11	Formal Judgment entered	15th June 1955 ..	20
	<i>IN THE COURT OF APPEAL OF THE COLONY OF SINGAPORE. ISLAND OF SINGAPORE.</i>		
12	Notice of Appeal	18th May 1955 ..	20
13	Grounds of Appeal	13th June 1955 ..	21
14	Notes of Taylor, J., of Argument		23
15	Notes of Storr, J., of Argument		29
16	Notes of Knight, J., of Argument		34
17	Judgment	1st July 1955 ..	37
18	Formal Judgment entered	21st July 1955 ..	40
19	Order giving leave to Appeal to Her Majesty in Council ..	22nd August 1955 ..	41

EXHIBITS

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
	Agreed Bundle of correspondence containing :—		
E	Letter, Plaintiffs to Defendants	18th February 1954 ..	42
	Cable, Defendants to Plaintiffs	22nd February 1954 ..	43
	Cable, Plaintiffs to Defendants	23rd February 1954 ..	43
A	Cable, Defendants to Plaintiffs		43
	Cable, Plaintiffs to Defendants	27th February 1954 ..	44
	Cable, Defendants to Plaintiffs	11th March 1954 ..	44
	Cable, Plaintiffs to Defendants	12th March 1954 ..	44
F	Letter, Plaintiffs to Defendants	12th March 1954 ..	45
B	Letter, Defendants to Plaintiffs	22nd March 1954 ..	46
	Letter, Hilborne & Murphy to Plaintiffs	12th May 1954 ..	47
	Letter, Plaintiffs to Hilborne & Murphy	13th May 1954 ..	49
C	Letter, Hilborne & Murphy to Plaintiffs	14th May 1954 ..	50
	Letter, Hilborne & Murphy to Plaintiffs	14th May 1954 ..	51
	Letter, Drew & Napier to Hilborne & Murphy ..	14th May 1954 ..	51
	Letter, Hilborne & Murphy to Drew & Napier ..	17th May 1954 ..	52
	Letter, Drew & Napier to Hilborne & Murphy ..	17th May 1954 ..	53
	Letter, Hilborne & Murphy to Drew & Napier ..	18th May 1954 ..	53
	Letter, Hilborne & Murphy to Drew & Napier ..	19th May 1954 ..	54
	Letter, Drew & Napier to Hilborne & Murphy ..	19th May 1954 ..	55
	Letter, Drew & Napier to Hilborne & Murphy ..	19th May 1954 ..	56
	Letter, Hilborne & Murphy to Drew & Napier ..	20th May 1954 ..	57
	Letter, Drew & Napier to Hilborne & Murphy ..	20th May 1954 ..	58
D	List put in by Plaintiffs showing places where they have appeared in London		59

**DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT PRINTED**

DESCRIPTION OF DOCUMENT	DATE
Memorandum of Appearance	20th May 1954
Order for security for costs	21st May 1954
Letter, Hilborne & Murphy to Controller of Immigration Singapore ..	21st May 1954
Letter, Hilborne & Murphy to Drew & Napier	21st May 1954
Letter, Drew & Napier to Hilborne & Murphy	21st May 1954
Letter, Hilborne & Murphy to Drew & Napier	21st May 1954
Letter, Drew & Napier to Hilborne & Murphy	25th May 1954
Letter, Hilborne & Murphy to Drew & Napier	26th May 1954
Letter, Hilborne & Murphy to Drew & Napier	12th August 1954
Order for examination of Pierce Allix	20th August 1954
Letter, Drew & Napier to Hilborne & Murphy	6th April 1955
Order staying execution pending hearing of appeal to Court of Appeal ..	10th June 1955

In the Privy Council.

ON APPEAL

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

BETWEEN

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

AND

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

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, To Hotel de L'Europe Limited, a Company incorporated in Singapore and having its registered office at Nos. 6-7, Oxley Rise, Singapore.

20 WE COMMAND YOU, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the Suit of William Dudley Currie-Fryer and Silvia Mary Martin, both of Hotel de L'Europe Limited, 6-7, Oxley Rise, Singapore.

And take notice that in default of your so doing, the Plaintiff(s) may proceed therein to judgment and execution.

Witness, THE HONOURABLE SIR CHARLES MURRAY MURRAY-AYNSLEY, Knight, Chief Justice of the Colony of Singapore, the 19th day of May, 1954.

30 (Sgd.) DREW & NAPIER,
Solicitors for the Plaintiff(s).

N.B.—This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of such renewal, including the day of such date, and not afterwards.

In the High Court of the Colony of Singapore. Island of Singapore.

No. 1.
Writ of Summons,
19th May 1954.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 1.
Writ of
Summons,
19th May
1954,
continued.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the Supreme Court at Singapore.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$5.50 with an addressed envelope to the Registrar of the Supreme Court at Singapore.

O. 46, r. 4.—Take notice that this Writ is served on you as a partner and/or the person having the control or management of the Defendant Firm.

10

THE PLAINTIFFS' CLAIM is for arrears of salary and damages for breach of contract in writing dated 22nd March, 1954.

This Writ was issued by DREW AND NAPIER, of Nos. 32-35 Chartered Bank Chambers, Battery Road, Singapore, Solicitors to the said Plaintiff(s).

This Writ was served by

on

on the day of 195 .

Indorsed the day of 195 .

(Signed)

20

(Address)



No. 2.

STATEMENT OF CLAIM.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 2.
Statement
of Claim,
21st May
1954.

1. The Defendant is the Proprietors of the Hotel de L'Europe, and the Plaintiffs were engaged by the Defendant to give performances in their bar and restaurant "The Cockpit" as Cabaret Artists for two months on and from 24th March, 1954.

2. The terms of the Plaintiffs' employment were contained in a contract in writing signed by the Managing Director of the Defendant on the 22nd March, 1954. By the said Contract the Defendant agreed to
10 pay to the Plaintiffs the sum of £250 per month in sterling or the equivalent in Straits dollars, and free board and lodging, the income tax payable on such remuneration being payable by the Defendant. The Plaintiffs will refer at the trial of this action to the said written Contract for the full and exact terms thereof.

3. On or about 5th May 1954 the Defendant paid to the Plaintiffs \$2,125.00 as one month's salary, but at exchange on that day viz. \$8.60 to £1 the sum of \$2,150.05 was due leaving a balance owing of \$25.05.

4. The said Contract contained no stipulation as to notice of termination.

20 5. By letter dated 14th May 1954 the Defendant by its Solicitors wrongfully determined the said employment on that day, and the said employment was accordingly determined.

6. By reason of the premises the Plaintiffs have suffered damage and have not been able to obtain employment elsewhere from the 14th May until the 23rd May.

AND THE PLAINTIFFS CLAIM—Damages.

Delivered this 21st day of May, 1954.

(Sgd.) DREW & NAPIER,
Solicitors for the Plaintiffs.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiffs'
evidence
de bene esse.*

No. 3.
William
Dudley
Currie-
Fryer,
22nd May
1954.

Examina-
tion.

PLAINTIFFS' EVIDENCE de bene esse.

No. 3.

WILLIAM DUDLEY CURRIE-FRYER.

Suit 964/54. Evidence *de bene esse* pursuant to Order of Court dated 21.5.54.

Hanbury Sparrow for Plaintiff.

Hilborne for Defendant.

Hanbury Sparrow calls.

WILLIAM DUDLEY CURRIE-FRYER, sworn.

At present staying in Hotel De L'Europe. Age 51. A writer in 10
theatrical and kindred arts by profession. Connected with entertainment
world from age 6. I have appeared in past 25 years in West End London
(excluding war years). Also appeared in first class theatres in Provinces,
South America, France, Belgium, Holland and Germany. Appeared as
comedian, comprieri, vocalist, and in cabaret acts. Miss Sylvia Martin
is my partner. I appeared with her some years ago. She became partner
on permanent basis since May 1953. We describe ourselves as "Sylvia
Martin & Bill Currie." We appeared together at the Grosvenor House,
Dorchester, and Wingfield House ; all in London.

While in London we were offered a contract to go to India and Pakistan, 20
to appear for 1 month in Karachi and a month in Calcutta. The value
of contract was about £1,000 excluding hotel accommodation which was
provided by people who engaged us. If we hadn't accepted this contract
we would have gone to the "Cafe de Paris" in London. At Calcutta we
were offered contract to Bombay. While in Bombay we negotiated to
go to Australia. We didn't succeed because of change in the execution
of the Australian Broadcasting Commission and new arrangements have
to be made with the retiring executive's successor. An agent in Calcutta
suggested to us that having a little time we should visit Singapore. He 30
suggested "Raffles Hotel" and the "Cockpit." We tried Raffles but they
were booked for the period we wanted to be. So we wrote to manager of
Cockpit to which they replied by cable making us an offer which we
accepted. This is the cable (*produced and marked Exh. A*).

We left Bombay and arrived in Singapore on the 21st March 1954.
The next morning we met Mrs. Veronica Hilborne managing director of
Hotel de L'Europe and subsequently after conversation she gave us
confirmation by handing over to us a letter dated 22nd March. This is
the letter (*produced and marked Exh. B*). There is nothing in that letter
giving any terms as to dismissal.

We performed nightly from the 24th March till the middle of the 40
7th week of our contract. We received no information during that time
that our performances were unsatisfactory until the 11th May when I
was called into the office. I was told by Mr. Hilborne that the management

was not prepared to pay me any money for the last month of my contract, but if I accepted the salary paid for the first month as complete payment, they would have no objection to my finishing the period of my contract. We had arranged with Mrs. Hilborne for the last day to be the 22nd May. In theatrical circles a month would be 30 days.

The contract stated £250 or equivalent in Straits Dollars. We were given a cheque in payment of one month's salary which was \$25 short.

Q. Did anybody express approval of your performances ?

10 A. Mrs. Hilborne had done so when we first opened. She said she was delighted with the act. She also did so subsequently. Mr. Hilborne also has expressed approval on our opening night.

Our immediate plan is to fly to Sydney tomorrow morning. This is the letter dated 14th May 1954 which I received from the Defendant terminating our employment. (*Produced and marked Exh. C.*)

This is the list showing the places where we have appeared in London. (*Exh. D.*)

Xcd. Hilborne :

My full name is William Dudley Currie Fryer. As a joke I have said I have other names.

20 Yes, I first got into contact with Defendants about getting a contract. This is the letter dated 18.2.54 which I wrote to the manager Cockpit, Hotel de L'Europe, Singapore. (*Produced and marked Exh. E.*)

I was in Bombay for about 6 weeks. Before that, in Calcutta for about 6 weeks. Before that, in Karachi for 1 month. Before that in London. We arrived in India about November 1953. I have now read my letter dated 18.2.54. (*Exh. E.*) I say that each and every statement therein is true in my opinion. When I say that I am a top flight cabaret artiste that is my opinion. I did become liable to Income tax in India and I paid it.

30 Q. Do you know period during which a visitor will not be liable to Inc. Tax ?

A. I don't know of any period. If we had gone on living longer in India we would have come under different group.

Q. Did you in fact leave India in 1st week of March.

A. We left on the 16th.

Q. So the statement in Exh. E that you had to leave in 1st week is incorrect ?

A. On or about.

Q. Was this statement so that you could get an immediate reply ?

40 A. Certainly.

Q. When you wrote letter had you made tentative bookings ?

A. I made inquiries at Cooks either to U.K. or Australia. I know they made record of our name or our inquiries for passage to U.K.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiffs'
evidence
de bene esse.*

No. 3.
William
Dudley
Currie-
Fryer,
22nd May
1954,
Examina-
tion,
continued.

Cross-
examina-
tion.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiffs'
evidence
de bene esse.*

No. 3.
William
Dudley
Currie-
Fryer,
22nd May
1954,
Cross-
examina-
tion,
continued.

