

28,1959

1.

IN THE PRIVY COUNCIL

No. 37 of 1958

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF TRINIDAD

B E T W E E N

WILFRED ISAAC  
(Defendant) Appellant

- and -

HOTEL DE PARIS LIMITED  
(Plaintiffs) Respondents

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 9 MAR 1960  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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55471 CASE FOR THE RESPONDENTS

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1. This is an appeal from the judgment of the Federal Supreme Court of Trinidad, in the exercise of its Appellate Jurisdiction and on Transfer from the West Indian Court of Appeal, (Hallinan C.J., Rennie and Archer J.J.) on the 27th day of May 1958 dismissing the Appellants' appeal from the judgment of the Honourable Mr. Justice Clement-Phillips dated the 6th day of December 1957 whereby he ordered that judgment be entered for the Respondents in their action against the Appellant for a declaration that the Respondents were entitled to possession of the premises situate at No. 10, Abercromby Street and Marine Square (North) Port of Spain and known as the "Parisian Hotel" and for possession of the said premises with costs to be taxed.

p.139

p.116

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2. In the action the Respondents were Plaintiffs and by the Statement of Claim delivered on the 13th day of December 1956 the Respondents alleged that they were the lessees of the "Parisian Hotel" and entitled to possession thereof, that since the 1st day of March 1956 the Appellant had been and was still wrongfully in possession of the said "Parisian Hotel" and had refused to give them possession of the same, and they claimed a declaration that they were entitled to possession of the "Parisian Hotel", possession of that hotel, mesne profits and damages for trespass

p.3

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3. By the Defence which was delivered on the 8th day of February 1957 the Appellant as Defendant denied

p.4

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that the Respondents were entitled to possession of the hotel or that he was wrongfully in possession of it and claimed that he was the Respondents' tenant of the "Parisian Hotel" at a monthly rental of \$250.00 and accordingly that the Respondents were not entitled to the relief which they claimed in the action

4. The hearing of the action before the Honourable Mr. Justice Clement-Phillips occupied the 3rd, 11th, 21st, 22nd, 23rd, 24th, 25th, 28th, 29th, and 30th days of October 1957 and 6th day of December 1957.

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5. The principal issues involved in the action were as to :-

(1) whether the Respondents employed the Appellant as the manager of their two hotels from the beginning of September 1955 until December 1955

(2) whether in December 1955 the Respondents agreed to give a tenancy of the "Parisian Hotel" to the Appellant at a monthly rental of \$250, which tenancy the Appellant accepted and under which he paid rent and

(3) whether the position was affected in any way by either the terms of a proposed settlement discussed on the 17th February 1956 or by the Respondents' acceptance of \$250 a month from the Appellant from February 1956 down to the commencement of the action in October 1956.

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6. Counsel for the Respondents called as witnesses for the Respondents their Managing Director, Attie Saffie Joseph, their accountant Egbert Bridgman, their secretary at all material times, Edward Aping, and the Barrister who acted for the Respondents in their dispute with the Appellant, one Anthony Khalil Sabga Aboud.

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7. Attie Saffie Joseph denied that he had ever employed the Appellant as Manager of the Respondents' two hotels from early September 1955 until December 1955 and stated that the Appellant's only connection with the Respondents' two hotels during October, November and December 1955 arose from his entering into an Agreement with Attie Saffie Joseph dated the 1st October 1955 for the purchase of 15 shares, part of the Respondents' issued capital. The purchase was only to be effective after the payment of a number of instalments by the Appellant. Thereafter the Appellant made occasional attendances at the hotels in which he was thus acquiring an interest. Attie Saffie Joseph denied that in December 1955 he

