

15, 1955

~~DC G 112.6/1~~

In the Privy Council.

No. 28 of 1954.

ON APPEAL FROM THE SUPREME COURT OF
THE BAHAMA ISLANDS EQUITY SIDE

Suit No. 29 of 1953.

BETWEEN

WILLIAM HENRY SANDS ... (Plaintiff) Appellant

AND

HARBOUR CLUB LIMITED ... (Defendants) Respondents.

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
V.I.C.1.
-4 JUL 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES
13546

PART I.
INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE SUPREME COURT OF THE BAHAMA ISLANDS. Suit No. 29 of 1953.			
1	Writ of Summons	27th February 1953	1
2	Statement of Claim	27th February 1953	2
3	Defence	2nd May 1953	3
4	Reply	15th June 1953	4
5	Chief Justice's Notes on Evidence		5
	<i>Plaintiff's Evidence :</i>		
	William Henry Sands	30th December 1953	
	Examination		6
	Cross Examination		8
	Re-Examination		10

No.	Description of Document.	Date	Page.
	Roscoe Whittleton Thompson	30th December 1953	
	Examination ... ..	...	11
	Cross Examination ... ..	...	14
	Re-Examination ... ..	...	17
	<i>Defendants' Evidence :</i>		
	William George Elcock	30th and 31st	
	Examination	December 1953 ...	17
	Cross Examination ... ..	...	20
	Re-Examination ... ..	...	25
	Address of Defendants' Counsel	11th January 1954 ...	25
	Address of Plaintiff's Counsel	11th January 1954 ...	28
6	Judgment	30th January 1954 ...	32
7	Order	30th January 1954 ...	46
8	Notice of Intention to Appeal	5th February 1954 ...	47
9	Notice of Motion	5th February 1954 ...	47
10	Notice of Motion for Supplemental Judgment... ..	12th February 1954 ...	48
11	Order refusing Supplemental Judgment	9th March 1954 ...	49
12	Order Granting Conditional Leave to Appeal to Privy Council	9th March 1954 ...	50

PART II.
EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
A	Lease	18th April 1950 ...	51
B	Agreement (copied in extenso in Judgment)	13th January 1951 ...	34
C	Letter Leonard Knowles to Hon. A. F. Adderley	10th December 1952	55

LIST OF DOCUMENTS NOT TRANSMITTED WITH THE RECORD.

Description of Document.	Date.
Notice of Entry of Appearance	12th March 1953
Summons for Directions	8th April 1953
Order for Directions	10th April 1953
Notice of Trial	23rd December 1953
Praecipe for Subpoena :	
Roscoe W. Thompson	23rd December 1953
Subpoena :	
Roscoe W. Thompson	23rd December 1953
Affidavit of Service of Notice of Intention to Appeal to Her Majesty in Privy Council	6th February 1954
Exhibit D—16 Vouchers	
Exhibit E—Copy of Exhibit B	

In the Privy Council.

No. 28 of 1954.

ON APPEAL FROM THE SUPREME COURT OF
THE BAHAMA ISLANDS EQUITY SIDE

Suit No. 29 of 1953.

BETWEEN

WILLIAM HENRY SANDS (Plaintiff) Appellant

AND

HARBOUR CLUB LIMITED (Defendants) Respondents.

RECORD OF PROCEEDINGS

No. 1.

Writ of Summons.

In the
Supreme
Court of
the Bahama
Islands.

IN THE SUPREME COURT.
EQUITY SIDE.

Suit No. 29 of 1953.

No. 1.
Writ of
Summons.
27th
February,
1953.

Between

WILLIAM HENRY SANDS Plaintiff

and

HARBOUR CLUB, LIMITED Defendants.

10 ELIZABETH THE SECOND by the Grace of God, of Great
Britain, Ireland, and of the British Dominions beyond the seas, Queen,
Defender of the Faith.

To : Harbour Club, Limited.

WE command you that within fourteen days after the filing of this
Writ, inclusive of the day of such filing you do cause an appearance to be
entered in an action at the suit of William Henry Sands. And take notice

In the
Supreme
Court of
the Bahama
Islands.

No. 1.
Writ of
Summons,
27th
February,
1953—
continued.

that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honourable Guy Wilmot McLintock Henderson, Q.C.,
Our Chief Justice of Our Bahama Islands the 27th day of February in the
year of Our Lord One Thousand Nine Hundred and Fifty-three.

(Sgd.) HILDA PRUDDEN,
Ag. Asst. Registrar.

The Plaintiff's claim is to recover possession of the premises known
as the Spider Web Garden Club situate on Bay Street in the City of Nassau,
damages and mesne profits.

10

(Sgd.) LEONARD KNOWLES,
Attorney for the Plaintiff.

This Writ was issued by Leonard Knowles of the said City of Nassau,
whose address for service is his Chambers situate in Bank Lane in the
said City, Attorney for the said Plaintiff who carries on business at Bay
Street, Nassau.

No. 2.
Statement
of Claim.
27th
February,
1953.

No. 2.
Statement of Claim.

IN THE SUPREME COURT.
EQUITY SIDE.

20

Suit No. 29 of 1953.

Between

WILLIAM HENRY SANDS Plaintiff

and

HARBOUR CLUB LIMITED Defendants.

(Writ issued the 27th day of February A.D. 1953)

STATEMENT OF CLAIM.

1.—By a lease dated the 18th day of April 1950 and made between
the Plaintiff of the first part the Defendants of the second part and William
George Elcock of the third part the Plaintiff demised to the Defendants 30
the premises situate on Bay Street in the City of Nassau known as the
Spider Web Garden Club together with the entrance thereto and the open
sections on the harbour of Nassau for the term of 8 years from the 1st day
of May 1950 at a yearly rent of £900 payable half-yearly.

2.—By the said lease the Defendants covenanted (inter alia) not to assign underlet or part with the possession of the said premises or any part thereof without first obtaining the written consent of the Plaintiff such consent not to be unreasonably withheld in the case of a responsible person.

In the Supreme Court of the Bahama Islands.

3.—By the said lease it was further provided that if any covenant on the Defendants' part therein contained should not be performed or observed then and in such case it should be lawful for the Plaintiff at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon the said demise should absolutely determine.

No. 2. Statement of Claim. 27th February, 1953—*continued.*

4.—In breach of the aforesaid covenant the Defendants on or about the 13th day of January 1951 sub-let or parted with possession of the said premises or of part or parts thereof to Maurice Handler without the written consent of the Plaintiff first obtained, and in further breach of the aforesaid covenant in or about the month of November 1951 the Defendants sublet or parted with possession of the said premises or of part or parts thereof to Roscoe Whittleton Thompson without the written consent of the Plaintiff first obtained.

5.—By reason of the matters aforesaid the Plaintiff has suffered damage.

The Plaintiff claims :

- (1) Possession of the said premises.
- (2) Damages.
- (3) Mesne profits from the 1st November 1952 to date of judgment or order.

Dated the 27th day of February 1953.

(Sgd.) LEONARD KNOWLES.
Attorney for the Plaintiff.

30

No. 3.
Defence.

No. 3.
Defence.
2nd May, 1953.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
EQUITY SIDE.

Suit No. 29 of 1953.

Between

WILLIAM HENRY SANDS Plaintiff

and

HARBOUR CLUB, LIMITED Defendants.

DEFENCE.

In the
Supreme
Court of
the Bahama
Islands.

No. 3.
Defence.
2nd May,
1953—
continued.

1.—The Defendants admit paragraphs 1, 2 and 3 of the Statement of Claim.

2.—The Defendants deny that they sub-let or parted with possession of the premises referred to in the Statement of Claim or any part or parts thereof in breach of the covenants contained in the Lease referred to in the Statement of Claim as alleged in paragraph 4 of the Statement of Claim or at all.

3.—The Defendants say that on the 13th day of January A.D. 1951 they entered into an agreement with Maurice Handler and Roscoe Whittleton Thompson whereby the said Maurice Handler was appointed to be the Manager of the Spider Web Garden Club from the 1st day of January A.D. 1951 to the 30th day of November A.D. 1951 and the said Roscoe Whittleton Thompson joined as Guarantor for the said Maurice Handler. After the termination of the said agreement the said Roscoe Whittleton Thompson conducted the affairs of the said Spider Web Garden Club but the Defendants are and always have been in possession and control of the said premises. 10

4.—The Defendants deny that the Plaintiff is entitled to possession of the said premises, damages or mesne profits as alleged or at all. 20

5.—Further or alternatively, the Defendants say that if they sub-let or parted with the possession of the said premises or part or parts thereof as alleged in the Statement of Claim (which is denied) the alleged forfeiture was waived by the Plaintiff before the commencement of this action. At all material times the Plaintiff received rent from the Defendants under the terms of the said Lease including the sum of £450. 0. 0. in respect of rent of the said premises to the 31st day of October 1952 which became due on the 1st day of May, A.D. 1952, after the cause of the alleged forfeiture arose.

6.—Further or alternatively, the Defendants say that if they sub-let or parted with possession of the said premises or part or parts thereof as alleged in the Statement of Claim (which is denied) they were entitled so to do. The consent of the Plaintiff to the acts complained of was sought and was given verbally but such consent has not been given in writing. The Defendants say that the said Maurice Handler and the said Roscoe Whittleton Thompson are responsible persons and that such consent in writing has been unreasonably withheld by the Plaintiff. 30

Delivered the 2nd day of May A.D. 1953.

(Sgd.) E. A. P. DUPUCH,
Attorney for the Defendants,
Chambers, Nassau, Bahamas. 40

No. 4.
Reply.

In the
Supreme
Court of
the Bahama
Islands.

IN THE SUPREME COURT.
EQUITY SIDE.

Suit No. 29 of 1953.

No. 4.
Reply.
15th June,
1953.

Between

WILLIAM HENRY SANDS Plaintiff
and
HARBOUR CLUB LIMITED Defendants.

10

REPLY.

1.—The Plaintiff joins issue with the Defendants on their Defence save insofar as the same consists of admissions.

2.—In further answer to paragraph 5 thereof the Plaintiff says that the said forfeiture was not waived by the Plaintiff and that the Plaintiff did not accept rent of the said premises after he became aware of the said breach of covenant by the Defendants.

3.—And in further answer to paragraph 6 of the Defence the Plaintiff denies that he ever gave verbal consent to any sub-letting or parting with possession of the said premises or any part thereof by the Defendants or
20 that the Defendants ever asked for consent to do so.

Dated the 15th day of June, A.D. 1953.

(Sgd.) LEONARD KNOWLES,
Attorney for the Plaintiff.

To E. A. P. Dupuch, Esq.,
Attorney for the Defendants.

No. 5.

Chief Justice's Notes on Evidence.

No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

IN THE SUPREME COURT.
EQUITY SIDE.

Suit No. 29 of 1953.

30

Between

WILLIAM HENRY SANDS Plaintiff
and
HARBOUR CLUB LIMITED Defendants.

Suit for possession.

In the
Supreme
Court of
the Bahama
Islands.

Mr. KNOWLES for Plaintiff.
Mr. DUPUCH for Defendant.

Issues.

No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953—
continued.

- (1) Whether or not the Defendant sub-let or parted with possession of the premises in breach of the covenant in the lease ;
- (2) If there was a breach was there a waiver by acceptance of rent ;
- (3) If the Defendant sub-let or parted with possession did the Plff. give the necessary consent either verbally or otherwise or did he unreasonably withhold that consent ; 10
- (4) If the answer to (1) is in the affirmative and there was no waiver and consent was not unreasonably withheld what are the damages, if any.

Mr. KNOWLES.

There is no provision for relief against forfeiture under the Bahamian law.

Reads pleadings.

Plff. did notice that Handler & Roscoe had a lot to do with Club. Enquired abt. status. Informed Managers—satisfied & accepted them. But when whole circs. of occupation are regarded as a whole only conclusion 20 is that they were in possession.

Possession—control—who was in control.

Written agt. 15th May 1951 Dft. Co. & Handler & Thompson or others—stated that Handler appd. manager but submits entitled to look at all term—& agt. shows possession & control given by Dft. to Handler.

1st agt. expired 30th Nov. 1951.

Then R. W. Thompson continued in occupation possession & control on same terms as before until premises vacated by Thompson in Jan. or Feb. 53.

Agreement crucial part of the case. 30

(Mr. Dupuch tells me that both this agreement & the lease are admitted.)

Mr. Knowles hands in the original agreement and the original lease.

The lease I accept & mark "A."

The Agreement ,, ,, "B."

Letter of 10th Dec. 1953 from Attorney to Attorney. Put in "C."

Plaintiff's
Evidence.

Mr. KNOWLES calls :—

WILLIAM HENRY SANDS :—

William
Henry
Sands.
Examina-
tion.