Q. Do you recall writing a 2nd letter to Manager Cockpit from Bombay ?

A. Yes. This is my letter dated 12.3.54. (*Produced and marked Exh. F.*) I have now read it.

Q. Is it and every statement therein true.

A. No. That part referring to Mr. & Mrs. Currie is untrue. Yes, I said I and Sylvia Martin had 2 children. They are Miss Martin's children. I was present when Miss Martin said her daughter was coming out East.

Q. Have you any London theatrical agents ?

10

A. Yes.

Q. Can you disclose their names ?

A. I object to this.

Q. In para. 2 of " Exh. E " you intended to convey that you were top flight cabaret ?

A. Yes.

Q. In para. 3 by " our engagements " did you intend to mean the engagements of Sylvia Martin and Bill Currie working under that name together in top flight cabaret ?

A. Not necessarily.

20

Q. Can you tell us what you mean ?

A. That we have appeared either together or individually or individually with others at the places named.

Q. Do you think then that the meaning you meant to convey is clearly expressed in para. 2 & 3 of your letter dated 18.2.54 ? (*Exh. E.*)

A. I think it is clear enough.

Q. Do you think they are capable of other interpretation ?

A. No.

Q. When did you appear at Berkeley Hotel approx. ?

A. After the war. The exact date can be ascertained. I appeared 30 there with another partner, not Miss Martin.

Café de Paris—I appeared before the war.

Grosvenor House—appeared there after war.

Q. Didn't you tell me that you appeared there in Dec. 1952 ?

A. I don't recall saying the exact date.

I did cabaret, with Miss Martin and with others at Grosvenor.

Appeared with Miss Martin for 1 night at private party.

Dorchester—post war, in cabaret, with Miss Martin and with others ;
with Miss Martin at one private function.

Ciros—appeared there post war, cabaret.

Embassy—pre war.

Bagutilla—post war.

Colony—post war.

Astor—post war not with Miss Martin.

10 I didn't appear at Lido or New Delhi or Blue Angel, or Astor Roof,
or Hollywood Ciros.

Q. At Dorchester and Grosvenor you were not engaged by the
Hotels ?

A. No. I intended to convey that my engagements had been at those
places.

Q. Was there anything in letter to indicate that your engagements in
Dorchester and Grosvenor were at private parties ?

A. No.

Q. Can you hold a private party in the night clubs mentioned ?

20 A. Sometimes, on a Sunday. I have known Miss Martin for 16 or
17 years.

Q. Her main occupation is cabaret ?

A. It is one of her occupations.

Q. You had publicity cuttings with you of your acts ?

A. No.

Q. Was your cabaret successful in Ritz at Bombay ?

A. Yes, very successful.

Q. If described as moderate, that is inaccurate ?

A. In my opinion, yes.

30 Q. Success is determined by your popularity ?

A. To an extent.

Q. You would agree that your cabaret at the Hotel de L'Europe has
not been successful on ground of popularity ?

A. By my standards it has not been successful.

Q. Would you agree that the house has been poor ?

A. I can't answer. It is a matter of comparison.

Q. During the 6½ weeks the number of people who attended your
cabaret was small for one reason or another ?

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiffs'
evidence
de bene esse.*

No. 3.
William
Dudley
Currie-
Fryer,
22nd May
1954,
Cross-
examina-
tion,
continued.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiffs'
evidence
de bene esse.*

No. 3.
William
Dudley
Currie-
Fryer,
22nd May
1954,
Cross-
examina-
tion,
continued.

A. It wasn't what we expected.

Q. How do you account for this small attendance ?

A. In my opinion the people to whom our act would appeal don't frequent the place.

Q. Your cabaret team has been advertised ?

A. Yes, inadequately. In my opinion the confirmation that the Cockpit was the best place to put your cabaret was inaccurate.

Q. Have you been told by Mr. Chin Chye Fong that you have received more publicity than the 2 previous shows at the Cockpit ?

A. I recall his saying so. 10

Q. Were you also told by him that with less publicity the previous cabarets had been more successful ?

A. I don't recall this. My act consists of sophisticated songs.

Q. Can you tell how many songs in all are repertoire ?

A. 14 or 15.

Q. Did Mrs. Hilborne ask you after 2 or 3 weeks when a change of programme might be expected ?

A. She did and I pointed out that constant changes had been made. For the 6½ weeks programmes were made out of the 14 or 15 songs.

Q. Would you agree with me that your most successful number was 20 the "43rd Ghurkhas."

A. Not always.

Q. Did Mr. Chin complain about the cabaret ?

A. No.

Re-exami- *Rxd.*
nation.

Q. At the Dorchester and Grosvenor is it practice to employ a permanent cabaret ?

A. No.

Read over and found correct.

(Sgd.) W. D. CURRIE FRYER. 30

Taken by me.

(Sgd.) C. C. EU.
Dy. Registrar.

Examined.

I certify that this is a true copy of the original.

(Exhibits retained by counsels.)
L.S.

(Sgd.) C. C. EU.
Dy. Registrar.

No. 4.

SYLVIA MARY MARTIN.

SYLVIA MARY MARTIN sworn. *Xd.* H. S.

I went on stage at age of 11. I have appeared as a dancer, a singer, cabaret artist and film artist. I am 38 years. I had my own orchestra in England. I toured with it. It had appeared at West End and in Provinces, and Spain, France, Belgium, Luxembourg, Canada, United States, Pakistan and India.

10 I have appeared with Bill Currie at the Dorchester, Grosvenor, Wingfield and India.

In para. 3 of Exh. E I didn't appear at Berkeley, Café de Paris, I appeared at Grosvenor with and without Bill Currie. I appeared at Dorchester with and without Currie. I appeared at Ciros London on my own. I didn't appear at Embassy, Bagutilla, Colony, Astor. In Paris I appeared at Lido, and Nevanlle Eve. In New York I appeared at Blue Angel, Astor Roof. I was working for Paramount in Hollywood and appeared at Ciros. I have done radio but not T.V.

Xcd. Hilborne.

20 Q. When did you appear at Grosvenor ?

A. Post war and pre war.

Q. Dorchester ?

A. No idea of date. Pre and post war.

Q. Ciros's ?

A. Post war.

Q. Lido ?

A. Pre to post war. Post war—about 1949 or 50.

Q. Nevanlle Eve ?

A. Pre war about 1939.

Q. Blue Angel ?

30 A. About 45 or 46.

Q. Astor Roof ?

A. About 45 or 46.

Q. Ciros ?

A. About 46.

Q. At Grosvenor when you appeared without Currie what acts did you do ?

A. I can't remember. Yes, I did cabaret work on my own with full orchestra.

Q. At Dorchester what act did you do ?

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Plaintiff's
evidence
de bene esse.*

No. 4.
Sylvia
Mary
Martin,
22nd May
1954.

Examin-
ation.

Cross-
examina-
tion.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

A. Dancing. At Ciro's London I did dancing arranged by Carrol Gibbons. At Lido I did dancing and vocalising, at New Delhi I did dancing. Blue Angel—vocal. Astor Roof—vocal, and I also conducted band of Sammy Kayes & his Orchestra. At Ciro's—I did singing.

Q. The only cabaret work you have done with Currie to any extent was at India and Pakistan.

*Plaintiffs'
evidence
de bene esse.*

A. Continuously, yes. Apart from Dorchester and Grosvenor and Wingfield House I have no cabaret appearances with Bill Currie. I have 2 children—1 son age 15. He is at Magdalene Cottage. It is my intention to have my daughter to join me. 10

No. 4.
Sylvia
Mary
Martin,
22nd May
1954,
Cross-
examina-
tion,
continued.

Q. In your passport you describe yourself as a journalist ?

A. Yes, I had that description of myself because I was a journalist for newspapers during the war and I took advantage of that description because it afforded greater facility in travelling during the war.

Q. Do you think paras. 2 and 3 of Exh. E is a true description of yourselves ?

A. Yes.

Q. Do you not agree that these paras.—means that you and Currie have appeared together in top flight cabaret as Sylvia Martin and Bill Currie at the places named. 20

A. No. In another letter in which we enclosed our photographs we stated for Press purposes our individual activities previously. This letter has unfortunately been destroyed by Mr. Currie. This letter was written by Currie. He read it to me. He normally reads these business letters to me before posting. I can't remember whether I read letter of 18th Dec. I have seen it so often.

Q. Can you explain why Mr. Currie destroyed this letter.

A. Because we thought it was of no importance. It came by surface mail and we were already at the Cockpit.

Re-exami-
nation.

Rxd.

The Press cuttings are in store in London. I have appeared for Royalty—before the Duke of Windsor who was then Prince of Wales, before Princess Royal. 30

The second letter which is missing came by sea mail after we have been in Cockpit for some time.

Read over and found correct.

(Sgd.) SYLVIA MARY MARTIN.

Taken by me.

(Sgd.) C. C. EU,

Dy. Registrar. 40

Examined.

I certify that this is a true copy of the original.

(Sgd.) C. C. EU,

Dy. Registrar.

L.S.

DEFENCE AND COUNTER-CLAIM.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

1. The Defendants admit paragraph 1 of the Statement of Claim.

2. The Defendants deny the existence of a contract in writing signed by the Managing Director on the 22nd March 1954 as alleged in paragraph 2 of the Statement of Claim, and say that the same is a letter which does not constitute the contract between the Plaintiffs and the Defendants or any contract.

No. 5.
Defence
and
Counter-
claim,
3rd June
1954.

3. The Defendants admit paying the sum of \$2,125.00 to the
10 Plaintiffs on or about the 5th day of May 1954 as one month's salary
The Defendants further say that the precise amount due to the Plaintiffs
at the bank rate of exchange on the 23rd April 1954 and/or the 5th May
1954 was \$2,138.08 and not \$2,150.05 as alleged by the Plaintiffs in
paragraph 3 of their Statement of Claim. The Defendants bring the sum
of \$13.08 into Court in Satisfaction of the balance due to the Plaintiffs.

4. With regard to paragraphs 4 and 5 of the Plaintiffs' Statement
of Claim the Defendants admit that the contract between the Plaintiffs
and the Defendants contained no stipulation as to notice of termination
but deny that the said employment was at any time wrongfully determined
20 by the Defendants. The said employment was determined by a letter
dated the 12th May 1954 and not by a letter dated the 14th May 1954.

5. The Defendants were induced to and did enter into a contract
with the Plaintiffs on the faith of a letter dated the 18th day of February
1954 sent by the Plaintiffs from the Ritz Hotel, Bombay to the Defendants
and written for the purpose of inducing the Defendants to engage the
Plaintiffs as a cabaret act at the Defendants' hotel and restaurant in
Singapore.

6. The material part or parts of the said letter dated the 18th February
1954 are as follows :—

30 " We have been advised to get into touch with you, as we
are told you have the best venue for our act in Singapore.

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.

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 Neuvelle Eve, New York, Blue Angel, Astor Roof, Hollywood,
Ciro's etc."

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 5.
Defence
and
Counter-
claim,
3rd June
1954,
continued.

The Defendants say the said part or parts of the said letter and the representations and statements comprised therein were calculated to cause the Defendants to believe, and did cause the Defendants to believe, the following, viz. :—

(A) that the Plaintiffs working as Sylvia Martin and Bill Currie together were top-flight cabaret in Europe and elsewhere before their present trip East.

(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. 10

5. The said representations and statements, and each of them, were untrue in the following respects, viz. :—

(A) The Plaintiffs have only appeared together on three separate nights in cabaret, all in London, and the Plaintiffs have never appeared together as a top-flight cabaret act.

(B) The Plaintiffs have never appeared together as Sylvia Martin and Bill Currie in cabaret in any of the hotels, restaurants and night clubs mentioned in the said letter except the Dorchester Hotel and the Grosvenor House in each of which they appeared one night. 20

(C) At the Dorchester Hotel and Grosvenor House at each of which places the Plaintiffs appeared once, the Plaintiffs were not engaged by the said hotels but appeared at private parties at the same only.