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<u>Record</u>	made from running the "Parisian Hotel" on the second floor only of 10, Abercromby Street and subject to the Respondents' right to retain that part of the second floor on which billiard tournaments took place.	
p.50, 11.13-17		
p.57, 1.20	10. Edward Aping confirmed that the Appellant was not employed as Manager of the Respondents' two hotels from early September 1955 until December 1955. He stated that although he paid the salaries, the Appellant never applied to him for any salary alleged to be due. The Respondents paid for repairs to the "Parisian Hotel" from October 1955 until February 1956, the wages of the staff at the "Parisian Hotel" down to the 17th February 1956 and telephone and electricity bills for the "Parisian Hotel" down to April 1956 and February 1956 respectively.	10
p.57, 11.20-24		
p.57, 11.25-29		
p.58, 11.19-34		
	11. Counsel for the Appellant called as witnesses the Appellant, Mrs. Elma Lamsee and the Appellant's Solicitor Guy de Gannes.	
p.71, 11.23-26	12. The Appellant stated that on the 1st September 1955 Joseph employed him as Manager of the Respondents' two hotels at a salary of \$400 per month and that he discharged the duties of manager down to the 15th or 16th December 1955. During that period he received no salary because Joseph said that the Respondents had insufficient money. However, he had entered into the Agreement dated the 1st October 1955 for the purchase of 15 of Joseph's shares and had made payments to Joseph down to the 1st December 1955 which amounted to \$2329.20. At a meeting on the 15th or 16th December 1955 in the presence of Mrs. Lamsee Joseph said "You could take the Parisian Hotel - pay a rent and manage it - whatever you take that would be your profit in the Company representing your shares". The Appellant accepted this offer on Joseph's consenting to have the necessary repairs carried out and Joseph's agreement that the rent should be \$250 per month. The Appellant paid the first \$250 before Christmas, although nothing had been said about whether the rent was payable in advance, and the next payment on the 1st or 2nd January 1956. The Appellant took possession of the "Parisian Hotel" immediately after his oral tenancy agreement and by the 23rd December 1955 the Respondents stopped paying for any repairs to be carried out to the "Parisian Hotel".	20
p.72, 11.27-33		
p.73, 1.1		30
p.75, 1.33		
p.76, 11.21-24		40
p.77, 11.1-7		
p.77, 1.26	13. The Appellant paid \$2800 for repairs to the "Parisian Hotel" but could not produce any of the receipts which he obtained. The meeting on the 17th February 1956 was called to embody the oral	50
p.78, 11.37-40		

- agreement made in December 1955 in a written agreement and to deal with some other points such as the payment of the balance due for the shares which he was purchasing. By the 28th February 1956 he had deposited with his Solicitor, Guy de Gannes, the balance payable for the shares but when the draft Agreement arrived, he would not sign it as it did not embody the terms which had been agreed. Record  
p.80, 11.31-33
- 10 14. In cross examination the Appellant admitted that he could indicate no documents which he had signed whilst allegedly manager of the Respondents' two hotels between September and December 1955. He also admitted that he had no books of account for his running of the "Parisian Hotel" from the 15th or 16th December 1955 until the 17th February 1956. He was shown a number of slips which he had signed and which were instructions for the Respondents to make payments for disbursements at the "Parisian Hotel" in February 1956 and which had led to payments being made by the Respondents. He could not account for these documents save that he said "My estimate is that all those documents are a perfect fabrication, fabricated for the purpose of meeting this case". p.83, 11.31-34  
p.98, 11.1-33  
p.93, 11.34-40
- 20 15. Mrs. Elma Lamsee confirmed the Appellant's evidence about his appointment as Manager of the two hotels in September 1955 and Joseph's grant of a tenancy of the "Parisian Hotel" to the Appellant in December 1955 but in cross-examination she admitted that she had signed a document dated the 7th June 1956 stating that the Appellant was not a tenant and that she had also written a letter to a friend saying that the Appellant had promised to pay her \$25 a day for every day she appeared in Court. p.108, 11.23-32  
p.110, 11.2-3  
p.109, 11.27-39
- 30 16. Guy de Gannes dealt in his evidence with the discussion between Joseph and the Appellant and their legal advisers on the 17th February 1956. This witness said that he knew nothing of the matter prior to the meeting but that Aboud took notes of the discussion. He said that after a long discussion about money Joseph said "You want the Ice House (referring to the Parisian Hotel) - take it - you want to run it - take it." The witness also said that it was not true that the Appellant had deposited the balance of the purchase price of the shares with him by the 28th February 1956 or at all. p.104, 11.34-5  
p.102, 11.17-20
- 40 17. At the close of the case for the Defence, the learned trial Judge allowed an application by Counsel for the Respondents to recall Egbert Bridgeman. Upon recall he produced the Guest Register of the "Parisian Hotel" from the 9th October 1954 to the 16th February 1956, showing that in February 1956 p.111
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Record

there were 155 guests in the "Parisian Hotel" paying their charges to the Respondents. He also produced the Bill Analysis Book of the "Parisian Hotel" from the 9th May 1955 to the 29th February 1956 and the Bill Books and Receipt Books of the "Parisian Hotel".