I live E. Bay St. Merchant Bay St. I did lease the pty. concerned to the Dft. Co. by virtue of the lease Ex. A. dated the 18th Ap. 1950. The rent reserved was several times over-due it was not payed promptly. In 40

fact however now it has been pd. to date. After the 18th April 50 I seldom went into the Spider Web Club the pty. under lease. When I did go I saw Maurice Handler & Mr. Thompson going in & out & handling the matter.

On one occasion I saw the late Mr. Adderley who was I think the lawyer for Mrs. Elcock.

(Mr. Dupuch objects if this conversation conflicts with statements given by Mr. Adderley.)

Mr. Knowles this is a statement made by an agent. It does not come under para. (7) of section 42.

10 Mr. Dupuch asks that if this be admitted then the statement made by Mr. Adderley prior to his death of the occurrences.

Mr. Knowles does not agree—the evidence is admissible under para. 18 (2).

Mr. Adderley agent & made admission in ordinary course of business. He was acting as solicitor for the Company.

(He suggests that this conversation be omitted.)

I did have a conversation with the late Mr. Adderley.

(Handed agreement 13 Jan. 1951) *Ex. B.*

I saw a copy of this handed in around the end of Nov. & early Dec. 20 1952.

I cannot remember the exact date.

As far as I can remember it seemed to be a copy of *Ex. B.*

Q. Was this the very document this one?—*A.* Yes this is it.

Q. Had you seen it before then?—*A.* No.

I got it from Roscoe Thompson. About this time I was offered a cheque in payment of the rent by Mr. Adderley. I did not accept the cheque & returned it through my Attorney.

(*Ex. C* refers.)

Q. Why did you refuse to accept the rent?—*A.* I thought there had 30 been a breach of covenant in the lease.

Q. Which covenant?—*A.* It is the agreement between me & the Garden Club.

Shown the lease.

Q. Which covenant had been broken?—*A.* It is stated there he couldn't sub-let without my written agreement.

It is I think 5 (a). No I am wrong it is clause 2 (f) (after referring again to the document). This is the one I mean.

Q. How do you think it has been broken?—*A.* After I saw the agreement handed to me by Thompson it looked to me like a sub-lease & 40 that according to that agreement pty. had been sub-let.

Q. Now that alleged "Manager" agreement is with Mr. Handler primarily?—*A.* Yes.

Q. So in Dec. 1952 you feel there had been a breach apart from Mr. Handler?—*A.* Well Thompson was in it & I got the copy.

Q. Did you feel there was a breach re Handler?—*A.* Yes.

Q. Anyone else?—*A.* Yes with Elcock. To Handler but Thompson was only guarantor.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Plaintiff's
Evidence.

William
Henry
Sands.
Examina-
tion—
continued.

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence,
30th
December,
1953.

—
Plaintiff's
Evidence.

—
William
Henry
Sands.
Examina-
tion—
continued.

Q. Was there anything else after that agreement?—*A.* Not that I know of. I think Roscoe Thompson carried on after Handler quit.

Q. In Dec. 1952 who was in possession?—*A.* Handler was there then.

Q. When agreement shown?—*A.* Handler had gone & I think Roscoe Thompson was there.

Q. Who appeared to be in occupation in Dec. 1952?—*A.* Roscoe Thompson.

Q. Had you seen him there before?—*A.* Yes while Handler was there.

Q. Was he there in summer?—*A.* Yes I think so he was there rt. along & when Handler left he continued.

Q. You sd. you refused this offer of rent in Dec. 1953?—*A.* Yes. I had accepted rent prior to that date.

Q. Did you know at that time of the existence of the "Manager's" agreement of 1951?—*A.* No I did not.

Q. If you had known wd. you have accepted rent?—*A.* No.

Q. In what capacity did you think Handler & Thompson were occupying the Club before Dec. 1952?—*A.* I thought they were Managers that's all.

Q. Suppose you had been asked . . . have you ever waived or condoned the breach of covenant you have spoken about?—*A.* No.

Q. Was your consent to an underlease for parting with possession ever asked for by the Dft. or anyone acting on their behalf?—*A.* No. I was never approached abt. that.

Q. Did you ever give your consent verbally to a sublease or parting with possession of premises?—*A.* No.

Q. Wld. you have consented to a sub-lease to Maurice Handler?—*A.* No. I wouldn't. He was a stranger I knew nothing about him.

Q. Are you aware whether the water & sewer bills have been pd.?—*A.* They are still outstanding.

Q. Have you got these bills?—*A.* I have (produces some papers).

Q. Have you inspected premises recently?—*A.* No. I had no key & have not been inside. They did do something to the roof & outside.

Q. It is sd. in defence that you accepted rent due on 1st May 1952 expiring Sept. 1952?—*A.* I did accept that.

Q. Do you remember when that rent was in fact accepted?—*A.* No I can't say off hand. It was due on 1st May 1952. I can't say if it was paid then.

Q. Did you ever accept rent with the knowledge there had been a breach of covenant?—*A.* No—not until the Court's Order.

Cross-exam- CROSS-EXAMINED.
ination

Q. You say on several occasions rent overdue?—*A.* Yes—I know 2 occasions. One was May 1952 shld. have been pd. 1st May. The other I can't remember but I took it up with Mr. Adderley 1st Nov. I think a little later. I understood Mr. Elcock wld. be coming later. It was early pt. of November I spoke to Mr. Adderley & sd. rents are due.

Q. Were you not asking for the rent then?—*A.* I had not seen document.

- Q. But you called & reminded Mr. Adderley—you were making a demand were you not for rent for 6 months?—A. Yes that's right.
- Q. So the rent you demanded wld. have run to 1st May next year?—A. Yes that's right.
- Q. Thompson quit premises in March this year. So had the rent been pd. it would have covered a period beyond that of Mr. Thompson's occupation?—A. Yes.
- Q. Had your rent previously been overdue more than 3 weeks?—A. Yes one occasion. On that other occasion I got it on the 5th Dec. I think. It was more than 21 days this time.
- Q. When was the other occasion?—A. I do not remember.
- Q. When you refused the rent did you see agt. Before or after?—A. I saw it before & I turned cheque over to attorney. I think attorney sent it to Mr. Adderley.
- Q. When did you take cheque to attorney?—A. I think it was next day.
- Q. Do you remember getting this letter from Mr. Adderley 6th Dec. ?—A. Yes I remember this was 6th Dec. That cheque blew to & fro 2 or 3 times. Mrs. Elcock brought it in & then before I had seen Mr. Adderley & then it came by registered mail.
- Q. You say you refused because of breach. Were you not aware there was a covenant to pay in 21 days?—A. Yes. Mr. Adderley advised me about the 21 days.
- Q. Did you not return cheque because it was overdue?—A. No.
- Q. I suggest you did not find out until much later abt. the sub-lease?—A. No.
- Q. Why did you want them out?—A. There was a breach of trust I thought.
- Q. You say you wldn't have given underlease to Mr. Handler?—A. No he was a stranger.
- Q. Does it not say reasonable person?—A. Yes—I never knew he was responsible or not.
- Q. Mr. Thompson?—A. I have never been approached by him. I would have made a decision abt. him then.
- Q. But you say the same of Mr. Thompson?—A. No I think he is a responsible person. But this all carried on from Handler & paid off the place loaded with bills. I did not have any grievance on that score.
- Q. What abt. the water & sewage?—A. I turned it over to Mr. Thompson to pay.
- Q. How have you got it now?—A. They will not accept an application . . .
- Q. But these?—A. They are copies—these are.
- Q. Before Handler went in did not Elcock speak to you?—A. No never.
- Q. No Elcock never sd. a word to you?—A. Nothing like that ever happened. I never told Mr. Elcock that I was satisfied if he pd. the rent.
- Q. Did not you say that you were satisfied so long as the licence renewed in Mrs. Elcock's name?—A. No reference was ever made to that.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.

Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Plaintiff's
Evidence.

William
Henry
Sands.
Cross-exam-
ination—
continued.

In the Supreme Court of the Bahama Islands. — No. 5. Chief Justice's Notes on Evidence. 30th December, 1953. — Plaintiff's Evidence. — William Henry Sands. Cross-examination—continued.

COURT.

I do not mean by this that there was any discussion ever. There never was a discussion with Mr. Elcock.

Q. Do you know who the licensee is?—A. Yes—only a few weeks ago. There are 2 licences liquor & club.

Q. Who holds these licences?—A. I do not know—I have never known.

Q. Were not you aware that Mrs. Elcock director of Co. was licensee. —A. No I never went into that at all.

Q. Surely this is a very important question—were you not concerned? —A. No.

10

Q. Wld. you be surprised to know Thompson has no rt. to operate Club save as a servant of the Club?—A. I did not know—there may have been an understanding.

Q. You used to see Mr. Elcock frequently early in the lease?—A. He used to come into the shop. I wouldn't say frequently or often. On no occasion did he discuss Handler or Thompson.

Q. You knew abt. end of Nov. there was a proposal for the purpose of Harbour Club Ltd?—A. No I never knew that. I never even had any enquiries about the Club. I have been asked whether it was available—I have said it was leased.

20

Q. When was your last enquiry recd. before 5th Dec. 1952 from anyone?—A. There was an American a few weeks ago.

Q. Before Dec. 1952?—A. I wouldn't remember.

Q. In Nov. wasn't it?—A. I wouldn't remember.

Q. Is it not correct that there was a proposal from Elcock to sell & you wanted to forfeit the lease?—A. No.

Q. Were not the people sent to you who wanted to buy?—A. If they hd. come I sd. it was leased.

Q. Wld. you have taken the Club over at that time in 1950? What wld. you have done were you not glad Elcock had it?—A. No not necessary—we can always get a rent for it. It is not right that I wanted to take advantage of the offer made to Elcock.

30

Q. You sd. Thompson appeared to be in possession in Dec. 1952—who appeared to be in possession before?—A. I saw Thompson & the others going in & out & it aroused my suspicion so I went to Mr. Adderley.

Q. When did you make additions to your shop?—A. I think about 3 years ago—may be a little longer.

Q. That was when Handler went in?—A. I cannot connect the two.

Q. Didn't you say you were happy Handler going in so there wld. be more people in your shop?—A. No.

40

Q. Not when you put in your nice new windows?—A. No. We have been established 30 odd years it made no difference—we had the windows to show stock.

Re-examination.

RE-EXAMINATION.

When you spoke to Mr. Adderley in early Nov. 1952 about rent of Co. were you then aware of the manager's agreement or a possible breach of covenant?—A. No never.

Q. Were you aware of a breach of covenant on 1st Nov. ?—A. No.
 Q. Re cheque 6th Dec. 1952 did it eventually remain with defence till case started ?—A. I think I sent it to my attorney & then I think it was sent to Mr. Adderley. Then Mrs. Elcock brought it in & I refused it. After that it was sent by registered post. Then I took it to my attorney & he sent it back as I remember.

In the Supreme Court of the Bahama Islands.

No. 5.

Chief Justice's Notes on Evidence. 30th December, 1953.

Q. In view of what you know of Mr. Handler do you consider him a responsible person ?—A. I don't.

Q. Was there ever at any time a discussion bet. Elcock & self abt. position of Mr. Handler in the Club ?—A. No—never.

COURT.

I was not under the impression that Mrs. Elcock had severed her connection with the Club in the beginning of Dec. 1952. I understood that Mrs. Elcock was Secretary to the Spider Web Club. It was in Nov/Dec. that I discovered then what I thought to be a sub-lease to Handler followed by one to Roscoe Thompson & it was because of this that I refused to accept the rent due in fact for the period after Handler had left.

Plaintiff's Evidence.

William Henry Sands. Re-examination—continued.

I question Mr. Sands as to his attitude of mind in the end of Nov. & the beginning of Dec. It seems that he knew the Elcocks & Thompson were there in the Club—one was his lessee & the other running the Club. He seemed to say he approved of both. But now Mr. Sands says that when he discovered the so-called manager's agreement he was not satisfied—he disapproved of Handler & he says that he wld. not on that discovery have rented either to the Elcocks or Thompson because the thing was in such a mess. But he says he was in a position to receive & get his rental wh. was his investment.

Q. How did you see the agreement ?—A. I was talking to Roscoe Thompson & he sd. he was a tenant & that place had been sublet & he wld. send me a copy. He did so & that's how I got the copy. It was about that time he wasn't satisfied or something.

It is now 12.45. I adjourn for lunch to 2.15 p.m.

G. W. McL. H.

At 2.15 p.m.

(2) ROSCOE WHITTLETON THOMPSON, sworn.

Roscoe Whittleton Thompson. Examination.

Montagu Heights.

I am proprietor of Thompson Dept. store Bay St.

This is opposite to Spider's Web Club.

I appear today on subpoena.

I was a party to an agreement made 13th Jan. 1951 between Harbour Club Ltd. & Maurice Handler.