6. The Defendants on the faith of the said letter and on the said statements and representations contained therein offered the Plaintiffs an engagement for two months from the 24th March 1954 at the remuneration of £250 per month, or the equivalent thereof in Malayan Currency, together with free board and lodging at the Defendants' Hotel, and an undertaking to pay and discharge the income tax due and payable on such remuneration 30 which said offer was accepted by the Plaintiffs.

7. The Plaintiffs wrote the said letter and the representations contained therein falsely and fraudulently, knowing the same to be untrue or with reckless carelessness as to the truth or falsity thereof, and with the intent that the same should be, as in fact they were, acted on by the Defendants.

8. The Defendants immediately upon discovering that the representations were false by letter dated the 12th May 1954 to the Plaintiffs by the Defendants' Solicitors, repudiated the said contract.

9. By reason of the foregoing the Defendants deny that the Plaintiffs 40 have suffered any damage whatsoever as alleged in paragraph 9 of their Statement of Claim and deny that they are entitled to the relief prayed for.

COUNTER-CLAIM.

10. The Defendants repeat paragraphs 1 to 9 both inclusive, of the Defence.

11. THE DEFENDANTS CLAIM :—

(1) That the contract between themselves and the Plaintiffs concluded by two cablegrams dated the 25th and 26th February 1954 between the Defendants and the Plaintiffs respectively may be rescinded and declared null and void.

(2) Damages.

10 (3) Such further relief as the nature of the case may require.

Dated and Delivered this 3rd day of June 1954.

(Sgd.) HILBORNE & MURPHY,
Solicitors for the above-named Defendants.

To,

The above-named Plaintiffs,
And their Solicitors, MESSRS. DREW & NAPIER,
Singapore.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

—
No. 5.
Defence
and
Counter-
claim,
3rd June
1954,
continued.

No. 6.

REPLY AND DEFENCE TO COUNTER-CLAIM.

20 1. The Plaintiffs join issue with the Defendants upon their Defence save in so far as it consists of admissions.

2. In answer to paragraph 11 of the Counter-claim the Plaintiffs repeat paragraphs 1-6 inclusive of the Statement of Claim and say the terms of the said contract are contained in a letter from the Defendants to the Plaintiffs as alleged in paragraph 2 of the Statement of Claim and that the Defendants have wrongfully determined the said contract as alleged in paragraph 5 thereof.

30 3. In the premises the Plaintiffs deny that the Defendants are entitled to have the said contract rescinded and declared null and void or to damages or such further or other relief as claimed.

Delivered the 14th day of June, 1954.

(Sgd.) DREW & NAPIER,
Solicitors for the Plaintiffs.

No. 6.
Reply and
Defence to
Counter-
claim,
14th June
1954.

DEFENDANTS' EVIDENCE de bene esse.

No. 7.

PIERCE ALLIX.

25.8.54.

In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.

Defendants'
evidence
de bene esse.

No. 7.
Pierce
Allix, 25th
August
1954.

Examina-
tion.

S.964.54—*de bene esse*

H. Sparrow
Hilborne

Hilborne calls

PIERCE ALLIX ss Hotel d'Europe. Manager—for last 3 years.

I worked in Savoy Hotel, London, before the war 1937. There was 10
a cabaret show while I worked in Savoy Hotel. Since I worked at Hotel
d'Europe they had 3 different cabaret acts at the Cockpit. The first act
was Pat Kay & Betty Anker : June-Sept. 1953. Then Ticke & John :
Feb.-March 1954. Finally the Plaintiffs from 24 March 1954 for 2 months.
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. Even later in conversation they
referred to, for example, the Dorchester. At first the patrons or customers
were well disposed to them. I later noticed they did not hold the interest
of the customers. My opinion was that the act was far from being first 20
class ; particularly Sylvia Martin had no voice or stage appearance. It
was obvious to me that she never appeared in a first class act of that type.
The audience's applause was poor : practically no encore. But when
Bill Currie performed alone in a song—" 49th Gurkha "—he was successful.
The applause compared poorly with previous two acts. The cabaret
used to perform at 10.30 ; when we had not enough customers we postponed
it to a quarter to eleven. They performed in the ballroom. When we
saw the crowd was poor in the ballroom the No. 1 Boy and I would go
to the Garden and Bar and invite people into the ballroom. People did
not show any interest in the cabaret : with the previous shows it was the 30
contrary. Then people used to reserve tables for the cabaret shows.
Some of these people were regular customers and they did not seem to like
the Plaintiffs. During the performance some people did not show interest ;
some talked during the song and some even left during the performance.
Some customers passed doubt that the artists had performed in first class
cabarets in London.

Their repertoire was extremely poor : about seven songs per night ;
the same songs every night till we had to insist on their getting new songs.
With Pat Kay & Betty Ankers a minimum of 30 different songs ; even
Ticke & John, although young, had an extended repertoire. They blamed 40
their failure on lack of publicity. But we gave them more publicity.

Pat Kay for 4 months publicity cost	..	..	..	\$1072.20
Ticke & John for 2 months	..	..	..	\$340.00
Bill Currie & Sylvia for 2 months	..	..	..	\$1022.50

No result to publicity.

Xad.

I agree the first thing was to get people to the Cockpit. I have
experience of cabaret in Savoy, London and the Capitol here. I know if

Cross-
examina-
tion.

the cabaret appeals to the people. Any good cabaret show appeals to the people in Singapore. The good singing of songs appeal to people : Betty Ankers did. In that act Pat Kay played the piano. They changed their programme every week : they repeated themselves when customers asked for it. They sang seven songs throughout the week : but they had a new programme every week. I would say fifteen songs for two months would not be enough. Ticke & John had about 10 songs but they did something else, John did an act in which he was a newly married husband ; he repeated it for 2 weeks. He impersonated a woman and pretended to play the piano : played it for two weeks. Ticke sang a song pretending to be a child : one week. John imitated Groucho Marx a number of times : 3 weeks. Bill Currie & Sylvia Martin asked to sing not before quarter to eleven so that the ballroom would fill up.

A drop in business from beginning of 1953 onwards : that is still the present position. I don't blame Bill Currie & Sylvia Martin for drop in business in 1954. But good cabaret will improve business.

I last saw the letter of 18.2.54 (Ex. E) at end of February. To some extent I am judge of singing. My criticism is largely directed to Sylvia Martin.

20 *Read.*

There would be no point in engaging a cabaret show if it did not bring in more customers.

(Sgd.) P. ALLIX.

Taken by me : read over and signed by the examiner.

(Sgd.) TAN THOON LIP.

25.8.54.

Examined

(Sgd.) S. VIAGASU.

I certify that this is a true copy of the original.

30 (Sgd.) TAN THOON LIP.

Registrar.

(L.S.)

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

*Defendants'
evidence
de bene esse.*

No. 7.
Pierce
Allix, 25th
August
1954,
Cross-
examina-
tion,
continued.

Re-exami-
nation.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

ANALYSIS OF PLAINTIFFS' EVIDENCE put in at the Trial by consent.

		CURRIE.	MARTIN.	
	BERKELEY HOTEL	Appeared but not with Martin.	Has not appeared.	
No. 8.	CAFÉ DE PARIS ..	Appeared but not with Martin.	Has not appeared.	
Analysis of Plaintiffs' evidence put in at the trial by consent.	GROSVENOR HOUSE	Appeared with Martin one night at private function.	Appeared with Currie one night at private function.	10
	DORCHESTER ..	Appeared with Martin one night at private function.	Appeared with Currie one night at private function.	
	CIRO'S	Appeared but not with Martin.	Appeared but not with Currie appeared as dancer.	
	EMBASSY	Appeared but not with Martin.	Has not appeared.	
	BAGATELLE ..	Appeared but not with Martin.	Has not appeared.	20
	COLONY	Appeared but not with Martin.	Has not appeared.	
	ASTOR	Appeared but not with Martin.	Has not appeared.	
	LIDO	Has not appeared.	Appeared as dancer and vocalist.	
	NEW DELHI ..	Has not appeared.	Appeared as dancer.	
	BLUE ANGEL ..	Has not appeared.	Appeared as vocalist.	
	ASTOR ROOF ..	Has not appeared.	Appeared as vocalist and dance band conductor.	30
	HOLLYWOOD CIRO'S	Has not appeared.	Appeared as vocalist.	

No. 9.

NOTES of Murray-Aynsley, C.J., of Evidence.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 9.
Notes of
Evidence
by Murray-
Aynsley,
C.J.,
19th April
1955.

19.4.55.

Lloyd for Plaintiffs.

Hilborne for Defendants.

Lloyd : Pleadings.

Submission—Defendants to begin.

Hilborne agrees—correspondence.

Letter of February 18.

10 Letter of March 22nd.

May 12th and 13th.

May 14.

Put in evidence of Plaintiffs and of Pierre Allix.

Counterclaim for damages.

Law : 23 Hailsham 5 40.

Damages, wants to amend.

Chi Chye Fong, 99 Emerald Hill Road, director of Defendant Company.

Letter of February 18. Discussed with Mrs. Hilborne. Thought they should be artistes of standing. Offered engagements.

20 Can't give evidence about cabaret.

Wrote to Grosvenor Hotel May 7th. Answer 11.11 and 14th.

Payment of Plaintiffs 1st month—£250.

Expenses of advertising (*Lloyd* objects).

(Damages—amendment too late.)

Defendants rescinded contract.

Chitty, 544.

Damages—rescission.

(I rule that rescission *restitutio in integrum* not possible.)

Further application—to amend.

30 *Lloyd*—clients in Australia—objects.*Hilborne*—return of salary.

costs of advertising

\$1,318.50.

\$450 board and lodging per month.

(Allow amendment on those terms.)

XXd. Lloyd :

1st month—no increase of business.

Figures—March 1st–23rd, average taking \$1,0007.98.

24–30th inc. up possible new show.

40 Counter attractions can't recall.

“ Holiday on Ice ”.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 9.
Notes of
Evidence
by Murray-
Aynsley,
C.J.,
19th April
1955,
continued.

Other cabarets—possible.

Don't think that was the reason.

Complained of programme to 1st Plaintiff.

Present salaries—£200 p.m. for the couple with passages.

£156 for three persons would come to £275 in all.

Terms to Plaintiffs generous.

Only had four — £250 with board and lodging, one act £85, inexperienced. £250 about average.

Re-ud. Lloyd :

Interpretation of letter.

10

[1914] A.C. 948 @ 949.

Precision—not to be expected—

Plaintiffs one or other have appeared at each of places named.

Must be intent to defraud.

Innocent misrepresentation—effect of.

35 E. & E. Digest 648.

Act initially approved.

Hilborne in reply :

Construction of letter.

Question of private engagements.

20

Letters of people in profession
encouragement etc.

Letter written deliberately.

C.A.V.

17.5.55.

Written judgment read.

True Copy.

(Sgd.) illegible.

Private Secretary to
the Hon. the Chief Justice,
Supreme Court,
Singapore, 6.

30

JUDGMENT of Murray-Aynsley, C.J.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

No. 10.
Judgment
of Murray-
Aynsley,
C.J.,
17th May
1955.

In this case the Plaintiffs, who are members of the theatrical profession, claim the balance of remuneration due under a contract with the Defendant Company. The defence is that the contract was obtained by fraud. The Plaintiffs were in Bombay. As a result of correspondence they came to Singapore and actually performed at the premises of the Defendant Company for about six weeks. The contract was then repudiated by the Company.

10 The charges of fraud were based on a letter sent by the Plaintiffs to Defendants dated 18th February, 1954. The material passage runs as follows :—

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

20 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 that the charge of fraud is established.