18. In his Judgment the learned trial Judge reviewed the evidence and then on the issues of fact between the parties stated that he accepted the evidence of Attie Saffie Joseph on behalf of the Respondents and rejected the evidence of the Appellant and Elsa Lamsee. He held that Elsa Lamsee was a thoroughly unreliable witness and that cross-examination of the Appellant had the effect of thoroughly discrediting him. He also stated that part of the evidence of Guy de Gannes was entirely inconsistent with the Appellant's claim that he had been a tenant of the "Parisian Hotel" since December 1955. Accordingly he held that the Appellant was not appointed manager of the Respondents' two hotels in September 1955 and was not given a tenancy of the "Parisian Hotel" in December 1955. He held that, as Counsel for the Appellant had conceded, the draft Agreement of the 17th February 1956 did not alter the position because it was never accepted by either party. Finally he turned to consider the effect of the Respondents' acceptance of \$250 a month from the Appellant from February 1956 until October 1956, which the Appellant had tendered as rent for the "Parisian Hotel". He reviewed the conduct and statements by Joseph in the course of other proceedings before the Licensing Committee and, then referred to the case law which was relevant. He dealt with the matter in the following passages:

p.120, 11.1-3  
p.122, 11.8-10

"In my judgment it is impossible in the circumstances of this case to impute any intention on the part of the Plaintiff Company to enter into the relationship of landlord and tenant with the Defendant."

p.130, 1.19

"During the period between the 7th May 1956 and the date of issue of the Writ of Summons, the Defendant continued forwarding to Joseph monthly sums of \$250 purporting to be by way of "rent" for the premises and it might be suggested that acceptance of those sums by Joseph would, whatever the position might otherwise have been, in itself have the effect of creating a tenancy between the Company and the Defendant.

In my judgment, this proposition is, in view of the previous relations between the parties, quite untenable..."

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"With regard to the present case what is certain is that between the 7th May 1956 and the date of the issue of the Writ of Summons there was no change of intention on the part of the Plaintiff Company, whatever might have been the intention or desire of the Defendant."

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p.132, 1.11.

10 19. The Respondents respectfully submit that all the issues which the learned trial Judge had to decide in the action were issues of fact and that having carefully directed himself upon the evidence and the principles of law which he had to consider in making his findings of fact, none of these findings should be disturbed.

20. The hearing of the Appeal in the Federal Supreme Court occupied the 14th, 15th, 16th, 19th and 27th days of May 1958. The appeal was dismissed by all three Judges of that Court. Mr. Justice Archer delivered the first judgment in the course of which he said

20 "The trial Judge, on what I consider ample evidence, p.140, 1.28 accepted Joseph's account of the circumstances in which Isaac had been placed in occupation in December 1955. He found that there had been no payment of rent before the 17th February 1956 and that Isaac was an employee in December 1955 and not a tenant. It follows therefore that Isaac's occupation from December 1955 to the 17th February 1956 was the Plaintiff's occupation".

30 He then considered the further contention that as from the 17th February 1956 Isaac was a licensee with an interest and that his licence had not been properly determined. He held that Isaac was a licensee pending final acceptance or rejection of the draft agreement, that he was entitled to notice and that the notice dated the 7th May 1956 was effective to determine the licence. Finally he considered the possible creation of the relationship of landlord and tenant by acceptance of rent down to the issue of the Writ and held that it was the intention of the parties that governed their relationship and that the trial Judge had properly directed himself and found that there was no change of intention on the part of the Plaintiff between the 7th May 1956 and the date of the issue of the Writ.

p.142, 11.3-36

p.141, 11.8-13

Both Hallinan C.J. and Rennie J. concurred with this judgment delivered by Mr. Justice Archer.

21. The Respondents respectfully submit that the judgments of the three Judges of the Federal Supreme Court should be upheld as following the findings of

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fact made by the learned trial Judge.

22. On behalf of the Respondents it will be contended that the judgment in favour of the Respondents giving him possession of the "Parisian Hotel" and the dismissal of the Appellant's appeal from that judgment were right and should be upheld and that the appeal herein should be dismissed with costs for the following, among other

R E A S O N S

1. BECAUSE on the issues of fact the learned trial Judge, who had the opportunity of observing the demeanour of all the witnesses, had accepted the evidence tendered by the Respondents' witnesses and rejected the evidence of the Appellant and his witness, Mrs. Lamsee 10
2. BECAUSE the learned trial Judge found as a fact that the Appellant was never a tenant of the "Parisian Hotel".
3. BECAUSE the learned trial Judge found as a fact that the Appellant's licence to occupy the "Parisian Hotel" was properly determined by Notice to Quit dated the 7th May 1956. 20
4. BECAUSE the learned trial Judge found as a fact that from the 7th May 1956 until the issue of the Writ the Respondents did not intend to grant the Appellant a tenancy of the "Parisian Hotel" and in fact did not grant him a tenancy of the same.
5. BECAUSE the Respondents were entitled to judgment in the action as given. 30
6. AND UPON the grounds stated in the judgment of the Honourable Mr. Justice Archer in the Federal Supreme Court of Trinidad.

J. Lloyd Eley



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WILFRED ISAAC

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CASE FOR THE RESPONDENTS

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