Yes. I joined in as guarantor—I do not remember exact date.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Plaintiff's
Evidence.

Roscoe
Whittleton
Thompson.
Exam-
ination—
continued.

Q. Before that was signed did you see anyone representing Harbour Club Ltd. ?—*A.* Yes. I saw Mr. Elcock at Drake Hotel about Jan. about renting & leasing the Spider Web Club. I think Mr. H. was with us. I can't be sure. Maybe Newton Higgs was there—he was acting for us & may have been there.

Q. Now what was said ?—*A.* We wanted to lease the place for Handler wanted it & so we went to Mr. Elcock to see how much the rent wld. be & wld. he lease the place. So he sd. he'd have to draw up an agreement & we told him to get it drawn up & handed to Newton Higgs our lawyer. This he did & we Handler & I saw Newton Higgs & we accepted the price for 10 the 1st year—it was £900 & £300 I think for gratuity. It was any how £1200 for the 1st year. Then the 2nd year was supposed to be £1800. (Shown Ex. B.)

This is the agreement.

That is about all I remember. He was anxious to get out & we to get in the season it was the 1st January.

Q. Any other discussions ?—*A.* No not after seeing Mr. Higgs—there was the agreement. We opened the place & went into business.

Q. What did you think you were getting from the Harbour Club under the agreement ?—*A.* We thought we were leasing the place. I knew 20 it was owned by Mr. Sands but I was under the impression it was a sub-lease.

Q. What did you do in the club ?—*A.* I didn't do much. Lightbourn was supposed to be the manager, & Handler was the partner. The idea was that the 3 were partners Handler was to greet the customers &c. He was a sort of maitre. I used to go over there occasionally—especially in the mornings. I wanted to see how it was running—I used to go in the evenings but it was a late club. I used to go to the Club 2 or 3 times a week to see how it was going. I had put in a lot of money & backed it through the bank.

Q. This agreement was to run to November ?—*A.* Yes. 30

Q. Did you go 2/3 times a week the whole time ?—*A.* Yes Howard Lightbourn left in April 1951. After he left I went there more frequently.

Q. Did you continue assisting in the running ?—*A.* Yes I used to see to the bills for liquor & collected the takings & pay in cash. There were quite a few bills outstanding against the place.

Q. Did you leave the operation to Handler ?—*A.* No—I had to take a part in the evening. I couldn't leave everything to him.

Q. Did the Dft. Company or any of their representatives have anything to do with the running after the agreement ?—*A.* No—we were on our own.

Q. Did you ever see Mr. or Mrs. Elcock in the Club ?—*A.* No not 40 myself. I understand she had been in in the night.

Q. You know when Mrs. Elcock came in in what capacity did she come ?—*A.* I imagine as a guest—she was there I think with Kirk Myer.

Q. How many keys were there ?—*A.* I had one & Handler had one. We had to change locks on the Club often—we were always losing the keys.

Q. How did you get the original keys ?—*A.* I don't remember. Maurice Handler must have got the original keys.

Q. So far as you know did Mr. or Mrs. Elcock have a key ?—*A.* No—

they couldn't for at least half a dozen times I had to buy locks. We gave the keys to boys & then borrowed them & so on.

Q. Who was in control of the Spider Web?—A. I thought I was—that's why we had it rented—I figured I was in control.

Q. Was there ever any enquiry from Elcocks about the running of the Club?—A. Not to me—don't know about Lightbourne or Handler. They never examined the books.

Q. Wld. you consider the books their concern?—A. None at all—it was my concern & Maurice Handler.

10 Q. Who pd. insurance premiums?—A. I remember once we pd.—& I think the licence—liquor licence. I pd. the liquor licence fee. I pd. this to Mr. Adderley.

Q. In whose name was the licence?—A. Not ours—in either Mr. or Mrs. Elcock's name.

Q. Who took charge of rcts.—money?—A. Handler used to take care of it. I checked next morning. When he left they used to bring it across to store & I checked the slips & bar money.

Q. Did it ever pass through Mr. Elcock's hands or Mrs.?—A. Never. I was responsible for bills & outgoing

20 Q. Did you consider you were working for the deft. co.?—A. Oh no.

Q. Was it ever necessary to have painting done inside?—A. We painted it once or twice—I hired a painter. We also did the water front & patio.

Q. When did Handler leave?—A. I think somewhere in or around Oct. 1951. I can't say exactly. Then I just carried on. I know we owed some money. I then found that the club over 3/4000. I went to Mrs. Elcock & they sd. could I carry on.

30 Q. What terms?—A. Second year was £1800—I pd. £100 in cash. I gave 2 post dated cheques for £900. This was in Dec.-Jan. for the year. Mrs. Elcock sd. I could carry on & I did.

Q. Was there any difference in your position after Handler left?—A. It was different because I was left to pay off everything. I had told him not to charge & he had done. I had left a lot to H.

Q. Was your position with Dft. Co. any different?—A. No. Mrs. Elcock knew that Handler had gone & left me holding the bag. I wouldn't go into business again with him if you paid me. He was not satisfactory.

Q. You were asked to produce all bills & papers?—A. I can't find anything much. I have some of them here but I've been busy & there have been the holidays.

40 (Hands in a file of papers—not very many.)

Q. Here's a/c A. E. Saunders dt. 1951 Nov.?—A. This was for fixing electric work. The plumbing & electric work always very bad & needed fixing.

Q. Do you produce these bills?—A. Yes.

(Put in in a bundle Ex. D.)

(The bills are paid bills.)

(Mr. Knowles says they show control.)

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

—
Plaintiff's
Evidence.

—
Roscoe
Whittleton
Thompson.
Exam-
ination—
continued.

In the Supreme Court of the Bahama Islands.

No. 5. Chief Justice's Notes on Evidence. 30th December, 1953.

Plaintiff's Evidence.

Roscoe Whittleton Thompson. Examination—continued.

Cross-examination.

Q. Did this oral agreement take you up to Nov. 1952 ?—A. Yes.
Q. When did you vacate ?—A. Can't remember. I know I gave Mr. Adderley notice. I didn't wish to lease any more. I saw Mrs. Elcock who sd. I cld. carry on. I did carry on. Mrs. Elcock came & saw me & sd. I cld. carry on. I think I closed March/Apr. 1953.

Mr. Knowles wishes to put in a copy of "B."

(Shown to witness.)

This is a copy of the lease drawn up by Mr. Higgs. I am almost sure he gave it to us since he drew it up. It was one like this—it was not signed. I showed this to several people on different occasions. I went across to Club in last part of Nov. 1952 & met Mr. Sands & sd. I was giving up my lease & showed him the paper—my copy of the agreement. 10

It might have been 1st part of December. Around there.

Q. Did you pay any extra rental after Nov. 1952 ?—A. No she sd. carry on—she called up a week before I closed & sd. I wld. have to close the place.

" E " (Copy put in Ex. E).

CROSS-EXAMINATION.

You say that before signing B you saw Elcock at Drake Hotel ?—
A. Yes about leasing & renting. 20

Q. It was to you & Handler or to others as well ?—A. Only to Handler & myself.

I regard document as a lease.

Mr. Higgs approved agreement drawn up by Mr. Elcock.

But Higgs drew it ? We told Mr. Elcock to see Mr. Higgs our lawyer.

(shown document).

Yes I think this is Mr. Higgs' signature. He acted for me.

Q. Why then are you described as guarantor ?—A. Well I figured that both Handler & Elcock were strangers & I wasn't so I had to be responsible.

Q. You see you had no interest in the pty. according to the deed ?—
A. I was a partner. Lightbourn was partner & manager & Handler was as I have sd. 30

Q. Is it not strange that your lawyer called Handler the manager ?—
A. I think that H. had approached Mr. Elcock before this was drawn up. I do not think I have a lease right now for any premises. I have a good landlady.

Q. Supposing you leased your pty. wld. you be happy if you were described as Manager or other than lessee or tenant ?—A. No I pay my money to her.

Q. Have you made any undertaking to your landlady that you will pay persons supplying goods to your shop —A. No. 40

Q. It is none of your business ?—A. Right.

Q. She doesn't care does she ?—A. No.

Q. Then why did you guarantee to pay for all the liquors &c used in the Club?—A. I have just explained Elcock knew I was satisfactory.

Q. But if you lease the Spider Web is it the business of Elcock?—A. No its my business to pay.

Q. Did you promise Elcock to pay for it?—A. No I never did.

Q. But in this agreement it is so. Why was it Elcock's business that you wld. pay for the liquor? Was it not that they did not give you full possession?—A. Not a bit—I had full possession—I cld. ask them to leave.

(shown preamble).

10 Q. "Co. shall appt. manager to be the manager" what does this mean?
—A. I don't know—I appointed the manager. I think. *The agreement is exactly what Mr. Elcock arranged with Mr. Newton Higgs—I read it and I signed it.*

Q. If your landlady gave you a lease & in the lease appointed you manager of your own business wldn't you say I am already manager. Wldn't you say I am only a tenant—lessee. In another way if owner was giving you your property he appointed you manager?—A. Not if it was my own store.

Q. You would think it strange?—A. —

20 Q. Turn to para. 13 of agreement. If Co. receives &c. this engagement shall terminate. What does this mean. This engagement?—A. If they want to sell.

Q. Yes what is the engagement?—A. If someone wanted then to buy out their interests then they gave 30 days to raise the money. *The engagement means the lease.*

Q. But do you not engage a clerk—you do not engage a landlady—does she engage me?—A. She doesn't engage me & I do not get a salary. I got no salary from Mr. Elcock though.

30 Q. Supposing the night club business was bad cld. you have changed it to a grocery store or an aquarium?—A. I guess I cld. have done so.

Q. But all you cld. do was to manage the club under the agreement. Can you show me in the agreement giving you the rt. to go into any business?—A. I think if something else occurred I cld. have asked Mr. Elcock to change the lease.

Q. Do you say you can open a fish market in your shop?—A. Yes.

Q. I put it to you that all you had to do was to manage the club?—A. But I had to pay the rent.

40 Q. But wasn't H. to run the club & you were responsible to pay the bills?—A. I thought I had a right to do anything I liked in the premises. I reckoned I had a right there & was able to put anyone out whom I didn't want. I had to pay a lot & I didn't figure that either Mr. Sands or Mr. Elcock were liable. I never did make money on the thing. I had my own business to carry on too.

Q. Mrs. Elcock permitted you to carry on with no liability?—A. Yes she came to me—I left in March/April. It was in March Mrs. E. told me to dismiss staff & close the club. I told her that I should have nothing to

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

—
Plaintiff's
Evidence.

—
Roscoe
Whittleton
Thompson.
Cross-exam-
ination—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.

Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Plaintiff's
Evidence.

Roscoe
Whittleton
Thompson.
Cross-exam-
ination—
continued.

pay off the boys. She only gave me 3 days. She called me up & sd. the Club must be closed on Sunday & I closed it. I had written to Mr. Adderley saying I wouldn't carry on my lease any longer in Nov. I know it was Mrs. E. came & told me I cld. carry on & run the place.

I had given them notice enough in case they wanted to give it to someone else.

The licence was not in my name—it was Elcock or Harbour Club. In Mrs. Elcock's.

Probably they were not in my name.

Q. Do you know who is responsible under Liquor Licences Act for the 10 premises?—A. I don't. I know you put them out if they misbehave.

Q. I suggest you cld. only serve liquor at all as an agent of Mrs. Elcock? You used to sell it?—A. I sold it for myself—I never gave her profits. The bartender sold it not me.

Q. Who for.

(Mr. KNOWLES objects).

(Mr. DUPUCH does not suggest that Thompson was doing anything illegal or committing any offence—he does not pursue it).

Q. Did you know Mr. Elcock had a key when first handed over?—

A. The locks were changed many times. 20

Q. I mean the first time?—A. He might have a key but we had 2 locks & then we changed the gate.

Q. You sd. the Elcocks never examined the books—they never enquired—how did you operate bank a/c.?—A. When we 1st started we had Spiders Nest at Barclays & then we cld. sign cheques.

I borrowed £1000 from Barclays.

After H. left I operated from my store.

We closed a/c down after he left.

Q. Is it not rt. that Mr. Elcock asked to change a/c from Spiders Web because agreement asked that finances were to be kept separate?—A. It 30 may be—it was not Spider's Web. It was Spider's Nest.

Q. When did you 1st speak with Mr. Sands?—A. I walked across & I met him at the front by the gate of the club. I had written to Adderley abt. my lease & Sands asked if he cld. see it. I showed it to him.

Q. Did anyone ever speak to you about Mr. Freeman buying the Harbour Club Ltd.?—A. Mrs. Elcock did say when she rang up about Nov. that Mr. Freeman was thinking of buying the Club.

Yes.