There must be judgment for the Plaintiffs for one month's salary, that is £250 to be converted at rate on May 14th, 1954, plus the sum of \$13.08 underpaid on May 5th 1954, with costs.

(Sgd.) C. M. MURRAY-AYNSLEY,

30

Chief Justice,
Singapore.

Singapore, 17th May, 1955.

True Copy,

(Sgd.) (*illegible*)

Private Secretary to
The Hon. The Chief Justice,
Singapore.

No. 11.

FORMAL JUDGMENT.

*In the
High Court
of the
Colony of
Singapore.
Island of
Singapore.*

17th May, 1955.

No. 11.
Formal
Judgment,
entered
15th June
1955.

This action coming on for trial on the 19th day of April, 1955, before the Honourable the Chief Justice in the presence of Counsel for the Plaintiffs and for the Defendants AND UPON READING the pleadings delivered in this action AND UPON HEARING what was alleged by Counsel for the Plaintiffs and for the Defendants this Court did order that this action should stand for judgment and this action standing for judgment this day in the presence of Counsel for the Plaintiffs and for the Defendants 10
IT IS ADJUDGED that the Plaintiffs recover against the Defendants one month's salary of £250 to be converted at the rate of exchange in force on the 14th day of May, 1954, together with the sum of \$13.08 underpaid on the 5th day of May, 1954 AND IT IS ORDERED that the Counterclaim do stand dismissed out of this Court AND IT IS ORDERED that the costs of this action and the costs of the Plaintiffs of the Counterclaim be taxed and paid by the Defendants to the Plaintiffs.

Entered in Volume LXVII pages 70 and 71 at 3.30 p.m. the 15th day of June, 1955.

(Sgd.) TAN THOON LIP, 20
Registrar.

No. 12.

NOTICE OF APPEAL.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 12.
Notice of
Appeal,
18th May
1955.

Take Notice that the abovenamed Defendants will appeal to the Next Court of Appeal in the Colony of Singapore against the whole of the Judgment of the Honourable Sir Charles Murray Murray-Aynsley, Chief Justice of the Colony of Singapore delivered herein on the 17th day of May, 1955.

Dated this 18th day of May, 1955.

(Sgd.) HILBORNE & MURPHY, 30
Solicitors for the abovenamed
Appellants/Defendants.

To,

The Registrar of the Supreme Court,
Singapore ;

And to,

The abovenamed Plaintiffs and to their
Solicitors, Messrs. DREW & NAPIER.

GROUNDS OF APPEAL.

Hotel De L'Europe, Limited, the abovenamed Defendants (Appellants), appeal to the Court of Appeal against the whole of the Judgment of the Honourable Sir Charles Murray Murray-Aynsley, Chief Justice of the Colony of Singapore delivered herein on the 17th day of May, 1955, upon the following grounds :—

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 13.
Grounds of
Appeal,
13th June
1955.

1. The Learned Trial Judge erred in fact and in law in considering only that passage of the Respondents' letter to the Appellants of 18th February 1954 which he has set out in his Judgment. The Learned Trial Judge should have considered the said letter as a whole. In addition the Learned Trial Judge overlooked the fact that the said letter was not written by the Respondents in their individual capacities but as a cabaret team or act known as " Sylvia Martin and Bill Currie " of which they were the members and on behalf of which the 1st Respondent signed the letter.

2. The Learned Trial Judge erred in fact and in law in accepting the construction put by the Respondents upon that passage of their letter of 18th February 1954 in the Judgment set out. What the Learned Trial Judge really found was that there had been no misrepresentation of fact by the Respondents in their said letter. The Appellants will contend that the said letter contained the following misrepresentation of fact :—

(A) That the Respondents, working as a cabaret act known as " Sylvia Martin and Bill Currie," which they by the said letter of 18th February 1954 offered to the Appellants, had previously performed that act at all the hotels restaurants and night-clubs in the said letter mentioned, whereas they had in fact not performed that said act at any of the said hotels restaurants and night-clubs except at the Dorchester and Grosvenor House hotels where they only performed at private parties.

(B) That with regard to the allegation that the Respondents had performed the said act at the Dorchester and Grosvenor House this meant and was intended to mean that they had been engaged to perform the said act by the management or proprietors of the said hotels in one or other of the public rooms of the hotels. In fact they had only performed their act in both the said hotels at private parties in a private room and at the request of private individuals and for one night only at each hotel.

(C) That the Respondents in their act known as " Sylvia Martin and Bill Currie " were top flight cabaret in Europe. The Respondents had not in fact been engaged to perform or ever performed their act at any first class hotel restaurant or night-clubs in Europe at all except at three private parties held in private rooms at the Dorchester, Grosvenor House and Wingfield House. Save as aforesaid the Respondents first public performance of their act was in India in 1954.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 13.
Grounds of
Appeal,
13th June
1955,
continued.

3. If the Learned Trial Judge had found as it is submitted he should have found, that the letter of 18th February 1954 contained misrepresentations of fact then he should have held that such misrepresentations amounted to fraud and that the Appellant was entitled to the relief claimed in its Defence and Counterclaim.

4. Even if the Learned Trial Judge was correct in finding that the Respondents made no actual misstatement of fact in the said letter of 18th February 1954 (which is denied) he should have held that the statements contained therein suggested and were intended to suggest matters which were false namely :—

10

(A) That the Respondents had been engaged to perform and had performed their cabaret act known as "Sylvia Martin and Bill Currie" at the hotels restaurants and night-clubs in the said letter of 18th February 1954 mentioned.

(B) That the Respondents' cabaret act known as "Sylvia Martin and Bill Currie" was top flight cabaret in Europe.

(C) That the Respondents had been engaged by the hotel managements to perform and had performed their said cabaret act at the said establishments including the Dorchester and Grosvenor House.

20

and that there had therefore been fraudulent misrepresentation by the Respondents to the Appellants.

The Appellants therefore pray that the Judgment of the Learned Trial Judge may be reversed, that the Plaintiffs' claim may be dismissed with costs, and that this Appellants' Counterclaim may be allowed for such sum in damages as the Court may assess and costs.

Dated this 13th day of June, 1955.

(Sgd.) ALLEN & GLEDHILL,
Solicitors for the Appellants.

No. 14.

NOTES of Taylor, J., of Argument.

Coram : TAYLOR, J.
STORR, J.
KNIGHT, J.

In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.

22nd June 1955.

No. 14.
Notes of
Taylor, J.,
of
Argument.

Massey and Hilborne for Appellants.

Lloyd for Respondents.

Massey :

10 Facts.

18.2.54 Hotel received letter from Bombay from a cabaret team—
offering services as a team.

No details of personalities.

Signed by Bill Currie on behalf of the team.

Top flight.

16 Hotels and Night Clubs specified.

Offered £250 to the team.

Accepted by cable.

Respondents and 21.3.

20 Began 24.3.

22nd they received a letter setting out terms.

After a few days—obvious not top flight cabaret.

Enquiries.

Much of letter untrue.

Not appeared as a team except on 3 occasions—for one act each—at
private parties.

Puts in typed analysis of appearances used at trial.

12 May—Appellants wrote terminating alleging fraud.

14th May—appearances stopped.

30 23rd May—Left for Sydney.

They had received £250 for first month before truth known to
Appellants.

Evidence *de bene esse*.

19 May—Respondents issued writ for wrongful determination of contract.

Appellants replied terminated and counterclaimed for damages.

As to damages. Amendment of pleadings.

Appellants abandoned claim for general damages.

Substituted claim for special damages.

Only items now claimed are those three.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*
—
No. 14.
Notes of
Taylor, J.,
of
Argument,
continued.

At Trial. Decided on one point.

Found—No misrepresentation.

In the evidence Plaintiffs said this letter was true. They did not say innocent misrepresentation.

Lloyd agrees that if this Court finds the letter was a fraudulent misrepresentation the Defendants would succeed on claim and counter-claim.

But as there was amendment and no XXn. there should be an enquiry as to damages—agreed.

The letter—written by a firm or team.

10

We work under the name i.e. work together.

Appellants did not know them then.

Team top flight—first trip east i.e. first team trip.

Clear ordinary sense—This act was top flight.

Means that the C. & M. team had appeared at these places.

If it could mean anything else—what would an ordinary person reading it take it to mean.

Stating truth in a misleading way is a false representation.

3 points of misrepresentation—

(A) Not top flight cabaret ;

20

(B) Not appeared at those places except Berkeley ; and

(C) Implication that the management of the hotel selected them.

Para. 4—“ have to leave India ”—also untrue.

Writer untruthful.

12 days later.

If Appellants had ever seen the letter it would have explained—Not added to Currie but he got hold of it and destroyed it. Letter never seen by Appellants.

Kerr—VII edition page 25.

The four points—

30

(1) Untrue in fact—for declaration—submit it was.

(2) Currie knew.

(3) Intended to act—Respondent's initiative.

(4) Did act—damages to be assessed.

As to “ *could be true* ” p. 41/2—43—45 middle.

If you convey a false impression.

No one reading the letter could have thought them other than a team which had appeared at the places named—on the invitation of the managements.

Lloyd. G.A. 1—error in considering only the passage quoted.

Only reason for not looking at letter as a whole—the Appellants in their defence set out only part as being material.

Did not include signature.

Not alluded to at first instance.

C.J. omitted parts of paras. pleaded but added a little, not pleaded.

10 Para. 2 is a statement of opinion—first part true at time.

23 Hailsham, 19/20.

“ Top flight cabaret ” not a term of art Massey said.

After a few days—obvious not top flight cabaret and enquiries made—found untrue.

Submit Evidence does not bear that out.

Started 24 March.

Wrote to Grosvenor May 7th.

„ „ others same day.

Replies not proved.

20 “ Large portion untrue.”

Subsequent “ discoveries ” volunteered in evidence.

As to obvious etc.

Unrebutted—not XXd. to.

Allowed to continue.

No evidence that Wingfield was private.

Letter of 12 May does not in terms allege fraud.

Appellants had their information on 11 May.

„ immediately repudiated.

No suggestion of fraud 10 days letter in XXn.

30 Kerr p. 25. Calculated to induce.

First mention of fraud is in Defence and Counter-claim of 3 June.

Curious that only question put as to intention was as to date of leaving India.

Derry v. Peek [1889] A.C. 343.

Agree it does not really matter. Whether words true or untrue—if literally true they may still be a misrepresentation.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 14.
Notes of
Taylor, J.,
of
Argument,
continued.

(Affd. not
in)

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 14.
Notes of
Taylor, J.,
of
Argument,
continued.

But the C.J. decided more than that they could be true—because had he decided that he would still have found for the Defendant.

He must have found—either that there was no fraudulent intent or that they were not induced by the misrepresentation.

No bridge to the gap between the finding of truth and the finding for the Plaintiffs.

Bridge must be the two hypotheses—

- (A) either no intention
- (B) or no inducement.

As to (A) can it be said his finding is impossible ?

10

Submit, since first allegation of fraud not till 1st June—

Quasi criminal allegation never put in Xxn.

Sufficient to enable him to find no intention, or that intention not proved.

Up to and including 3rd June Appellant's conduct consistent with innocent misrepresentation. [Massey—they pleaded truth.]

We said at trial, and still say statements literally true.

Agree that *may* be immaterial to fraud.

Appellants by their letter—35 contract at an end.

Gilchester Properties v. Gomm, 64 T.L.R. 235.

20

Letter of 12 May Attempt to obtain damages for innocent misrepresentation.

In any event—even assuming entitled—they assessed their own damage.

Submitted below, not open to find innocent misrepresentation—either fraudulent misrepresentation or nothing.

Appellants eggs all in one basket.

Having relied on fraud alone they must prove it or fail.

Innocent misrepresentation not pleaded.

As to Grounds of Appeal 1—Only part of letter pleaded—Point taken 30 now not taken at trial.

Grounds of Appeal 2—What he really found was that there was no misrepresentation in fact, either—

(1) Failure to prove *mens rea*—allegation very late or

(2) No inducement—could not say no inducement.

Really no intention.

Question is not whether we agree with him but whether his finding was impossible.

As to subheads (A), (B) and (C)—

(A) and (B) both require reading in words not there.

(C) Top flight neither term of art nor st. of fact.

As to appearance at Wingfield, a private party no evidence.

As to Grounds of Appeal 3—Even if he found (as he should) nevertheless he should not have granted relief because fraud not proved.

Ground of Appeal 4—Same.

10 As to prayer—Appellants assessed their own damages by letter of 12 May—Ref. to Registrar necessary.

Counterclaim for *restitutio*—abandoned—at most—Appellants have a defence—not a counterclaim.

Massey in reply :

As to “ We are not entitled to refer to the portions of letter not pleaded—Letter was proved—an Exhibit.

As to—Found no misrepresentation in fact and no proof of intention to deceive.

20 He only found—no misrepresentation—words clear—construction possible—therefore fraud not established.

Nothing said about Respondent’s intention.

His finding was sufficient for Court below—he found no misrepresentation.

Had he addressed his mind to intention he could not have held anything except intention plainly expressed ; they admitted it in evidence.

Difficult to find they did not intend to deceive.

No question of innocent misrepresentation.

As to Ground of Appeal—reading in words not there—submit no words suggested.

30 Agree “ top flight cabaret ” might be an expression of opinion but not “ Top flight cabaret in Europe ” unless you have appeared at the top places in Europe—which they had not.

Agree nothing in evidence about Wingfield House being private—but no evidence either way.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 14.
Notes of
Taylor, J.,
of
Argument,
continued.

In the Court of Appeal of the Colony of Singapore. Island of Singapore. Not attacked the main point in the appeal—the misrepresentations in the letter.

If not true—submit automatically follows—fraudulent and the other consequences follow.

No. 14.
Notes of
Taylor, J.,
of
Argument,
continued.

Cor : TAYLOR, J.
STORR, J.
KNIGHT, J.

C. A. V.
intld. E. N. T.

Friday, 1st July 1955.

10

Civil Appeal No. 16 of 1955.

For Judgment.

Counsel as before.

Dismissed with costs.

Deposit to Respondent's solicitors—Sum in Court as security for damages to be paid to Respondent's solicitors on their undertaking not to act on this part of the order for 6 weeks and if Notice of Appeal for leave to appeal to Her Majesty in Council has been given not until after disposal.

Liberty to apply.

Certified True Copy.

intld. E. N. T. 20

(Sgd.) ENG SEONG HOOI,
Private Secretary to Judge
Court No. 3
Supreme Court,
Singapore.

No. 15.

NOTES of Storr, J., of Argument.

Coram : TAYLOR, J.
STORR, J.
KNIGHT, J.

—————
22nd June, 1955.
—————

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

—————
No. 15.
Notes of
Storr, J., of
Argument.

Massey with Hilborne for Appellants.

Lloyd for Respondents.

Massey :

- 10 Facts : Letter of 18-2-54—offer.
Cable 27-2-54—acceptance.
Respondents arrived—21-3-54.
Respondents only appeared together in England on 3 occasions.
(Massey hands up list showing where Respondents appeared together.)
Appellants after finding out terminated contract.
Appearances stopped—14-5-54.
Respondents left for Sydney—23-5-54.
Had already received £250—1 month's salary.
Respondents started action.
- 20 Writ issued—19-5-54.

Counter-claim :

Page 17 of record : Special Damage—amendment. Only damages claimed :

- (1) Return of salary ;
- (2) Cost of advertising \$1,318.50 ;
- (3) Board and Lodging \$450 p.m.

C.J. decided case on only one point. He finds as a fact that there had been no misrepresentation.

Pages 57 & 58 of Judgment of C.J.

- 30 Respondents said contents of letter of 18-2-54 were true. Not that we had made misrepresentations.

If Court finds letter of 18-2-54 was a fraudulent misrepresentation, then Appellants had good defence and were entitled to damages.

Agreed. Enquiry as to damage on counter-claim before Registrar ; an amendment made at trial and no chance to refute by evidence which was taken *de bene esse*.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 15.
Notes of
Storr, J., of
Argument,
continued.

Page 5 of record—Ex. “ E.” Letter written by team, not by Bill Currie. (P. 42 of record).

Letter—para. 2—implies that Respondents worked together as a cabaret act and were *top flight cabaret in Europe*. Team’s first trip East.

Complaint: Team not top flight cabaret in Europe. Para. means team were top flight cabaret.

Para. 3—could only mean and refer to the team’s engagement.

Three points :—

(1) Act unknown to Appellants ; they could only read para. 3 as meaning team had had these engagements. 10

(2) Not top flight cabaret. Team had not appeared in London and Paris.

(3) Although they had appeared to private parties at Berkeley, Dorchester and Grosvenor House, they had not appeared in the public rooms.

Para. 4—quite untrue as admitted by 1st Respondent.

Cables. P. 43 of record. (letter follows). P. 44—letter not received.

Letter. P. 45 of record. Letter supposed to be sent. Pps. 9 and 10.

Missing letter : destroyed by Currie ; how did he get hold of it as it 20 was sent to Cockpit ?

Law.—Fraud and Mistake. (Kerr 7th edn.) P. 42 facts :—

(1) Letter untrue in fact.

(2) Respondents knew letter to be untrue and was indifferent to its truth.

(3) Letter calculated to induce Appellants to act upon it.

(4) Appellants acted and suffered damage.

Kerr p. 41, para. 2.

P. 54—literal truth.

P. 56—omission. 30

Lloyd.

Ground 1 of appeal : Appellants in their defence did not call attention to the signature of letter of 18-2-54 (“ E ”).

From the letter, or part of it, pleaded C.J. took the last 2 lines of para. 3 of the letter thereby completing the para.

C.J. omitted paras. 1 and 2 of letter. Para. 1 not material. Para. 2 only an expression of opinion, not a statement of fact.

P. 5 of record. Opinion expressed by Currie in evidence.

Refers to 23 Halsbury, p. 19. Para. 26—“ puffing.” Puffing not misrepresentation. Team of “ top flight cabaret,” not a team of art. 40 Evidence does not bear out statement from bar that it was obvious Respondents not top flight cabaret.

P. 17. Evidence of Chi Chye Fong. No evidence of cabaret. What Grosvenor Hotel.

P. 47 & 48. From enquiries 2 places said Respondents did not appear there. Last para—would allow performance to be continued.

P. 14—evidence of Pierre Allix.

P. 4—Currie's evidence as to performance. No XXtion on his statements.

Ground 2 (c). Wingfield House—no evidence that performance was private.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

— —
No. 15.
Notes of
Storr, J., of
Argument,
continued.

10 P. 47—letter of 12-5-55 does not refer to fraud; yet cable replies received by Appellants before.

P. 49—repudiated 13-5-55.

10 days later 23-5-55. Respondents examined and cross-examined, but still no suggestion of fraud.

First mention of fraud in Defence and Counter-claim, dated and delivered 3-6-54.

P. 11; p. 12.

P. 5—only question relating to date of leaving India. *Derry v. Peek* [1889] A.C. 337/343.

20 Even if words true, they can still be a misrepresentation even if literally true. C.J. decided something more than that they could be true; he went further and found that there was no fraudulent intention; no *mens rea*—no calculation to deceive or that Appellants not induced by the misrepresentation. No bridge to gap of finding of truth and finding for Pltfs.

Judgment p. 19—only bridge: either no intention or no inducement.

30 1. Can it be said C.J.'s finding as such is one of fact that it is impossible? Submits that in view of fact the 1st allegation of fraud not made till June and that this *quasi* allegation of fraud not put to Respondents in XXtion. would have been sufficient for C.J. to find there was no fraudulent intention. Up to and including 3rd June Respondents only guilty of innocent misrepresentation.

I said at trial and I say here that statements are literally true. May be fraudulent or innocent misrepresentation. Open to me to take the point.

Pps. 47 & 48. Appellants by letter 12-5-54 stated they were prepared to pay half salary.

Refers to *Gilchester Properties v. Foreman* (?) 64 T.L.R. 235.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

Appellants by letter of 12-5-54 attempted to give themselves damages against Respondents for innocent misrepresentation and in any event assessed their own damages.

Not open to Court to find innocent misrepresentation; it is either fraudulent misrepresentation or nothing.

Cases 35 E. & E. Digest, 648 *et seq.*

No. 15.
Notes of
Storr, J., of
Argument,
continued.

Appellants have claimed fraudulent misrepresentation; they must prove it or fail; they cannot now rely on innocent misrepresentation:—

(1) Only part of letter pleaded; point taken now not taken at trial. 10

(2) What C.J. really found was that there was no misrepresentation in fact and:

(i) There was a failure to prove *mens rea*;

(ii) No intention to defraud.

Question is not whether Court agrees with C.J., but whether his finding is impossible on the facts.

P. 21—Grounds 2 (A), (B) and (C).

(A) and (B) both require a reading into letter of words which are not there.

(C) Top flight cabaret not a term of art or statement of fact. 20

As to Wingfield House—no evidence as to the Respondents only appearing at private party.

Ground 3. Fraud has not been proved.

„ 4. — do —

Last para. of Grounds. Appellants have assessed their own damages by letter of 12th May. Reference to Registrar would be necessary.

Fraud in counterclaim of *restitutio* is a bad claim and therefore at most Appellants have a ground of defence to action, but not a counterclaim.

Massey in reply:

P. 42—letter “E.” Letter referred to in pleadings and exhibited. 30
Can of course be referred to on appeal.

Intention to deceive.

C.J. only found there was no misrepresentation. Nothing said at all about Respondents’ intention.

Respondents sent letter to obtain employment. Any person writing a letter like “E” must have had intention to deceive.

Grounds 2 (A) and (B)—clear.

Agree top flight cabaret is an expression of opinion, but top flight cabaret in Europe is a misrepresentation of fact; they hardly appeared in Europe together at all.

Damages—everything before Registrar.

No attack on question of misrepresentation in letter—main substance.

C.A.V.

(Sgd.) PAUL STORR.

1st July, 1955.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 15.
Notes of
Storr, J., of
Argument,
continued.

Counsel as before.

10 I have had the advantage of reading the judgment of the learned President, with which I am in entire agreement and have nothing to add. Appeal should be dismissed.

(Sgd.) PAUL STORR.

Order : Appeal dismissed with costs. Deposit to Respondents. Payment of sum in Court as security for damages to be given out to Respondents' Solicitors on their undertaking not to act on this point of the order for 6 weeks, and if notice of application for leave to appeal to H.M. in Council has been given not until after disposal.

Liberty to apply.

20

(Sgd.) PAUL STORR,

Judge.

Certified True Copy.

(Sgd.) A. GEORGE,
Secretary to Judge,
Supreme Court, J. Bahru.

9.7.1955.

NOTES of Knight, J., of Argument.

Coram : TAYLOR, J.

STORR, J.

KNIGHT, J.

No. 16.
Notes of
Knight, J.,
of
Argument.

Massey & Hilborne for Appellants.

Lloyd for Defendants.

Massey—reviews facts—“ team ” had appeared on only 3 occasions at private parties (list submitted showing details of appearances). Respondents went Sydney 23rd May—Writ 19th May. 10

Page 17—special damages—general damage claim withdrawn. C.J. found no misrepresentation. Respondents said contents of the letter (42) true not that it was an innocent misrepresentation. If successful would ask for inquiry before Registrar as to damages.

Page 42. Written by a team *not* by Currie.

Paragraph 2 Clearly implies that they wherever they were they worked together—i.e. the team “ top flight cabaret in Europe ”—team making its first trip East.

Massey (continuing) :

Not true that act was “ top flight . . . ” Paragraph 3. 20

What else can it mean but that this team had appeared in these places ?