Q. It was about the same time you showed Sands the Agreement?—A. I hadn't closed the business. It was later that I was about to close— 40 this wld. be 1st part of Nov.

Sands spoke to me & I showed the lease.

Freeman a little later I think got the key from me & went to the Spider Web with Bob Symonette & Ralph Collins.

Q. Was Mr. Sands there at the time?—A. You have to go to the side of his shop. It is a blank wall—you can't see in the shop.

Q. Have you discussed this with Mr. Sands recently?—A. No I haven't brought it up—I've seen him naturally—I am as friendly with him as with the Elcocks. I wasn't trying to hide anything & wld. have shown lease to anyone.

In the
Supreme
Court of
the Bahama
Islands.

RE-EXAMINATION.

Q. Was H. in fact ever manager?—A. Yes after Howard Lightbourn left. He acted for a time.

Q. Were you concerned with the wording of this agreement?—A. No I wasn't worried about the lease—I was worried about my partners.

10 Q. You thought under this you & H. were getting possession of the premises?—A. Yes I thought so.

Q. During whole period from Jan. 51 till the time you vacated in 1953 did Mr. or Mrs. Elcock say or do anything to show that they thought that they were in control or possession of the premises?—A. No.

Q. Did either of them to your knowledge come to the club to find out if it was being conducted in a proper manner?—A. Not while I was there.

Q. Having regard to time you spent there cld. it be that Mr. & Mrs. Elcock were keeping a constant eye on the club. Cld. it have happened without your knowledge?—A. No I don't think so.

20 Q. Were there 2 locks?—A. There was one lock when we first went. We put another lock on a few weeks later.

Q. Who kept keys of second lock?—A. We did—we changed the locks & the gates since then.

Q. With an original key cld. Mr. Elcock have got into the club?—A. No because in March or April she had to get the key from me to go in & take the inventory or her secretary did.

Plaintiff closes his case subject to addresses.

No. 5.
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Plaintiff's
Evidence.

Roscoe
Whittleton
Thompson.
Cross-exam-
ination—
continued.

Re-exam-
ination.

Mr. DUPUCH opens & calls Mr. Elcock.

WILLIAM GEORGE ELCOCK, sworn.

30 I am a chartered a/ct. Director of Harbour Club Ltd. I live in London & have business interests here.

In 1948 I met John Roberts & mother who owned the contents of the Spider Web & had a lease. I negotiated with them & bought the contents and the lease for £9,500.

Mr. Adderley was attorney & we were in touch with W. H. Sands land-lord & got a new lease.

This matter handled by Mr. Adderley alone. Sands did not believe in having attorney & acted for himself.

There was a lease in 1948.

40 Then came the lease of 1950. I saw Sands & asked for a long lease because I was spending a lot of money on the Club. I got it. I think we spent £1,500 in improvements.

It was closed in 1949/50 season because we cld. not find a good manager.

Defendant's
Evidence.

William
George
Elcock.
Examina-
tion.

In the
Supreme
Court of
the Bahama
Islands.

No. 5
Chief
Justice's
Notes on
Evidence.
30th
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Examina-
tion—
continued.

Several people came but we decided to keep it closed—we had had bad managers before.

H. had been employed at Drake Hotel, of wh. I am officer of co. as wine waiter. Not sure of nationality but had been at Banff Hotel in 49 successfully & worked in 1950 in big Canadian hotel.

H. approached me to manage the Spider Web club—it was in England I saw him.

It was after the 1950 season. It was in September I suppose & he wanted to work for me.

I couldn't give him employment at the Drake & then he begged me to be allowed to open & manage the Spider Web. 10

I did not agree at first. I didn't think he was the rt. type of man.

I was only prepared to put him in if I was guaranteed a fixed income. I would not accept the responsibility.

I eventually agreed to employ him when he came to me with Mr. Roscoe Thompson in Nassau at the Drake Hotel.

Q. Was the agreement we have in Ct. a result of this negotiation?—

A. Yes.

Q. Thompson says the agreement he and Handler. Were you tenants in the agreement. H. is spoken of as manager is this correct?—A. The agreement reflects the true arrangement. There were at no time tenants. Thompson is described as guarantor because Handler brought him along as such. 20

I adjourn to 10.00 a.m. tomorrow Thursday, 31st Dec. 1953.

G. W. McL. HENDERSON.

Thursday, 31st Dec. 1953.

WILLIAM GEORGE ELCOCK, sworn.

(EXAMINATION contd.).

I did have some doubts of Handler's ability. He was a very hard working man—I wasn't sure of his ability to handle club alone with all its a/cs. &c. I thought he was honest honourable & very hardworking. 30

Q. Under agreement provided you shld. be paid a fixed amt. by manager—what reason?—A. I've already sd. we wanted a fixed income we had had trouble before.

Q. Did you ever tell Mr. Sands of the agreement with Mr. Sands?—

A. Yes in constant touch—business with him from hotel—personal business—bought suits—very friendly indeed—told him H. was in as manager & he wld. take full responsibility. I mentioned abt. Thompson & I sought Mr. Sands' advice as to Thompson's standing in Bay St. This advice was good. He sd. he was of good repute & wld. honour any obligations into wh. he entered. 40

Q. Did Mr. S. know of the arrangement about the fixed income?—
A. My recollection was that I told Mr. Sands we were to get a fixed income & that Handler was put in as manager.

Q. Did Mr. S. express anything?—A. He sd. he was satisfied so long as I held myself responsible for the rent.

Q. Anything else?—A. And so long as licence was held in the name of Mrs. Elcock. I had to see him about flooding in the passage due to extension he had made to his place. Several times I saw him another time in connection with timber roofing over the passage way.

10 Q. Was he doing anything to his place?—A. I think he had finished—I suggested he put a window in the passage so that visitors cld. see his goods. I regarded myself as a friend & neighbour. He however sd. he had spent enough money. He welcomed the Club being repaired.

Agreement of 13th January 51 Ex. " B."

This ran from 30th Nov.

I can't say when H. went—I think Summer. Then Thompson carried on. He carried on also after 30th Nov. 1951. Thompson completed Handler's period but carried on on the same terms.

20 Q. Was there any adjustment of rent?—A. Abt. time agreement entered into Mr. A. and I discovered dates of leases different & the £450 pd. in 1950 was a month short under new lease—we sent £75 by cheque to S. so that the rent was correct to April 1951 in accordance with term of the lease. It was probably at request of Mr. Sands. It was in Jan. 1951. It was done in his Chambers & he may have sent his own cheque. It was in the same month as agreement with H. It was a tidying up as a result of H. going in we found the difference. At any rate we pd. one month's rent £75.

Q. Mr. Thompson terminated his engagement on 30th Nov. last year?—A. Yes he gave notice to Mr. Adderley.

30 Q. You sd. that he continued to carry on?—A. I think Mrs. E. asked him to carry on. I know I went into store before Xmas 52 & asked him to carry on. It was at my request. He pd. me nothing. He closed on Mrs. E's. instructions. He was there then purely at the will of the Company.

Q. Who held the licences for the Club?—A. Mrs. Elcock.

Q. Did anyone else hold them ever?—A. No. I handed the keys to Mr. Handler I kept a set of front door keys back & of the office. Mr. H. was aware I kept the keys certainly.

40 Q. Did you ever give up possession to H. or Thompson or anyone else?—A. No—Handler was manager—Thompson was guarantor & my dealings were with H. alone. When I came back in 1952 I understood that Mr. Freeman wanted to buy the club—spoke to Mr. Johnstone. We agreed on a price. The deal fell thro' as I understand Mr. Sands did not agree. I was prepared to sell for £5000. This was for the shares in the Co. which meant all the assets wh. included of course improvements.

Q. Does that mean value had deteriorated?—A. Either that or I had paid too much in first place.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Examina-
tion—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Examina-
tion—
continued.

Cross-exam-
ination.

Q. Wld. you say lease worth £900 a year?—*A.* There was a lease in existence & one had to stand by it. It was highly priced.

I believed the Freeman negotiation started through Mr. Adderley before I came.

Usually come 16th–24th Dec. 1952.

It was when I arrived that I saw Mr. Adderley who reported the situation to me in regard to the Freeman negotiations.

CROSS-EXAMINATION.

Q. You have sd. that rent was too much—is it not a fact you got £1800 rent from Thompson?—*A.* Oh no I had this sum under an agreement. This covered the benefit of the licence, the use of the equipment & the kitchen utensils in fact the whole place as a going concern. It was not merely the building. 10

Q. You have sd. the good will was low. That is implied isn't it?—*A.* I valued the club & the contents at £5000.

But this was in Dec. 52.

We deal in 1951. Surely the use of the premises was a greater part. The £900 was the rent I had to pay & £900 for the use &c.

Q. The goodwill was worth something but the rt. to use the premises given to Mr. Thompson?—*A.* I never made any arrangement at all about payment of rent in 1951 with Thompson. He was the guarantor—the person with whom I made the real agreement was Handler in the agreement Ex. B. 20

Q. When did Ex. "B" terminate?—*A.* 1st Nov. 1952.

Q. Wasn't it approx. 10 months in first place?—*A.* Yes.

Q. The 1st period expired in Nov. 1951?—*A.* Yes—that's so—may I correct the 1st Nov. 1952 to 30th Nov. 1952.

Q. Under Cl. 10 who had rt. to renew?—*A.* Maurice Handler.

Q. Did he do so?—*A.* No. He had left & by that time Roscoe Thompson became manager. In fact Thompson entered a new agreement based on Ex. B. No written agreement. It was based upon the first agreement. He was carrying on as substitute for Maurice H. Whether new agreement or not I don't know—I was guided & advised by the late Mr. Adderley. I am talking as an officer of the Club & not as an individual. 30

Q. You do agree that under terms of Ex. B. Thompson had no right to renew?—*A.* Yes he was guarantor.

Q. Then when he came it was a new agreement or arrangement?—*A.* It was a new arrangement on the basis of the agreement of 1951.

Q. This arrangement was made with Mrs. Elcock acting for the Co.?—*A.* Yes, through Mr. Adderley. Then rent cheque shown yesterday is made payable to Mr. Adderley. 40

Q. Am I right in saying there was no reference to Mr. Sands at this time?—*A.* About Thompson—no.

Q. Why not?—*A.* Wasn't any concern of his—this is a management agreement internal agreement with the Harbour Club. It was not necessary. I did discuss the matter previously with Mr. Sands as a matter of courtesy.

- Q. Then Mrs. Elcock wasn't so courteous?—A. It was not so—we were right next door & Mr. Sands knew of the whole arrangement. I & the Co. remained in possession & control of the premises the whole time. We would not grant a lease.
- Q. So all this discussion with Mr. S. about H. & Thompson was a matter of courtesy?—A. It was to keep him advised & as a matter of courtesy.
- Q. You sd. Mr. Sands agreed to what I told him?—A. Yes—it wld. have been a simple matter to have written a formal letter for consent to a sub-lease—this was not necessary as it was not a sub-lease.
- 10 Q. According to your statement you sd. you told Mr. S. prior to this document that H. was going to be manager—no consent necessary for that?—A. No.
- Q. Did you tell him of the contents of this agreement?—A. I told him H. was to be manager & Thompson guarantor.
- Q. Did you define their duties?—A. I wouldn't know how.
- Q. Did you tell him about Thompson at all?—A. Thompson was in and out.
- Q. Did you mention his name?—A. I have already sd. I asked Mr. S. as to T's standing.
- 20 Q. Did you explain why you ask?—A. At this date I have no recollection of exact words but I wld. expect I did. I was several times in and out of the store.
- Q. Along with 1000's of other people?—A. I also saw Mr. Sands.
- Q. What I am wondering is whether you disclosed to Mr. Sands the full contents of this agreement or whether you sd. Handler was to be the manager?—A. I told him of the broad outlines that Handler was to be manager. I did not probably go into details.
- Q. Is that all?—A. That Roscoe Thompson was interested & we wld. be getting a fixed income & Mr. S. replied that as long as he got the rent & I was responsible he was satisfied. I am a surety under the lease—it is shown in the lease.
- 30 Q. You have implied that you were not seeking Mr. S.'s consent to what I was doing?—A. *True I was not seeking his consent.*
- Q. Did you ever ask for his consent?—A. No.
- Q. Can you explain this para. 6 in your defence?
- Mr. DUPUCH objects—this is a pleading for wh. I am responsible—can the witness give a reply. I have pleaded inconsistent defences—the alternative.
- Mr. KNOWLES says he will put the question the other way.
- 40 A. I cannot & I don't propose to.
- Q. Has Mr. S. ever unreasonably withheld his consent to a lease to Maurice Handler or Thompson?—A. There is no sub-lease.
- Q. Has he withheld his consent?
- Mr. DUPUCH objects to the question.
- Mr. KNOWLES—it was perfectly possible for him to ask Mr. S. for permission.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.

Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Cross-exam-
ination—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Cross-exam-
ination—
continued.

Q. Has he withheld his consent?—A. I say there is no sub-lease & the point does not arise.

Q. Has he or did he withhold his consent?—A. There is no sub-lease.

Q. Did you ever ask Mr. Sands for permission specifically to sub-let the premises to H. and Thompson?—A. No. I didn't.

Q. At this time when you were contemplating this arrangement—Jan. 1951. Mr. Adderley was still acting?—A. Yes; until he died.

Q. Of course you know that if consent was necessary it had to be in writing?—A. Yes. It is in the lease & could not be unreasonably withheld.

Q. You are a man of considerable business experience?—A. Yes. 10

Q. When you were seeing H. & T. abt. this business didn't they ask you for a lease?—A. No.

Q. Thompson wld. be wrong?—A. No—Thompson was a guarantor. This document is quite simple—there was a guarantor & manager. *Thompson never asked for a lease.*

Q. Did you prepare agreement in the 1st place?—A. I am an accountant not a lawyer—the answer is no. I wld. have laid myself open to a prosecution if I had.

Q. Thompson is mistaken if he says he thought he was leasing the premises?—A. Yes—how he cld. have thought that I don't know he 20 signed it.

Q. Did you emphasise that Co. wld. remain in possession of the premises?—A. There was no need.

The answer is no.

Q. You did remain in possession didn't you?—A. Yes.

Q. How did you assert your right to possession Nov. 1951 to Nov. 1952?—A. I think that is a legal point—I can't answer that.

Q. Did you do anything to assert your control?—A. We held the licence.

Q. Did you take any steps to insure licence operated properly?— 30
A. I had reports from time to time—not difficult.

Q. Did you make first hand investigation?—A. I went to the Club once or twice—I made infrequent visits.

Q. You went as a guest?—A. As an ordinary person I have the ability to combine business & pleasure.

Q. Did Mrs. E. go once or twice during this period?—A. Yes.

Q. You took no part whatsoever in the running of the Club?—A. No.

Q. So then you consider you controlled merely thro' fact that licence in Mrs. E.'s name & you and she went into the Club 3 or 4 times during the whole period?—A. Yes. 40

Q. And that was the full extent of your control?—A. Yes, directly.

Q. Was there indirect control?—A. Yes—through managers—Mr. H. Directors do not normally control a club—there was this agreement. This is normal control.

Q. You couldn't rely upon the keys if they were changed?—A. No that is a physical matter one cannot control.

Q. Did you ever try to use your keys?—*A.* In the early days yes—immediately after the signing of the agreement I went in with my keys.

Q. Did you know locks had been changed?—*A.* No. I heard it in evidence only. I went into the club last winter I got a griller wh. is now installed at the Drake. This was approx. Jan. 1953.

Q. Would you have done that in 1952?—*A.* If I had needed it yes. It would have been with his consent I agree. If equipment was a part of the agreement and price.

10 *A.* Yes. *Q.* Do you really think Handler & Thompson were working for you?—

A. Yes. *Q.* They were your employees?—*A.* Yes—by a very special arrangement.

Q. Do not employees always receive a salary?—*A.* For club business not necessarily.

Q. So in club business employees sometimes pay their employers rather than the other way round?—*A.* Yes.

Q. Was not Thompson required to make a payment during 1952/53?—*A.* He was asked to continue as manager by Mrs. Elcock to keep the club open.

20 *Q.* Even tho' the Co. got nothing out of it?—*A.* It is simple we had negotiations on for purchase & no one would wish to buy anything closed down but a going concern.

Q. D'you think Mr. Freeman was concerned with this?—*A.* You must ask Mr. Freeman that.

Q. Wasn't it losing money hand over fist?—*A.* Mr. Thompson wld. know that.

Q. Wasn't it because Mr. S. had refused the rent in the beginning of Dec.?—*A.* I was appalled by Mr. S.'s action.

30 *Q.* But wasn't that why you did not take any more payment?—*A.* I have given my answer.

Q. Mr. Thompson had pd. in 1952 beginning of year?—*A.* Yes—you have the figures.

Q. Have you the manager's agreement. You know what a lease is. How does this differ from a lease?—*A.* There is nothing like it as a lease. I have both here—the agreement & a lease. The one is an indenture & the other an agreement.

Q. No difference?—*A.* I can possibly find words which occur.

40 *Q.* See para. 5 rental for the premises?—*A.* This means the repayment of the rent payable by the Co. to Mr. Sands. This covers the amt. the Co. had to pay.

Q. Para. 3 & 4? D'you say that it is customary in the night club world to be responsible for all charges salaries & wages of employees & to receive & retain all monies?—*A.* I am not in a position to answer that. But I know a number of clubs wh. work on that sort of agreement. The Albany does so in London & Saville Row Club. I know about 6 or so others. The proprietor is merely concerned in getting a fixed income.

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

—
Defendant's
Evidence.

—
William
George
Elcock.
Cross-exam-
ination—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
31st
December,
1953.

Defendant's
Evidence.

William
George
Elcock.
Cross-exam-
ination—
continued.

Q. Then that I suggest is a lease?—*A.* I say no—I discussed the matter with Mr. Adderley whereby Handler went in as manager Thompson guarantor. I got a fixed income & they were responsible. I did not ask or want a sub-lease & sd. so. This agreement is the result of these instructions.

Q. You saw the agreement before it was signed?—*A.* Oh yes.

Q. Did not you think the use of the word rental odd?—*A.* It is misleading I agree.

Q. Para. 7 the manager shall open . . . as he thinks fit. It is not as the Co. thinks fit? You say the Co. has control?—*A.* Yes—may I read the Clause.

(reads) The operative words are the rt. to cancel the agreement.

Q. But the manager was not bound to open it?—*A.* If the manager did not open then we cld. cancel the agreement—the word used is cancel whereas in the lease it is forfeit. You surely do not cancel a lease.

Q. You do agree in the face of para. 7 you did not have the rt. to open the Club?—*A.* No I don't agree—we cld. have a right to do so if it was not operated properly.

Q. At the end of para. 7 reference to cancellation high class lines. But you never had the final word because there was a reference to arbitration? You didn't have the final word?—*A.* I cannot argue about the legal position—the words mean what they say.

Q. The manager agrees to take over the Club. You were still in possession?—*A.* Yes.

Q. If that be so then why Clause 9—termination club to be handed back. Why?—*A.* This is a matter of legal interpretation. I take it that the agreement represents what the instruction given to lawyers.

Q. But taking the agreement as a whole does it not mean that they took over the whole lease & premises?—*A.* No definitely & had it been so there wld. have been a sub-lease Mr. Adderley wld. have sought & obtained permission in writing from Mr. S. & the whole matter wld. have stood upon an entirely different basis.

Q. Is it right in your view that you were entitled to go into the Spider Web Club at any time?—*A.* Yes.

Q. If that be so why put in para. 16—person's authorised by Co. shall have &c. Why is this necessary?—*A.* This clause is redundant really.

Q. You find a lot of faults now?—*A.* Unfortunately Mr. Adderley is not here to explain.

Q. I meant what you have done?—*A.* I have sd. so many times—this agreement set out the arrangements whereby there was a manager & guarantor.

Q. I put it to you you never explained the position of Handler & Thompson to Mr. S. at any time.—*A.* I have answered that question.

Q. I did not follow the evidence about the extra month's rent?—*A.* When new lease was granted in—see lease—the rental dates give a 13 month period for the first year. We found we had not pd. for an extra month provided for in the lease & so we paid the extra month although it

10

20

30

40

was a mistake in the dates given in the lease. It is purely mathematics. It was purely between Harbour Co. & Mr. Sands.

Q. But this had nothing to do with the agreement between you & H. & Thompson?—A. The whole thing was under review. This had nothing to do with the agreement with Handler &c. *I think the mistake came from Mr. Sands.*

Q. Have you still got the keys?—A. I do not know—I have a lot of keys labelled Spider's Web but I don't know if they were the keys of the doors in 1951.

10 Q. When Thompson pulled out did he hand over keys?—
A. Mrs. Elcock may know—I don't.

Q. Was it not important to know if you still had the original keys? to find out if you had them?—A. No.

RE-EXAMINATION.

Q. You say arrangement such as this is not uncommon—can you name a club?—A. Yes the Albany Club—Saville Row.

Q. Is he in exclusive possession?—A. No, he's manager.

20 Q. You were asked if usual for employees to pay employers?—A. It is very well known—head porter & head waiters used to pay as much as £1,000 a year. It is extremely common. This does not mean that the porter or the waiter is the tenant of the hotel.
Court.

But surely head waiters are very careful about persons going in and out in case they don't pay?—A. Yes most certainly. They are definitely controlling their restaurant under the management.

Defence closes its evidence.

I adjourn this case for argument & addresses until 10.00 a.m. on Monday 11th January, 1954.

G. W. McL. HENDERSON,
C.J.

30

(For argument, adjd. from 31 Dec.).

Mr. DUPUCH :

No relief for forfeiture under a lease under our law.

Ch. 180 S. 16 sub-section (8).

Russell vs. Buchan 1924 1 Q.B. 125.

Not dealing with substance—terms or "words" to be used in the particular lease—Cts. leaning against forfeiture but this apparently is wrong. Rules so harsh that Courts lean against it.

1st question :—whether there was a breach of covenant.

40 para. 2 defence—*denial.*

(agreed that the question is solely subletting or parting with possession).
Halsbury Vol. 8 337.

Exclusive possession—*licence* or lease.

Use of pty. on certain terms=*licence.*

In the Supreme Court of the Bahama Islands.

No. 5.

Chief Justice's Notes on Evidence.

31st December, 1953.

Defendant's Evidence.

William George Elcock.

Cross-examination—*continued.*

Re-examination.

Submission by Defendant's Counsel.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
11th
January,
1954.

Submission
by
Defendant's
Counsel—
continued.

Employment of words does not present licence no estate in pty.

Number of cases *Sterring v. Abrahams* 1931 1 Ch. p. 47. Covenant not to assign—Memorandum rental exclusive right & rental & tenancy all common to a lease. p. 473. Wholly outs him—current user—retention of a key is good—may be various facts pointing to a licence—retention of a key. Here Mr. Elcock had a key at the time of agreement with Maurice Handler's knowledge. However after Thompson took over lock changed but Mr. E. did not know & considered himself entitled to enter.

Smith v. Overseers St. Michael 41 *E.R.* 487 :

487 Agreement—annual consideration to include rent etc. 10

“possession given & rent to commence.”

Judgment p. 489. Words applicable to a lease—but kept a man on premises—*look at rt. words but substance*—agreement.

Here “rent” and “possession” used—mere licence.

White v. Bailey 142 *E.R.* p. 438 :

Dfts. owners of lease. Society as agent—carried on a business. Salary of £75 to his agent.

p. 441.

Matthew v. Supple 119 *E.R.* p. 133 :

Bought beer at heavy price to give landlord a fixed sum. 20

Landlord supplied the beer with no interest in retail sales.

In possession. Consideration of bondsman to guarantee the fixed payment. Notice to terminate the agreement? lease here an agreement only. One month's notice necessary. Delivery up of possession—this case covers all the pt. in the agreement before the Court. In this case handing back not unusual in lease or licence.

p. 35. Plff's beer not Dfts. beer.

Whiteman G. p. 136 : Extremely significant—Recital shows in the defendant—this is a recital of possession. Exclusion of tenancy from consideration of all facts *not inconsistent* with licence. Given the benefit of 30 the doubt as it were.

Words consistent with tenancy & *not* inconsistent with licence = licence.

Here referred to as an Agreement.

Judgment upheld in C. of A.—no relation save master & servant.

This case is stressed.

Facts of case :

Retention of keys—retention of liquor licences—licence may be or be granted in respect of certain premises. Liquor Licenses Act. Absolutely necessary in change of licence application also change of premises. Shows 40 intention to retain the premises—neither Handler nor Thompson could act as of right. All servants—Company cannot apply—licence in an office of Company. Mrs. E. held licence as Director. Only person entitled to sell & therefore sales were by her servant either Handler or Thompson.

—Never did sublet or part with possession.

—If fail on this point para. 5 of defence.

- Waiver* = facts considerable & is agreement
Sands says unaware of agreement.
Elcock discussed with Sands prior to the making of the agreement—
Sands happy.
Sands denied conversation took place. *Did it?*
No intention of renting.
Knew that permission necessary if sub-leased.
Sands—Thompson appeared to be in possession.
Very probable that the conversation took place. Happy so long as
10 the rental was guaranteed by Elcock. Sands under impression that Mrs. E. had interest in the Club.
It is our contention she clearly did.
Sands made a demand for his rent for $\frac{1}{2}$ year.
Evidence indicates negotiations for sale.
6th Dec. Sands after demanding rent—not having withdrawn it—
merely refused to receive the rent.
Continuing demand into when he returned the cheque. Thompson
sold arrangement—not comparative to the agreement.
Suggest plff. knew all along of the arrangement if not after demand in
20 Oct.—this was continuing demand till returned the cheque. The demand
was a waiver of what had happened.
Can only claim prior to 1st Nov.—no doubt of terms after that.
Demands later—waiver when rent accepted.
Vo. 11 p. 537 Halsbury :
1923 1 Ch. p. 522 @ p. 536. Breach not a continuing breach—if
possession remains in possession the breach is not continuous.
Can only happen once in time when Thompson took over. Waiver.
Dold Nash—150 E.R. p. 490 @ 493—Waiver.
Croft v. Bailey 10 E.R. 1450—Waiver & estoppel.
30 Spencer Brown p. 228. Elect to avoid &c.
Demanding subsequent rent.
p. 229. Footnote. Acceptance on condition if no waiver.
Cts. may hold it was a waiver—after leaning heavily.
Unequivocal demand.
Vol. 10 E.R. Clerk v. Lumley. p. 1466 at p. 1469–1472 : Bramwell—
1475 : When a lessor &c. take one estate or another on election by the
landlord ? whether lessor knows or not.
—Harbour Club had been in breach of payment of rent twice—rt. of
re-entry. Adequate relief in equity—tenant may always pay into Ct.
40 Forfeiture of non-payment not so formidable but is a breach of covenant.
If aware of these 2 breaches—refused because of rent or sub-leasing—
Sands sd. no not because of rent. It is a question of *any* breach & club
to keep the lease subsisting—cldn't rely upon a different breach.
Other judges take a different view but on other points. *Again leaning
against a forfeiture.*
Coleridge p. 1483. Waiver of all rights—& any other covenant even
if he did not know of it.

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence.
11th
January,
1954.

—
Submission
by
Defendant's
Counsel—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
11th
January,
1954.

Submission
by
Defendant's
Counsel—
continued.

Withhold consent :

This may arise in finding for plff. in 1st 2 questions. If Elcock informed Sands of the arrangement then this was an implied request.

Unreasonably withheld because responsible people.

No direct request made admittedly.

18 Hals. 1st 579.

Refer to nature of document. Actual intention.

Thompson had no notion of what was going on. He says he was negotiating for a lease but his own lawyer draws an agreement where he was guarantor—Evidence cannot be consistent with this. Nothing to 10 indicate this was not intention.

Agreement represents combined intention of parties. Both lawyers went out of the way to draw a document not a lease—an agreement only.

Manager—if he did not pay Club wld. be responsible as they were in possession. Pledging credit &c. ? operation—*cancelling the agreement.*

Whole tenor of agreement is not a lease at all.

Asks to consider this & also no parting with possession.

Mean profits 1st Nov. 1952 Questions asked further purpose.

Submission
by
Plaintiff's
Counsel.

Mr. Knowles :

Cases indicate an unwillingness to forfeit a lease unless good reason substantiated. Emphasize no provision for relief against this type of covenant. Bahamaian law—breach regarded seriously here. It has been established—mistaken forgetfulness no provision for relief.

Wood Fall 24th p. 585.

E. Tele. 1899 1 Q.B. 835.

Handler turned out bad—Elcock had his findings at him from the commencement. Sands says he wld. have refused—reason for proceedings a breach of trust & covenant.

1st Issue :

Wood Fall 587 retains legal possession—Did dft. remain in possession—*criterion is control.*

Did dft. remain in control.

Daley v. Edwards :

Licence intended not a lease. Distinguish this—what is a true licence. —Not sure licence granted here or acting as servants. Circumstances in case cited different.

p. 549. Frank Wall & Co. held the licence in this case.

One must look at the whole situation.

What was true intention.

Chaplin v. Smith : kept the key only key, p. 206 (top).

If dft. had taken any control or gone in then possible to consider on these lines.

Constantly on the premises, p. 211.

p. 205—apparent control—power to exclude others—parted with possession unless.

20

30

40

- Emphasis on "control."
Jackson v. Simons. retention of key . . . control.
Abrahams—case—concurrent user—important.
Smith v. Overseers—pt. is appltd. kept the servant there all the time.
White v. Bailey : See *Wood Fall* @ p. 12 no estate acquired.
Mayhew vs. Suttle : see *Whiteman* p. 136 : servant & master.
Were Handler & Thompson servants.
- Control* :
- 10 Cld. dfts. have intervened. No—limited to high class lines.
 They cld. not have controlled musicians etc.
 Thompson says he wasn't working for defendants.
 ??
 Agreement with Thompson—never was an agreement in writing with him.
Liquor Licence : No concern of his.
- Control* :
- I ask Mr. Knowles & Mr. Dupuch of control. He implies that Mr. E. has no control of this either.
 I adjourn the case to 2.30 p.m.
 G. W. McL. H.
- 20 *Mayhew v. Suttle* : recital dfts. owners of the lease. Recital of possession. This is not so. Might have said so even if they were going to grant sub-lease. No indication that they intended to remain in possession.
Liquor Licence not referred to in Ex. B. Wrong.
 Para. 7 does refer to the licence.
 Para. 9.
 I ask as to engagement in this paragraph & in others. The use of words like engagement rent or manager cannot be conclusive as to whether there was a parting with possession.
- 30 *Liquor licences.* Dfts. wld. have some limited degree of control—para. 7—very low if liquor sold to young children—restriction on user—not conclusive.
 See *Wood Fall* on user.
 Point is not conclusive—the whole has to be looked at.
Handler & Thompson servants.
 Elcocks statement—But they were not servants.
 Salmon p. 110 7th Edition—servant employed by another subject to control of another. Obey orders. These were under no responsibility to Elcock. Within wide discretion exercised discretion.
- 40 *Ex. B.*
 Para. 7 open manager may think fit—pts. to possession—clear dfts. did not have any say as to mode of operation—save high class lines.
 Same as lease 593 *Wood Fall*.
 Para. 8 & 9 inappropriate to managers agreement—pts. to possession by *Handler & by Thompson*.
 Para. 15 Covenant to pay rent—why if servants.
 Para. 16 strongly supports plff's contention.

In the
 Supreme
 Court of
 the Bahama
 Islands.

—
 No. 5.
 Chief
 Justice's
 Notes on
 Evidence.
 11th
 January,
 1954.

—
 Submission
 by
 Plaintiff's
 Counsel—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 5.
Chief
Justice's
Notes on
Evidence.
11th
January,
1954.
Submission
by
Plaintiff's
Counsel—
continued.

Co. is on outside—has had to reserve a right to enter at reasonable times—repair & manner of operation. Strong evidence of parting with possession. Why necessary if case was otherwise.

Final period Dec. 1952 to March 1953 by Thompson by supposing he was tenant nt. with a sufferance but he had exclusive possession—not rent is irrelevant.

Evidence.

Thompson—negotiations sd. he was anxious to get out & we to get in. We thought we were leasing the place—sub-lease.

Identified with Handler.

Not concerned with terminology. Co. running—noon their own. Keys is an important point. E. retained a key—couldn't produce it but not contradicted—significance is to enable one to use it. Never used it or attempted to use it. Control retained by fact that locks had been changed.

Authorities persons constantly using it.

Thompson—control—thats why rented it.

No enquiry—no examination of books—insurance paid.

Fee for licence pd. by Handler & Thompson. (Why not control retained.)

Agreement arranged with Mr. Newton Higgs.

Removal of griller in 1953.

Wld. it have been so in 1952 ?—Had to get consent.

(I put another case where an item of equipment taken might frustrate the whole contract).

2nd issue. *Waiver* : acceptance of rent.

Onus of proving is upon the dfts. (I agree with this.)

Page 592 Wood Fall.

If the lessor then knows of the breach.

Roe v. Harrison. Main proposition.

Harvey v. Oswald. No knowledge—no bar.

Goodright v. Davies. Must have full notice.

Sands made demand for rent early in November before aware.

Demand continued to operate—Day or two after that he knew he refused the rent.

Full notice end of Nov. or beginning of Dec. by seeing agreement for 1st time—refused the rent.

Dfce. says : Sands sd. Thompson was in possession.

Evidence=Handler was there.

Roscoe Thompson there in 1952.

? Certain negotiations under foot for sale—hence reason for seeking to end lease.

Thompson takes agreement to Sands. Disgruntled.

(all this was quite open to anyone).

Sands says he thought they were managers only—in & out of the Club.

Says he never sd. he was satisfied if the rent was pd.

Sands entitled to think servant because Elcock mentioned it to him.

10

20

30

40

Mr. Knowles :

But Sands had no reason to think that the Dft. Co. had broken their covenant. Waiver even tho' Sands didn't know—asked to follow the dicta given in cases quoted by dfce.

544 & 545 Wood Fall. Tacit acquiescence in one matter does not mean acquiescence in a number of others.

Denby v. Nicholl. p. 1130.

How can S. be sd. to waive by acceptance when unaware of the breach.

Was there an absolute & unqualified demand for rent. Only 30 days.

10 Demand must be unequivocal.

Urge that there cld. not have been a waiver by conduct by accepting rent till landlord full possession of facts.

Evidence—landlord not in full possession till B. shown him in Dec. 1952.

No waiver.

3rd point.

Consent.

Mr. E. said no consent asked for.

One whole follows from this—cannot be unreasonably withheld.

Roe v. Harrison. G. Telegraph Co., 839.

20 If plff. lead dft. to believe the whole this wld. aim to defraud.

Not pleaded.

Damages :

Left to the Court. Nothing further to say.

Mr. Dupuch :

2 points. Even if alleged conversation took place S. & E. did not affect case.

See evidence. Handler put in as manager.

fixed sum to be paid—plff. interprets this as rent.

Not correct that E. did not tell S. manager. Waiver of one breach &c.

30 proper interpretation. Waiver of one breach *is no* breach in future.

Breach of covenant to pay rent. If waived breach as regard rent then he waived prior breaches.

Suggested future breaches.

Manager put in impossible position if equipment removed pt. of contract.

Order.

I reserve orders.

G. W. McL. HENDERSON,

C.J.

Friday, 15th January, 1954.

40 *Order :*

I find that with the present pressure of work I am unable to give a detailed and reasoned judgment until later. Knowing, however, that the parties are most anxious to know the actual result of my deliberations I am

In the
Supreme
Court of
the Bahama
Islands.

—
No. 5.
Chief
Justice's
Notes on
Evidence.
11th
January,
1954.

—
Submission
by
Plaintiff's
Counsel—
continued.

Submission
by
Defendant's
Counsel.

In the
Supreme
Court of
the Bahama
Islands.

prepared to give this at once and take further time to give my reasons leading up to this result. I am of the opinion that the answer to the first issue is in the negative and by consequence the remaining issues do not call for a decision.

I therefore dismiss the suit with no order as to costs.

No. 5.
Chief
Justice's
Notes on
Evidence.
15th
January,
1954.
continued.

G. W. McL. HENDERSON,
C.J.

Saturday, 30th Jan., 1954.

Judgment delivered.
A copy of the original is put in the file.

10

Order :

Let the exhibits be returned to the respective parties on application being made therefor to the Registrar.

G. W. McL. HENDERSON,
C.J.

No. 6.
Judgment.
30th
January,
1954—

No. 6.
Judgment.

BAHAMA ISLANDS.

IN THE SUPREME COURT.
EQUITY SIDE.

20

Between

WILLIAM HENRY SANDS *Plaintiff*

vs.

HARBOUR CLUB LIMITED *Defendants*

29

53

JUDGMENT.

In view of the statements made by both Counsel in this case that it would be most convenient if the Court could give an indication of its finding in brief and give reasons later I did on the 15th day of January give an interim decision in favour of the Defendant Company intimating that I would give a reasoned Judgment later. I now give it. In this case the Plaintiff

30

sues the Defendant Company claiming possession of certain premises known as the Spider Web Garden Club on Bay Street, Nassau, which he had leased to the Company for a term of eight years, on the grounds that in breach of a covenant of that lease not to assign underlet or part with the possession of the premises without the written consent of the Plaintiff, the Company on or about the 13th January, 1951 did so sublet or part with possession firstly to one Maurice Handler and later to one Roscoe Whittleton Thompson. The Plaintiff also claimed damages and mesne profits. The Company denied that it had sub-let or parted with possession of the premises
 10 as alleged or at all but went on to allege that it did enter into an agreement with Maurice Handler whereby he was to be on the premises as Manager of the Club for a year from the 1st January, 1951 to the 30th November, 1951 and Thompson joined in this agreement as Guarantor for Handler. The Company agree that Handler left and Thompson took his place for the following year or more but say that the Company always retained the possession and control of the premises and that such agreement was no sub-lease. It denied by consequence that any damages and mesne profits were payable. In the alternative the Company alleged that if it had sub-let or parted with the possession, which it denied, then the Plaintiff
 20 had waived his right to claim forfeiture as he had received rent after the cause of the forfeiture arose and was known to him. And again in the alternative the Company said that if the premises had been sub-let or the Company had parted with possession, which it again denied, they were entitled to do so because verbal consent had been given to the arrangement by the Plaintiff who had unreasonably withheld written consent. By way of reply the Plaintiff denied acceptance of the rent after he became aware of the alleged breach of covenant by the Company thereby disposing of the question of waiver and denied also that he ever gave any verbal consent to any sub-letting or parting with possession and that any request for
 30 consent was ever made.