Submit (1) Respondents *not* “ top flight cabaret.”

(2) Not appeared in these places (save 2 exceptions private parties)

but (3) Private parties not in public rooms.

Paragraph 4 also untrue (Page 5)—inserted to get job quickly.

Reads 43–45 Letter referred to in cable 27 February see page 9 and 10. Letter instead of being sent by air mail—went surface mail yet Currie apparently got hold of it (though it was addressed to Cockpit) and 30 destroyed it. Never seen by Appellants.

Kerr on Fraud and Mistake 25—Four ingredients present in this case—fraudulent misrepresentation.

Page 41 (Kerr) 42, 43 *Literal Truth* 45.

No person reading letter 25 could conclude that this team on official invitation had appeared in the hotels named.

Lloyd—Ground 1 M/A—C.J. only looked at part of letter (42) because of paragraph 6 of the defence (Page 11). Signature was not alluded to in Court below. Paragraph 2 (letter 42) statement of opinion as to being top flight cabaret unlike 3 paragraph which is a statement of fact.

Halsbury Vol. 23—19.

10 Not true that large portion of letter (42) untrue. Respondents started work on March 24th. Dorchester, Grosvenor and Cafe de Paris written to on 7th May—letter 47. Allegation obvious after few days. Team was not “top flight” Cabaret—page 14 also page 4. No evidence performance at Wingfield House—private party—Letter 47 does not allege fraud in terms yet on 11th May they heard from Grosvenor etc.

Lloyd (continuing) :

(17) yet wrote letter 47. Ten days later Respondents cross-examined—no suggestion of fraud—Fraud first mentioned in Defence and Counterclaim.

20 *Derry v. Peek* [1889] A.C. 343 *mens rea*. Doesn't matter whether these words true or untrue. If true they may still be a misrepresentation. C.J. decided more than that they could be true i.e. either no *mens rea* i.e. intention or that Appellants were not induced by the misrepresentation. Finding of fact (former) can it be said to be impossible. First allegation of fraud made 3 June—not put to Respondents in cross-examination. This, of itself sufficient for C.J. to find no intention—or intention not proved as it must be.

Gilchester Properties v. Gomm 64 T.L.R. 235.

Not open to Court to find innocent misrepresentation. It is either fraudulent or nothing (authorities quoted at 18).

30 G/A (1) Only part of letter pleaded—signature point not taken at trial.

(2) C.J. in fact found no misrepresentation of fact and that either no intention or no inducement. As to former was C.J.'s finding impossible on facts—not whether Court of Appeal agrees with it.

(A) and (B) require a reading into of the letter of words not there.

(C) Top flight cabaret not term of art or statement of fact.

Wingfield House—not supported by evidence.

G/A 3 and 4. Fraud not proved.

40 Last paragraph. Damages. Appellants assessed their own damages letter 12 May—reference to Registrar would be necessary. At most Appellants have defence to action and no counterclaim.

Massey—C.J. only found no misrepresentation and fraud not established.

In the Court of Appeal of the Colony of Singapore. Island of Singapore.

No. 16.
Notes of
Knight, J.,
of
Argument,
continued.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

He found nothing as to Respondents' intention. Letter obviously intended to deceive its recipient. Top flight cabaret in Europe means team has performed in best places in Europe.

Lloyd cannot support letter (42) as being true. If untrue—fraudulent.

No. 16.
Notes of
Knight, J.,
of
Argument,
continued.

C. A. V.

Intld : C. K.

23/6/55.

1/7/55.

C.A. 16/55. Judgment read—deposit to Respondents.

Certified true copy,

10

(Sgd.) HENG PENG HOE,
Private Secretary to Judge Court No. 4,
Supreme Court,
Singapore.

9.7.55.



No. 17.

JUDGMENT.

Coram : TAYLOR, J.
STORR, J.
KNIGHT, J.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 17.
Judgment,
1st July
1955.

The Plaintiffs are cabaret performers. The Defendants are an Hotel Company.

The Plaintiffs wrote, from Bombay, the following letter to the Defendants :—

10 “ We have been advised to get into touch with you as we are told you have the best venue for our act in Singapore.

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.

20 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 & Newaille Eve, New York, Blue Angel, Astor Roof, Hollywood, Ciro's etc. We are Radio & T.V. Stars of many years standing, both writing and acting.

We find we have to leave India during the first week in March to avoid very heavy Income Tax charges, and therefore offer ourselves for your immediate consideration.

We work with only the services of a pianist if necessary though a band is useful.

Please cable us right away if you can use us or not as we are delaying our bookings to the U.K.

Yours truly,

pp. SYLVIA MARTIN and BILL CURRIE.

30 (Sgd.) BILL CURRIE.”

On the strength of that letter the Defendants engaged the Plaintiffs, by telegram, to perform in the Cockpit, Singapore, for two months at £250 p.m., with accommodation and free of income-tax.

40 The Plaintiffs arrived and their opening night was successful but their performances soon “ flopped.” The Defendants formed the view that they were not “ top flight Cabaret ” and made enquiries from which they learned that although one or other of the Plaintiffs had appeared in Cabaret at the places named they had never appeared as a team of two, except at Grosvenor House and the Dorchester, at each of which they had given one performance only at a private party. Meantime the first month had expired and the Defendants had paid the agreed remuneration for that month. During the

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 17.
Judgment,
1st July
1955,
continued.

second month the Defendants wrote to the Plaintiffs a letter claiming to terminate the contract on the ground of misrepresentation ; they continued the free accommodation till the end of the period but refused to pay any more salary.

The Plaintiffs sued for damages for wrongful termination of the contract. The Defendants counter-claimed damages for fraudulent misrepresentation. The trial Judge found for the Plaintiffs on the claim and dismissed the counter-claim. The Defendants appeal.

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. 10

The Defendants contend that the letter means that the Plaintiffs had been engaged by the managements of the hotels mentioned and that appearance at private parties there is irrelevant. I do not accept this. The words are : " Our engagements include every top spot such as (the places named) ". These words refer to places, not management. It was not suggested that they have a technical meaning or that a usage exists. There is no reason to think that people who give a private party at a leading hotel and employ professional artists to entertain their guests would be less exacting than the management who merely put on a show as an inducement to fluctuating visitors. If the Plaintiffs had appeared together at all the places named, even at private parties, the words used would have been literally true. The falsity of the representation is the statement that they had appeared together at all those places when the truth was that each of them had appeared separately at about half of them ; the two isolated joint appearances slightly mitigate the grossness of the mis-statement. 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 inadequate. 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. 30

If two opera singers obtained a joint engagement on a representation that they had appeared together in works in which the leading numbers are duets, the truth being that they had appeared in such productions only with other partners, and if they did not combine well and marred the whole show by bungling the duets then their employer would have a legitimate grievance but that is not this case. The Plaintiffs acted on the letter as a whole but they have never alleged that the duet factor particularly influenced them in entering into the contract or that failure of the duet element was an effective cause of their loss. Furthermore, it has not been shown that the Plaintiffs had any intention to deceive when they framed the letter. It was never 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. 40

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 of himself as “ top flight ” involves the risk of engaging a waning star.

10 The Defendants made a bad bargain but in my view they have not established the grounds on which they seek to avoid it and their appeal fails, with costs. The deposit should be paid to the Respondents’ solicitors.

(Sgd.) E. N. TAYLOR,
Judge.

I agree with the judgment of the learned President and have nothing to add.

(Sgd.) C. KNIGHT,
Judge.

Singapore, 1st July, 1955.

20 Certified True Copy.

(Sgd.) Illegible.

Private Secretary to Judge,

Court No. 3.

Supreme Court, Singapore.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

—
No. 17.
Judgment,
1st July
1955,
continued.

FORMAL JUDGMENT.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

1st July, 1955.

No. 18.
Formal
Judgment
entered,
21st July
1955.

The appeal of the above-named Appellants from the judgment herein of the Honourable the Chief Justice given on the 17th day of May, 1955, coming on for hearing on the 22nd day of June, 1955, before the Honourable Mr. Justice Taylor, the Honourable Mr. Justice Storr and the Honourable Mr. Justice Knight in the presence of Counsel for the Appellants and for the Respondents and upon reading the Record of Appeal and upon hearing Counsel for the Appellants and for the Respondents this Court did order 10 that this appeal should stand for judgment and this appeal standing for judgment this day in the presence of Counsel for the Appellants and for the Respondents IT IS ORDERED that the judgment of the Honourable the Chief Justice dated the 17th day of May, 1955, in favour of the Respondents be affirmed and this appeal dismissed with costs to be taxed and paid by the said Appellants to the said Respondents AND IT IS ORDERED that the sum of \$2,143.00 paid into Court by the said Appellants be paid by the Accountant-General to the Respondents' Solicitors upon Counsel for the said Respondents undertaking not to act upon this part of this judgment for a period of six weeks and if notice of application for leave 20 to appeal to Her Majesty in Council shall be given within the said period then not until such application shall have been disposed of AND IT IS FURTHER ORDERED that the sum of \$500.00 lodged in Court as security for the costs of this appeal be paid by the Accountant-General to the Respondents' Solicitors AND IT IS FURTHER ORDERED that the parties are to be at liberty to apply.

Entered in Volume LXVII pages 211 and 212 at 11 a.m. the 21st day of July, 1955.

(Sgd.) T. KULASEKARAM,

Dy. Registrar.

30

(Sgd.) YEO.

No. 19.

ORDER giving Leave to Appeal to Her Majesty in Council.

Before—

THE HONOURABLE MR. JUSTICE TAN

In Open Court.

UPON Motion preferred unto Court this day by Hotel de l'Europe Limited, the abovenamed Appellants/Defendants AND UPON HEARING Counsel for the applicants and for the Respondents/Plaintiffs AND UPON READING the Petition for leave to appeal dated the 18th day of August, 1955 and filed herein on the 19th day of August, 1955 THIS COURT DOTH ORDER that the Appellants/Defendants be at liberty to appeal to Her Majesty in Council AND THIS COURT DOTH CERTIFY that this case as regards the amount and value thereof is a fit one for appeal to Her Majesty in Council.

Dated this 22nd day of August, 1955.

(Sgd.) T. KULASEKARAM,

Dy. Registrar.

(Sgd.) YEO.

*In the
Court of
Appeal
of the
Colony of
Singapore.
Island of
Singapore.*

No. 19.
Order
giving
leave to
Appeal to
Her
Majesty
in Council,
22nd
August
1955.

EXHIBITS.

Exhibits.

Agreed
Bundle of
corres-
pondence.

AGREED BUNDLE OF CORRESPONDENCE.

E. Letter, Plaintiffs to Defendants.

E.
Letter,
Plaintiffs to
Defendants,
18th
February
1954.

The Manager,
The Cockpit,
Hotel de l'Europe,
Singapore.

Ritz Hotel,
Bombay.
18th Feb. 54.

10

Dear Sir,

We have been advised to get into touch with you, as we are told you have the best venue for our act in Singapore.

We work under the name of SILVIA MARTIN and BILL CURRIE and are top flight cabaret in Europe etc., this being our first trip East.

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 & Newaille Eve, New York, Blue Angel, Astor Roof, Hollywood, Ciro's etc. We are Radio & T.V. Stars of many years standing, both writing and acting. 20

We find we have to leave India during the first week in March to avoid very heavy Income Tax charges, and therefore offer ourselves for your immediate consideration.

We work with only the services of a pianist if necessary though a band is useful.

Please cable us right away if you can use us or not as we are delaying our bookings to the U.K.

Yours truly

p.p. SYLVIA MARTIN & BILL CURRIE
(Sgd.) BILL CURRIE.

30

Cable, Defendants to Plaintiffs.

22.2.54.

To BILL CURRIE
RITZ HOTEL
BOMBAY.

ADVISE SALARY WANTED MONTHLY WE PROVIDE
ACCOMMODATION

Exhibits.

Agreed
Bundle of
corres-
pondence.

Cable,
Defendants
to
Plaintiffs,
22nd
February
1954.

COCKPIT.

Cable, Plaintiffs to Defendants.

10 23 Feb. 54.

XP49 BOMBAY 24 23 1140—

COCKPIT HOTEL DE L'EUROPE SINGAPORE—

EQUIVALENT POUNDS TWOFIFTY STERLING PLUS SEA OR
AIR PASSAGES ONE WAY BOMBAY SINGAPORE STOP BOMBAY
CONTRACT ENDS MARCH THIRD—CURRIE

Cable,
Plaintiffs to
Defendants,
23rd
February
1954.

A. Cable, Defendants to Plaintiffs.

To BILL CURRIE

RITZ HOTEL BOMBAY

OFFER £250 MONTHLY TWO MONTHS ENGAGEMENT APRIL
20 MAY FREE INCOME TAX PLUS BOARD AND LODGING BUT
PASSAGES YOUR ACCOUNT. COCKPIT.

A.
Cable,
Defendants
to Plaintiffs

*Exhibits.***Cable, Plaintiffs to Defendants.**

Agreed
Bundle of
corres-
pondence.

27 Feb. 54.

TK130 BOMBAY 15 26 1620—

Cable,
Plaintiffs to
Defendants,
27th
February
1954.

GLT COCKPIT HOTEL DE L'EUROPE SINGAPORE—OFFER
ACCEPTED ARRIVING STEAMSHIP VICTORIA MARCH 21 LETTER
FOLLOWING—CURRIE

Cable,
Defendants
to
Plaintiffs,
11th
March
1954.

Cable, Defendants to Plaintiffs.

11.3.54 1.10 p.m.

To CURRIE RITZ HOTEL BOMBAY

HAVE NOT RECEIVED YOUR LETTER STOP WISH TO ANNOUNCE 10
YOUR OPENING DATE STOP CAN MANAGE 24TH

COCKPIT.

Cable,
Plaintiffs to
Defendants, 12 Mar 54
12th
March
1954.

Cable, Plaintiffs to Defendants.

XP145 BOMBAY 11 12 1145—

COCKPIT HOTEL DE L'EUROPE SINGAPORE—YES OPEN
24TH PHOTOGRAPHS IN AIRMAIL—CURRIE. 24TH

F. Letter, Plaintiffs to Defendants.

Exhibits.

Ritz Hotel,
Bombay.

Agreed
Bundle of
corres-
pondence.

12th Mar. 54.

F.
Letter,
Plaintiffs to
Defendants,
12th
March
1954.

The Manager,
“ Cockpit,”
Hotel de L’Europe,
Singapore.

Dear Sir,

10 I was very surprised to receive your cable stating you had not received my letter which was sent the day I cabled to you, upon checking however, I find that the staff here did not carry out my instructions to air mail but sent surface mail, so I am sending another set of photographs herewith.

I do not know if any permits are required to work in Singapore, if so the following details may help. Sylvia Martin, British passport ; British subject by birth Passport No. 951758, 23 June 53 F.O./London, Bill Currie, British Passport, British subject by birth ; passport No. 232829, 24 June 53 F.O./London.

20 I don’t know how long the surface mail takes from Bombay to Singapore and it may well be we will arrive before our last letter.

In case you are planning our accommodation in advance I should point out that Miss Martin and I are, in private life, Mr. & Mrs. Currie.

We shall be very happy to open on the 24th in fact in the letter which went astray I mentioned that should you require an earlier opening date than April it would suit us perfectly. We are very much looking forward to being with you, until then,

Yours sincerely,

(Sgd.) BILL CURRIE.

*Exhibits.***B. Letter, Defendants to Plaintiffs.**

Agreed
Bundle of
corres-
pondence.

Bill Currie, Esq.,
Present.

22nd March, 1954.

B.
Letter,
Defendants
to
Plaintiffs,
22nd
March
1954.

Dear Sir,

This will confirm our cable offering you a two months engagement at "The Cockpit" as from March 24th at a salary of £250 per month, either in Sterling or the equivalent in Straits dollars, plus free board and lodging. The income tax payable will be for our account, but travelling expenses to and from Singapore is your responsibility.

10

You will give a performance nightly except Sundays.

You and your wife will be entitled to a free drinks allowance of \$50.00 each per month. In addition we will allow you the following concessions on food and drinks as follows :

- (1) A discount of 20% on all drinks over and above the total sum of \$100.00 per month.
- (2) A discount of 20% on all A la Carte meals consumed by your wife and yourself and any guests you may entertain.
- (3) A discount of 20% on all table d'hote meals your guests may consume.

20

We hope that you will enjoy your visit to Singapore and particularly your stay in the Cockpit, and you may rest assured that we shall do everything to co-operate with you to make your stay a pleasant and successful one.

Yours faithfully,

HOTEL DE L'EUROPE LTD.

(Sgd.)

Managing Director.

Letter, Hilborne & Murphy to Plaintiffs.

Exhibits.

12th May, 1954.

Agreed
Bundle of
corres-
pondence.

KEH/EMC/

Letter,
Hilborne &
Murphy to
Plaintiffs,
12th May
1954.

Without Prejudice.

Dear Sir and Madam,

We have been consulted by our clients the Hotel de L'Europe who instruct us that you have been appearing on contract with our clients since the 24th March, last, in nightly cabaret. Our clients' offer to engage you at their restaurant known as "The Cockpit" was communicated to
10 you by cable in February when you were at the Ritz Hotel, Bombay. After receipt of a letter from Mr. Currie from there dated the 18th February, 1954, the offer was made by cable since Mr. Currie stated that you were delaying your bookings to the U.K. and he requested that the response to his letter be by cable.

We enclose a copy of the letter and we refer, in particular, to paragraphs 2 and 3 thereof. Our clients maintain that the ordinary meaning to be attached, and the meaning which they did attach, to these two paragraphs was that you were a top flight cabaret act in Europe, and that
20 as such you had been engaged by the Hotels and other places of entertainment mentioned in your letter. On the basis of this letter, therefore, our clients offered you a contract containing generous terms of engagement which you accepted by return.

In our clients' estimation, an opinion not held by them alone, the standard of the cabaret was mediocre to say the least, and after allowing some time for an improvement which did not materialise, our clients were prompted to make certain enquiries. From information which has come into our clients' hands as a result of these enquiries they are satisfied that the statements contained in paragraph 3 of your original letter of
30 application are untrue, at least in part, since two of the establishments mentioned in your letter deny that they have ever engaged you in cabaret.

We have advised our clients that having regard to this information your letter contains misrepresentations which go to the root of the contract, and which entitle them to claim damages from you for such misrepresentations. However, they do not propose, at any rate at the present juncture, to institute proceedings against you since they have no desire to become involved in Court proceedings which must be of an unpleasant nature. Nevertheless, if the proposition which we are instructed to make to you is not accepted by you, and you deem fit to institute proceedings yourselves, our clients will contest the matter most strongly, and in that
40 event they will themselves institute proceedings against you. We mention

Exhibits.

Agreed
Bundle of
corres-
pondence.

Letter,
Hilborne &
Murphy to
Plaintiffs,
12th May
1954,
continued.

this, which might otherwise appear to be rather anticipatory because at the meeting this afternoon at which Mr. Chin Chye Fong, Mr. Currie and the writer were present it appeared to the latter, and also, we believe, to Mr. Chin Chye Fong that you maintain that you were guilty of no misrepresentation in the letter referred to. We have no hesitation in saying that it appears to us quite clear that the misrepresentations are patent and it is obvious that our clients have been deceived. They have already paid you the sum of £250 for the first month of your contract. They are not prepared to pay you any more. In other words, they are prepared to pay you, and have paid you, at the rate of £125 per month 10 for the term of your engagement which was for two months. As far as our clients are concerned the contract is at an end. However, they have no objection at present to your continuing the Cabaret until the 22nd instant, the date you would normally have terminated your engagement, if you so desire, subject to their right to terminate the performances before that date should they consider that to be in their own interests.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Bill Currie, Esq., and Miss Sylvia Martin,
c/o Hotel de L'Europe Ltd.,
Singapore.
Encl.

20

Letter, Plaintiffs to Hilborne & Murphy.

Hotel de l'Europe,
Singapore.

13 May, 1954.

Messrs. Hilborne & Murphy,
9 Malacca Street,
Singapore.

Exhibits.

Agreed
Bundle of
corres-
pondence.

Letter,
Plaintiffs to
Hilborne &
Murphy,
13th May
1954.

Dear Sirs,

We have received your letter of the 12th May last, which, being
10 written without prejudice, we do not altogether understand.

It is emphatically denied that there was any misrepresentation in our letter of the 18th February last, and we have had engagements at all the Hotels and Restaurants mentioned therein. It is not, and never has been, suggested that we have been employed by all the Hotels stated since of course some of them, such as the Dorchester and Grosvenor do not engage cabaret artistes as is well known. No complaint whatsoever in relation to our work was made until yesterday.

We are certainly not prepared to settle this matter on the terms contained in your letter, and we note that you state your Client is not
20 prepared to pay our salary for the current month. We shall be obliged if you will confirm this.

As you know, we have booked an air passage leaving Singapore on the 23rd May next after the termination of our agreement, and of course the cost of this must be paid a week before that date. It therefore is of some importance for us to know exactly what is the purpose and intention of your Client in instructing you to write to us in this manner.

Yours faithfully,

p.p. SYLVIA MARTIN & BILL CURRIE.

(Sgd.) BILL CURRIE.

*Exhibits.***C. Letter, Hilborne & Murphy to Plaintiffs.**

Agreed
Bundle of
corres-
pondence.

KEH/FK/283/1954.

14th May, 1954.

C.

Letter,
Hilborne &
Murphy to
Plaintiffs,
14th May
1954.

Without Prejudice.

Dear Sir and Madam,

We refer to our letter to you of the 12th instant. We have been instructed to inform you that our clients, having given further consideration to the question of your continuing the cabaret until the 22nd instant, have now decided that they do not wish you to give any further performances at their restaurant.

10

We shall be glad if you will kindly take this letter as formal notice of this decision, effective as from this morning.

Although our clients have rescinded the contract which included free board and lodging in their hotel, they do not wish to ask you to leave the premises before the 22nd instant. However, they cannot allow you to continue to sign chits for drinks bought and consumed on the premises during the remainder of your stay at the hotel.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Bill Currie, Esq., and Miss Sylvia Martin,
c/o Hotel de L'Europe Ltd.,
Singapore.

20

Letter, Hilborne & Murphy to Plaintiffs.*Exhibits.*

KEH/EMC/283/54.

14th May 1954.

Agreed
Bundle of
corres-
pondence.

Dear Sirs,

We have received your letter of the 13th instant, written on behalf of Miss Sylvia Martin and yourself, and we note what you say, and we have taken our clients' instructions, thereon.

Letter,
Hilborne &
Murphy to
Plaintiffs,
14th May
1954.

In view of the fact that our clients are of the opinion that the contents of our letter of the 12th instant, are quite clear, they have nothing to add
10 thereto.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Bill Currie, Esq.,
c/o Hotel de L'Europe,
Singapore.

Letter, Drew & Napier to Hilborne & Murphy.

Messrs. Hilborne & Murphy,
22, Nunes Building,
Malacca St.,
Singapore, 1.

Letter,
Drew &
Napier to
Hilborne &
Murphy,
14th May
1954.

20

14th May, 1954.

Dear Sirs,

We have been consulted by Mr. Currie and Miss Sylvia Martin who have handed to us a letter from you dated 14th May last, and somewhat curiously written without prejudice. This letter terminates the contract made with them by the Hotel de L'Europe Ltd.