Mr. Leonard Knowles appeared for the Plaintiff and Mr. Eugene Dupuch for the Defendant Company and at the first hearing of the cause the following issues were framed by consent :—

- (1) whether or not the Defendant Company sub-let or parted with possession of the premises in breach of the covenant in the lease ;
- (2) if there was a breach was there a waiver by acceptance of rent ;
- (3) if the Defendant sub-let or parted with possession did the Plaintiff give the necessary consent either verbally or otherwise or did he unreasonably withhold that consent ;
 40
- (4) if the answer to (1) is in the affirmative and there was no waiver and consent was not unreasonably withheld what are the damages, if any.

In the
 Supreme
 Court of
 the Bahama
 Islands.

—
 No. 6.
 Judgment.
 30th
 January,
 1954—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 6.
Judgment.
30th
January,
1954—
continued.

It is an undisputed fact that in 1950 by a lease dated the 18th April of that year the Company with Mr. Elcock as surety, obtained a lease of the Spider Web Garden Club for a term of eight years from the Plaintiff at a rental of £900 a year. It is equally undisputed that under paragraph (2) (f) of this lease the Company covenanted "Not to assign, underlet or part " with the possession of the premises or any part thereof without first " obtaining the written consent of the Landlord such consent however not " to be unreasonably withheld in the case of a responsible person."

On the 13th January, 1951, a document was drawn up expressed as an agreement, between the Company of the one part, a Maurice Handler 10 called the Manager, of the second part, and a Roscoe Whittleton Thompson, as Guarantor to Maurice Handler, of the third part. This is the document which is the main basis for dispute in this case and accordingly I quote it in full. It was put in as Exhibit B.

" Bahama Islands.
New Providence.

I, Phyllis Simpson, of the Island of New Providence, Secretary of Harbour Club Limited make oath and say that on the Thirteenth day of January A.D. 1951 I was present and saw the Common Seal of Harbour Club Limited affixed to the annexed Agreement dated the Thirteenth day 20 of January A.D., 1951 by Janet Megrew Elcock the President of the said Company And that I saw the said Janet Megrew Elcock sign, execute and deliver the said Agreement as and for the act and deed of the said Company and for the purposes mentioned in the said Agreement and that I subscribed my name as the witness to the due execution thereof. Further that the seal affixed and impressed at the foot or end of the said Agreement is the Common Seal of Harbour Club Limited and was affixed and impressed thereto by the said Janet Megrew Elcock by the order and with the authority of the Board of Directors of the said Company and in conformity with the Articles of Association of the said Company. 30

Sworn to this 13th day of January }
A.D., 1953

PHYLLIS SIMPSON.

Before me,
A. F. ADDERLEY,
Notary Public. (Seal)

Bahama Islands.
New Providence.

I, Yvonne Ingraham, of the Island of New Providence, Secretary make oath and say that I was present and saw Maurice Handler and Roscoe Whittleton Thompson both also of the said Island of New Providence, 40 sign, seal and as and for their act and deed execute and deliver the annexed

Agreement dated the Thirteenth day of January, A.D., 1951 for the purposes therein mentioned ; and that I subscribed my name as the witness to the due execution thereof.

In the Supreme Court of the Bahama Islands.

Sworn to this 13th day of January, }
A.D., 1951

YVONNE INGRAHAM.

No. 6.
Judgment.
30th
January,
1954—
continued

Before me,

R. NEWTON HIGGS,
Notary Public.

10 R. NEWTON HIGGS,
Attorney-at-Law,
Nassau, Bahamas.

Bahama Islands.
New Providence.

AN AGREEMENT made the Thirteenth day of January, in the year of Our Lord One Thousand Nine Hundred and Fifty-one BETWEEN Harbour Club Limited a Company incorporated under the laws of the Bahama Islands and carrying on business within the Colony (hereinafter called the Company) of the one part Maurice Handler at present of the Island of New Providence (hereinafter called the Manager) of the second part 20 AND Roscoe Whittleton Thompson also of the said Island of New Providence Merchant (hereinafter called the Guarantor) of the third part WHEREAS the Company are the owners of a lease of the hereditaments and premises known as The Spider Web Garden Club the particulars whereof are set out in the Schedule hereto AND WHEREAS it has been agreed that the Company should appoint the Manager to be the Manager of the said Club upon the terms hereinafter expressed NOW IT IS HEREBY AGREED as follows:—

Stamp
Duty
10/-

1.—The Company hereby appoints the Manager to be the sole Manager of the Club known as The Spider Web Garden Club situate on the North side of Bay Street in the City of Nassau in the said Island of New Providence 30 from the First day of January A.D., 1951 to the Thirtieth day of November, A.D. 1951.

2.—The Manager shall pay all expenses in operating the said Club including the purchase of all wines, spirits, beers, minerals and food purchased for the Club. The Manager will not at any time pledge the credit of the Company nor of The Spider Web Garden Club.

3.—The Manager shall pay all charges including telephone electricity water sewerage insurance and licence and shall pay the salaries and wages of all employees of the Club.

In the
Supreme
Court of
the Bahama
Islands.

No. 6.
Judgment.
30th
January,
1954— ::
continue

4.—The Manager shall receive and retain all moneys received by the Club whether as subscriptions or otherwise for his own use and benefit after payment of the above-mentioned expenses and the rent and premium hereinafter mentioned.

5.—The Manager shall pay the sum of Nine hundred pounds in respect of rental of the said Club for the period ending the Thirtieth day of November, A.D., 1951 and the sum of Four hundred pounds as a premium towards the cost of the improvements already made to the Club by the Company.

6.—Of the above sum of Thirteen hundred pounds the sum of Six hundred and Fifty pounds shall be paid on the signing of this agreement and the balance of Six hundred and Fifty pounds on the Thirtieth day of April, A.D. 1951. 10

7.—The Manager shall open the Club at such times during the engagement as he thinks fit and hereby covenants with the Company to operate the Club on high class lines and the Company shall have the right to cancel this agreement on the breach of any of the conditions contained herein and upon such event the Company will refund to the Manager Seventy-five per cent of the unexpired rental paid by him provided that if any act or thing done by him or his agent or servants results in the revocation or cancellation of any licence under which the Club is operated the Company will be under no obligation to refund any of the rental paid provided further that in the event that the Company and the Manager are unable to agree as to whether or not the Club is operated on high class lines the matter shall be referred to two arbitrators one to be appointed by each party to the differences and if they are unable to agree then both parties shall agree on a third arbitrator to be appointed. 20

8.—The Manager agrees to take over the Club in its present condition together with the furniture and equipment set out in the attached inventory.

9.—At the termination of the engagement the Club is to be handed back to the Company in at least as good a condition as when taken over (fair wear and tear and damage by fire storm or tempest excepted) together with the equipment set out in the attached inventory. 30

10.—The Manager shall have the option to renew the engagement for a further period of one year to the Thirtieth day of November A.D., 1952 or alternatively to renew the engagement to the Twenty-eighth day of April, A.D., 1958 at the rental of Eighteen hundred pounds per annum for the said period payable in advance on the First day of December A.D., 1951 and on the First day of December in each and every year thereafter provided such option is exercised on or before the First day of September, A.D., 1951. 40

11.—At the expiration of the second year's engagement the Manager shall have the option to renew the engagement for a further period to the

Twenty-eighth day of April A.D., 1958 provided such option is exercised on or before the First day of September A.D. 1952 at the said annual rent of Eighteen hundred pounds payable in advance on the First day of December in each and every year.

In the
Supreme
Court of
the Bahama
Islands.

12.—The Company shall discharge all liabilities due by the Club up to and including the Thirty-first day of December, A.D., 1950.

No. 6.
Judgment.
30th
January,
1954—
continued.

13.—If the Company receives a *bona fide* offer for the purchase of the said lease which the Company now holds on the demised premises this engagement shall terminate within thirty days after such notice in writing is given to the Manager of such offer but the Manager shall have the option to purchase the said lease at the price which has been offered to the Company within thirty days after such notice is received.

14.—The Guarantor guarantees the Manager's undertakings as to the payment of the rental and other liabilities contained in this agreement and covenants to indemnify the Company against the Manager's failure to discharge all liabilities of the Club from the First day of January, A.D. 1951, up to and including the Thirtieth day of November, A.D. 1951, and also during any renewal of this agreement.

15.—The Company hereby covenants with the Manager that they will pay the rent due to the Landlord William Henry Sands as and when the same becomes due and payable.

16.—Anyone authorized by the Company shall at all reasonable times have permission to enter and view the state of repair of the Club premises and to observe the manner in which the Club is operated.

IN WITNESS WHEREOF the Company have caused their Common Seal to be hereunto affixed.

JANET MEGREW ELCOCK,
President. (Seal).

The Common Seal of Harbour Club Limited was affixed hereto by Janet Megrew Elcock the President of the said Company and the said Janet Megrew Elcock affixed her signature hereto on the Thirteenth day of January in the year of Our Lord One thousand nine hundred and fifty-one in the presence of:—

PHYLLIS SIMPSON,
Secretary.

IN WITNESS WHEREOF the Manager has hereunto set his hand and seal

M. HOLY HANDLER,
Manager. (Seal).

In the
Supreme
Court of
the Bahama
Islands.

No. 6.
Judgment.
30th
January,
1954—
continued.

Signed Sealed and Delivered by the said Maurice Handler on the Thirteenth day of January in the year of Our Lord One thousand nine hundred and fifty-one in the presence of :—

YVONNE INGRAHAM.

IN WITNESS WHEREOF the Guarantor has hereunto set his hand and seal.

R. W. THOMPSON. (Seal).
Guarantor.

Signed Sealed and Delivered by the said Roscoe Whittleton Thompson on the Thirteenth day of January, in the year of Our Lord One thousand nine hundred and fifty-one in the presence of :—

YVONNE INGRAHAM.

THE SCHEDULE hereinbefore referred to.

Indenture of Lease made between William Henry Sands and Harbour Club Limited dated the Eighteenth day of April, A.D. 1950.

R. W. THOMPSON.
M. HOLY HANDLER.

Witness :— YVONNE INGRAHAM.

DRAFT INVENTORY AS AT 6TH JANUARY, 1951.

								20	
BAR.									
Bar Counter	...	...	...	...	...	...	1	
Wall Cupboard	...	...	...	...	...	...	1	
Cash Desk	...	...	...	...	...	...	1	
Stool	...	...	...	...	...	...	1	
Telephone	...	...	...	...	...	...	1	
Bar Stools (two damaged)	...	...	...	...	...	...	24	
Wooden Cupboard	...	...	...	...	...	...	1	
Sink and Wall Shelves in front of Kitchen	...	...	...	...	...	...
Hurricane Lamps on Bar Wall	...	...	...	...	...	...	3	
Fish Nets	...	...	...	...	...	...	Various	30
Red Leather Side Wall Sofa	...	...	...	...	...	...	1	
Chairs and Tables included in Dance Hall List of Fixtures and Fittings.									
VERANDAH.									
Sofas, Wicker	...	...	...	...	...	...	2	
Wooden Flower Boxes	...	...	...	...	...	...	Various	

DANCE HALL.

Chairs	60
Wooden Garden Reclining Chairs	2
Tables	35
Orchestra Chairs	5
Record Player	1
Loudspeakers	3
Red Leather Side Wall Sofas	2
Hurricane Lamps	3
10 Canvas Awning round Kitchen and Orchestra	2
Paintings, framed	3

LADIES' ROOM.

Soap fixtures	2
Stools	3
Chair	1
Toilets	3
Wash Basins	2
Mirrors	4
Rubbish Bin	1
20 Linen Bin	1
Towel fixtures	1

GENTLEMEN'S ROOM.

Urinals	2
Toilets	2
Mirrors	3
Linen Bin	1
Towel fixture	1
Wash Basins	2
Soap fixtures	2

30 PERCY'S PLACE.

Wash Basin	1
Telephone	1
Shelf	1
Toilet	

CHECK ROOM.

Wooden Benches	2
Table	1

WAITER'S ROOM.

Wooden Bench	1
40 Wash Basin	1
Toilet	1

In the
Supreme
Court of
the Bahama
Islands.