We are instructed that our Clients entered into a contract with this Company for an engagement of two months at their Hotel at a salary of £250 per month, free of income tax, whereof only the first month's salary
30 has been paid. On the expiration of their contract our Clients had arranged to leave for Australia on the 23rd May next, and intend so to do. They are however clearly entitled to their salary for the second month of their engagement, and, in view of the breach thereof by the Company, claim the immediate payment thereof.

We shall accordingly be pleased to receive from you the equivalent of the sum of £250 and an undertaking on behalf of your Clients to pay the income tax thereon, and failing an immediate satisfactory reply tomorrow our Clients in the circumstances will have no alternative but to commence legal proceedings immediately and without further notice.

40

Yours faithfully,

(Sgd.) DREW & NAPIER.

*Exhibits.***Letter, Hilborne & Murphy to Drew & Napier.**

Agreed
 Bundle of
 corres-
 pondence.

Our Ref : KEH/FK/283/54

17th May, 1954.

Letter,
 Hilborne &
 Murphy to
 Drew &
 Napier,
 17th May
 1954.

Dear Sirs,

We have received your letter of the 14th instant. We did not receive this letter until 12.10 p.m. on the 15th instant which made it virtually impossible for us to obtain our clients' instructions and to communicate them to you on that day.

We notice that you refer to our letter to your clients of the 14th instant, but no doubt they have shown you our letter of the 12th idem, which is the 10 material letter confirming the rescission of your clients' contract and the reasons for doing so. That letter was written without prejudice because in the events which have happened we had advised our clients that they had a claim for damages against your clients, and these rights they wished to preserve in the event of your clients refusing to accept the rescission of the contract and the terms and conditions stipulated for by our clients. However, we have no objection to your treating previous correspondence between ourselves and your clients as open for the purpose of any proceedings which your clients deem fit to institute.

Our clients have no intention whatsoever of deviating from the terms 20 contained in their letter of the 12th instant and we are instructed to accept service of any proceedings commenced by your clients.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Messrs. Drew & Napier,
 Singapore.

Letter, Drew & Napier to Hilborne & Murphy.

Yours : KEH/FK/283/54.

Ours : CHWP/FM/2758.

Messrs. Hilborne & Murphy,
22, Nunes Building,
9, Malacca St.,
Singapore, 1.

17th May, 1954.

Dear Sirs,

10

Mr. W. Currie & Miss Sylvia Martin.

We thank you for your letter of the 17th May and will obtain our Clients' further instructions.

It seems clear to us that the letter of the 14th instant, though written without prejudice, is not privileged. This does not apply to the earlier correspondence.

Yours faithfully,

(Sgd.) DREW & NAPIER.

Letter, Hilborne & Murphy to Drew & Napier.

Our Ref : KEH/FK/283/54.

20 Your Ref : CHWP/FM/2758.

18th May 1954.

Dear Sirs,

Mr. W. Currie & Miss Sylvia Martin.

We have received your letter of the 17th instant and note what you say. Since your clients rejected the proposition made by our clients in our letter of the 12th instant, we see no good reason why any of the correspondence should now remain privileged. For the purpose of the proceedings, therefore, we propose that the whole of the correspondence should be open.

30

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Messrs. Drew & Napier,
Singapore.

Exhibits.

Agreed
Bundle of
corres-
pondence.

Letter,
Drew &
Napier to
Hilborne &
Murphy,
17th May
1954.

Letter,
Hilborne &
Murphy to
Drew &
Napier,
18th May
1954.

*Exhibits.***Letter, Hilborne & Murphy to Drew & Napier.**Agreed
Bundle of
corres-
pondence.

KEH/EMC/283/54.

19th May, 1954.

Your Ref. CHWP/FM/2758.

Letter,
Hilborne &
Murphy to
Drew &
Napier,
19th May
1954.

Dear Sirs,

Suit No. 964 of 1954.

1. William Dudley Currie-Fryer
2. Sylvia Mary Martin (m.w.)

and

Hotel de L'Europe Limited.

As the Plaintiffs are not ordinarily resident within the jurisdiction 10 of the High Court of Singapore, we shall be glad to know whether in the event of our clients entering a common appearance to the Writ of Summons which has today been served upon us, your clients are prepared to provide security in the sum of \$3,000. Failing a satisfactory reply we are instructed to apply to the Court for an Order.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Messrs. Drew & Napier,
Singapore.

Letter, Drew & Napier to Hilborne & Murphy.

Exhibits.

CHWP/JSK/2758.

Singapore.

19th May, 1954.

Agreed
Bundle of
corres-
pondence.

Messrs. Hilborne & Murphy,
22 Nunes Building,
9 Malacca Street,
Singapore.

Letter,
Drew &
Napier to
Hilborne &
Murphy,
19th May
1954.

Dear Sirs,

10

Suit No. 964 of 1954

William Dudley Currie-Fryer and
Sylvia Mary Martin (m.w.)
Hotel de L'Europe Limited.

We thank you for your letter of the 19th May and we see no reason why security for costs in such a large sum as \$3,000 shall be given. We give an undertaking to pay such costs as may be ordered against the Plaintiffs in the sum of \$2,500 which should be more than ample to cover the costs of this matter.

20 We have taken the summons out for the evidence of the Plaintiffs to be taken forthwith and by leave of the Chief Justice to issue a short notice of the summons so that it can be heard Friday next. The evidence itself can be taken Friday afternoon if this is convenient, but if not, we will endeavour to make an appointment Saturday morning, since as you are aware, our Clients leave by air Sunday morning. If their evidence is not so recorded, you will appreciate it will be necessary for a letter of request or a commission to be issued for their evidence to be taken in Australia, and this will involve considerable expense, which we consider can be saved.

30 We shall be obliged if you will let us have an immediate reply in connection with the proposed appointed with the Deputy Registrar.

Yours faithfully,

(Sgd.) DREW & NAPIER.

Exhibits.

Letter, Drew & Napier to Hilborne & Murphy.

Agreed
Bundle of
corres-
pondence.

Singapore.

19th May, 1954.

Letter,
Drew &
Napier to
Hilborne &
Murphy,
19th May
1954.

Messrs. Hilborne & Murphy,
22 Nunes Building,
Malacca Street,
Singapore.

Dear Sirs,

Mr. W. Currie & Miss Sylvia Martin.

We thank you for your letter of the 18th May, and a Writ herein 10 has been issued and will be served upon you to-morrow.

We do not agree with the manner in which correspondence has been headed "Without Prejudice," and are not at present prepared to agree to treat the whole of the same as open.

Yours faithfully,

(Sgd.) DREW & NAPIER.

Letter, Hilborne & Murphy to Drew & Napier.

KEH/EMC/283/54.

20th May, 1954.

Dear Sirs,

Suit No. 964 of 1954.

William Dudley Currie-Fryer and Sylvia Mary Martin (m.w.) vs.
Hotel de L'Europe Ltd.

Exhibits.

Agreed
Bundle of
corres-
pondence.

Letter,
Hilborne &
Murphy to
Drew &
Napier,
20th May
1954.

We have received your letter of the 19th inst., upon which we have taken our clients' instructions. We are entering an appearance to the Writ on their behalf to-day.

We will for the present agree to accept security in the sum of \$2,500, although in our opinion in view of the fact that we shall probably have to take evidence on commission in London, in addition to calling witnesses at the hearing, the costs are likely to exceed that figure considerably. However, we cannot agree to accept your undertaking to pay those costs in the event of them being ordered against the Plaintiffs. We feel sure that you will recognise that the ground of our objection is in no way personal as far as yourselves are concerned. We must insist that the security is deposited into Court pending the determination of the proceedings.

The writer is engaged in the Police Court on the 21st inst., but we would be prepared to attend before the Deputy Registrar on Saturday morning to enable your clients to give evidence, provided at least three hours can be set aside, that security for the costs in the sum of \$2,500 is given and deposited in Court forthwith, and that a Statement of Claim is filed by yourselves by to-morrow afternoon. All we have at the moment is the endorsement on the Writ.

We should like to know by return whether Miss Martin intends to give evidence. If not, we propose to call her ourselves in view of the fact that our clients intend to counter-claim for damages against your clients.

Yours faithfully,

(Sgd.) HILBORNE & MURPHY.

Messrs. Drew & Napier,
Singapore.

*Exhibits.***Letter, Drew & Napier to Hilborne & Murphy.**

Agreed
 Bundle of
 corres-
 pondence.

Singapore.

20th May, 1954.

Letter,
 Drew &
 Napier to
 Hilborne &
 Murphy,
 20th May
 1954.

Messrs. Hilborne & Murphy,
 9 Malacca Street,
 Singapore, 1.

Dear Sirs,

We thank you for your letter of the 20th May, but are quite unable to understand the reasons on which you decline to accept our undertaking for security for costs, particularly in view of the fact that, as you are 10 aware, this is a matter of extreme urgency.

If only you had filed immediately the appearance, we should ourselves have filed the statement of Claim which is ready in this office for this purpose.

Miss Martin naturally will give evidence and you will observe is included for this purpose in the Summons with which you have been served.

Yours faithfully,

(Sgd.) DREW & NAPIER.

D. List, put in by Plaintiffs, showing places where they have appeared in London.*Exhibits.*

In London Sylvia Martin and Bill Currie together, individually, or in concert with others have between them fulfilled engagements as entertainers at the following establishments :—

Agreed
Bundle of
corres-
pondence.

Berkeley Hotel	May Fair Hotel	Quaglino's	D. List put in by Plaintiffs showing places where they have appeared in London.
Allegro Room	Dorchester Hotel	Grosvenor House	
Café de Paris	Café Anglais	Ciro's Club	
Chez Henri	Orchid Room	Churchills Club	
Bagatelle	Embassy	Astor	
10 Landsdowne Restaurant	Colony	Oddinino's	
Café Royal	Pop's Club	Bat Club	
Florida	Wingfield House	96 Piccadilly	
Murrays Club	Connaught Rooms	Holborn Restaurant	
Savoy Hotel	Eccentric Club	500 Club	
London Palladium (Variety & Revue)	London Pavilion		
Leicester Square Theatre (show)	Saville Theatre (show)		
Alhambra Theatre (Variety)	Colliseum (Variety)		
Garrick Theatre (show)	Scala Theatre (concerts)		
Finsbury Park Empire (Variety)	Shepherds Bush Empire (Variety)		
20 Chiswick Empire (Variety)	New Cross Empire (Variety)		
Lewisham Empire (Variety)	Wood Green Empire (Variety)		
Golders Green Empire (Variety)	Holborn Empire (Variety)		
The Royal Command Variety Show, London Palladium	Victoria Palace		

Regular Broadcasters B.B.C. from 1929 (210 Savoy Hill) to 1953 including :—

Radio Olympia (T.V.)	Variety Bandbox	Music Hall
Henry Hall's Guest Night	B.B.C. Ballroom	Starlight House (Series)
30 Just Five Men (Own series)	Young Man's Fancy (Series)	They're out (Series) The Golden Slipper
Caprice	Curtain up (series)	Starlight Roof
The Bindles	Harry Roy Show	(T.V.)
Kaleidoscope (T.V.)	Café Continental	Weekly Magazine
Show Time (T.V.)	(T.V.)	Music Box
Cabaret Time (Live broadcast from Berkeley Hotel)		
Country Magazine (talks)		

Recorded for the following Gramophone Companies :—
Parlophone, Regal, Columbia, Chrystalate, Broadcast, Oriole.

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL OF 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.*

RECORD OF PROCEEDINGS

COWARD, CHANCE & CO.,
ST. SWITHIN'S HOUSE,
WALBROOK, E.C.4,
Solicitors for the Appellants.

SMITH & HUDSON,
CROWN BUILDINGS,
3/9 SOUTHAMPTON ROW, W.C.1,
Solicitors for the Respondents.