—
No. 6.
Judgment.
30th
January,
1954—
continued.

In the Supreme Court of the Bahama Islands. — No. 6. Judgment. 30th January, 1954— <i>continued.</i>	Serving Spoons	1
	Teaspoons	4 doz. & 6
	Ice Teaspoons	2 doz. & 8
	Oyster Forks	3 doz.
	Dinner Forks	6 doz. & 10
	Dinner Knives	6 doz. & 3
	Kerosene Lamps	8

BAR MIXING EQUIPMENT

Electric Mixing Machine	1	
Cocktail Shakers	2	10
Mixing Glasses	4	
Strainers... ..	2	
Lime Squeezers	5	
Ice Scoops	3	
Cork Screws	4	
Fruit Dishes	4	
Ash Trays	17	

LINEN.

Waiter's White Coats	8	
Table Cloths, White	13	20

Now the history of this document Ex. B. is in some measure important and from the evidence it appears to be this. Prior to the drawing up of Ex. B. Maurice Handler had approached Mr. Elcock, who was an officer of the Defendant Company, with a view to the Defendant Company allowing him to manage the Spider Web Club. After some consideration Mr. Elcock decided to enable Handler to manage the Club provided that he obtain a guarantor and eventually Handler obtained the services of Mr. Thompson as guarantor. It seems that the terms of the contract whereby Handler was to become manager were discussed by the three people and then in conjunction with the lawyers of both sides, the late Mr. Adderley for the Defendant Company and Mr. Newton Higgs for Handler and Thompson Ex. B. was drawn up and signed by the parties and Handler opened the Club under that agreement. It is said by Mr. Elcock that when Ex. B. was signed he retained a key of the front entrance and also of the office, and I do not think that the Plaintiff sought to contradict this. Mr. Elcock says that he made this special arrangement with Handler because he wished to be assured of a fixed and certain return or income from his investment ; he says that he had conversations with the Plaintiff about the whole arrangement, told him that Handler was going in as Manager and even asked Plaintiff's advice as to the standing of Mr. Thompson, clearly with a view to his standing as guarantor. He says that the Plaintiff appeared quite satisfied so long as he, Mr. Elcock, held himself responsible for the rent, and so long as the licence for the premises was held in the name of Mrs. Elcock. It may here be said that there is no

dispute that the licence was in the name of Mrs. Elcock the wife of Mr. Elcock and another officer of the Defendant Company. Mr. Sands the Plaintiff, on the other hand denies that there was any conversation of the character stated above at all, but he does say that he knew that the Elcocks and Handler and Mr. Thompson were in the Club at the beginning. Evidence is not available from Handler, he has left the Colony, and while on this topic it is greatly to be regretted that the late Mr. Adderley who handled the whole arrangement was, of course, unable to have assisted the Court. On the other hand Mr. Higgs apparently acted on behalf of Mr. Thompson and also Handler and approved the document and it would have been interesting to have heard his views one way or the other. Now Mr. Thompson gave evidence that he thought on signing Ex. B that he himself was obtaining a lease of the premises and when it was pointed out to him that he only signed as guarantor to Handler he says he was a partner and apparently by consequence held the lease as he thought it to be. He was asked what the document meant when it said that the company appointed the Manager and his reply was that he did not know, he appointed the manager he thought but he went on to say that the agreement Ex. B is exactly what Mr. Elcock arranged with Mr. Newton Higgs and that he read it and signed it. He maintained throughout that he thought he was obtaining a lease when he signed the document. I feel that no comment is necessary. Now on the signing of this agreement it seems that Handler and another man Lightbourn and Mr. Thompson took over the premises and ran the Club. Mr. Thompson says that Lightbourn was really manager with Handler a partner and he as partner. In April 1951 he says that Lightbourn left and in October or thereabouts Handler left. He then came to an arrangement with Mrs. Elcock to carry on the Club by himself and in fact did so. There was it seems no fresh agreement for this second year. Mr. Elcock says that Mr. Thompson carried on the place of Handler with a new arrangement on the basis of the arrangement of 1951 made through the late Mr. Adderley. In point of fact therefore there does not seem to have been any written agreement concerning the premises since the 30th November, 1951, with Mr. Thompson, although Mr. Thompson seems to have considered that Ex. B applied to him in the same way as it applied to Handler since at the end of November or beginning of December, 1952 he showed a copy of it to the Plaintiff still referring to himself verbally as a tenant and the document as a lease. It is undisputed that Mr. Thompson carried on at the Club until April 1953 by permission of the Defendant Company and eventually vacated at the request of Mrs. Elcock then.

It is clear law that in the provisions of the Conveyancing and Law of Property Act (Chapter 180) of the laws of the Bahamas there is no relief against forfeiture under a lease and, as I understand it, the Courts in these circumstances are inclined to lean against forfeiture. But it is right to say that the ordinary rules of construction and I would add the authorities which have been built up over the years apply to conditions and covenants the breach of which may lead to a forfeiture and the intention of the parties

In the
Supreme
Court of
the Bahama
Islands.

— — —
No. 6.
Judgment.
30th
January,
1954—

continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 6.
Judgment.
30th
January,
1954—
continued.

has to be found from the circumstances and the language they have used. In other words the court has to look at all the circumstances coupled with the words used in order to arrive at a decision with regard to the particular case. By consequence I propose to examine the language of the document Ex. B in the first place to endeavour to see whether it can be said whether the proper construction to be placed upon it is that it is a lease or merely an agreement by way of licence following an appointment and not meant to create any interest in land. Reading the preamble it will be observed that it is between a manager, a guarantor and the Defendant Company as owners of the lease and it cites an agreement "that the Company should appoint the manager to be the manager of the said club upon the terms hereinafter expressed." Here are no words indicative of a lease but rather of an appointment upon certain terms. In fact the word "lease" is not used in the body of the document except in reference to the lease owned by the Defendant Company. Instead the word "engagement" is used which it would not be improper perhaps to think referred to the engagement of the manager having regard to the words quoted above from the preamble and to the period of this engagement and the period covered by the agreement. It is not easy to see how a person can be both manager and tenant at the same time, but in answer to this it is argued that the handing over of possession, the retention of moneys received by the Club, the payment of "rent," the wording of paragraph 7 relating to the running of the Club upon high class lines and the ability to cancel, the provision in regard to the handing back of the Club at the termination of the engagement (paragraph 9) and in particular paragraphs 15 and 16 of the agreement relating to the covenant by the company to pay the rent due to the landlord and the permission to enter and view the state of repair of the Club and to observe the manner in which the Club is operated, are all highly significant and most indicative of the document being in fact a lease and nothing else.

Now on this question of the construction of the document by reference to its terms I have been quoted a number of authorities, but that authority which impresses me most, and one which the whole of the circumstances were looked at together with the relations of the parties despite the language used in the document drawn up is *Clore v. Theatrical Properties, Ltd.* 1936 3 All E.R. 483. In this case, while it is admittedly dealing with agreements for "the front of the house rights" in theatre premises, the document was an indenture, ordinary called an agreement for the above mentioned purpose and provided that "the lessor doth hereby demise and grant unto the lessee the free and exclusive use of all the refreshment rooms . . . of the theatre—for the purpose only of the supply to and the accommodation of the visitors to the theatre and for no other purpose whatsoever." There was a condition that the lease should not be assigned or sub-let except with the lessor's consent. The definition clause stated that the term lessor and lessee should include their executors administrators and assigns. It was held by the Court of Appeal (i) that the indenture was not a lease but a licence and (ii) it was a personal contract. Now while this decision was partially based upon a ruling by the

House of Lords in regard to these particular theatre agreements it is a case most illustrative of the point that no matter what wording is used in a document the Court will, if it thinks it necessary to arrive at what it considers to be the true position, disregard this wording entirely in its ordinary and perhaps legal meaning.

In this case of *Clore v. Theatrical Properties Ltd.* no words *qua* words more indicative of a lease could have been used I suggest, and I regard it as an authority for thinking that if a court is of the opinion that the intention of the parties apart from the wording of the document is not to create
 10 a lease, not to create any interest in land then the Court is at liberty to find accordingly despite the words used.

Now looking again at the facts and Ex. B in the present case I do not blame the Plaintiff in the very least for thinking that Ex. B when it was shown to him was a sub-lease. It has indeed some of the attributes of a lease if the wording only is looked at and that is what Mr. Sands did, coupled with what, of course Mr. Thompson said to him. But is there anything pointing conclusively to the intention that the document Ex. B was meant and can be said to have been meant to create an interest in land. I think not. Looking at the facts and the document it seems to me that all the
 20 document purports to do in regard to Handler is to appoint him manager under certain conditions which were to prevail for the first year of his engagement. One of the most impressive facts to my mind was that the licence for the Club was taken out in the name of Mrs. Elcock although it is provided in Clause 3 that the manager is to pay for the licence. I conceive that the Club would indeed have had to close had it no licence and yet beyond the fact of payment there is no covenant as to its renewal nor is the manager allowed to have the licence in his name which might be thought a normal course if he was really to have full control of the business. Again although it is given in evidence that the locks upon the doors were changed
 30 frequently during the engagement, due to the loss of the keys mostly by the manager and his staff, yet the company through Mr. Elcock retained a set of keys at the onset to the front door and to the office. I regard this as an important factor which the renewal of locks due to the loss of keys does not off set. Paragraph 7 of the document is also of interest since it is to my mind a normal method of cancelling the engagement but an abnormal method where there is any intention of creating an interest in land such as a lease. Apart therefore from the previous considerations it is good law that a covenant against parting with the possession of the premises is not broken, so long as the lessee retains the legal possession, by allowing other
 40 people to use the premises under a lease or under a declaration of trust. Here is no question I think of a declaration of trust but it does seem to me that having regard to the above mentioned factors of the licence, paragraph 7 of the agreement and the retention of keys the Defendant Company had no intention of parting with the legal possession; indeed, as I have said before it had no intention of creating an interest in land and Mr. Thompson in the first instance could have been under no illusion as to

In the
 Supreme
 Court of
 the Bahama
 Islands.

No. 6.
 Judgment,
 30th
 January,
 1954—
continued.

In the
Supreme
Court of
the Bahama
Islands.

No. 6.
Judgment.
30th
January,
1954—
continued.

his position of guarantor to Handler and having taken over in place of Handler under no real illusion as to Handler's original position and his subsequent position.

For the above reasons and on all the facts I have no hesitation in answering the first issue in the negative, that is to say that the Defendant Company did not sub-let or part with possession of the premises in breach of the covenant in the lease but in the circumstances I dismiss the case with no order as to costs.

G. W. McL. HENDERSON

C.J.

30th January, 1954.

10

No. 7.
Order.
30th
January,
1954.

No. 7.

Order.

No. 29. 1953.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
EQUITY SIDE.

Between

WILLIAM HENRY SANDS Plaintiff

and

HARBOUR CLUB, LIMITED Defendants.

20

Dated and entered the 30th day of January, A.D., 1954.

THIS ACTION having on the 30th day of January, 1954, been tried before the Honourable Guy Wilmot McLintock Henderson, Q.C., Chief Justice, without a jury, in the Supreme Court at the City of Nassau in the Island of New Providence, and the said Chief Justice having ordered on the said 30th day of January, 1954, that judgment be entered for the Defendants herein and having made no order as to costs.

IT IS THIS DAY ADJUDGED that this action do stand dismissed out of this Court.

30

By Order of the Court,

(Sgd.)

Asst. Registrar General.

No. 8.
Notice of Intention to Appeal.

No. 29. 1953.

In the
Supreme
Court of
the Bahama
Islands.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
Equity Side.

No. 8.
Notice of
Intention
to Appeal.
5th
February,
1954.

Between

WILLIAM HENRY SANDS *Plaintiff*
and
10 HARBOUR CLUB, LIMITED *Defendants.*

I hereby inform you of the intention of William Henry Sands, the Plaintiff in the above-mentioned action to prosecute an appeal against the rulings, direction, judgment and order of this Honourable Court given and made and dated on the 30th day of January, 1954, and of the readiness of the Plaintiff to give the security required by the Supreme Court Amendment Act, 1912.

Dated the Fifth day of February, 1954.

LEONARD KNOWLES,
Counsel and Attorney for the Plaintiff.

20 To the Registrar, The Supreme Court, Nassau, Bahamas, and
E. A. P. Dupuch, Esq., Attorney for the Defendants.

No. 9.
Notice of Motion.

No. 29. 1953.

No. 9.
Notice of
Motion.
5th
February,
1954.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
Equity Side.

Between

WILLIAM HENRY SANDS *Plaintiff*
and
30 HARBOUR CLUB, LIMITED *Defendants.*

TAKE NOTICE that this Honourable Court will be moved on Tuesday, the 9th day of March, 1954, at ten o'clock in the forenoon or so soon thereafter as Counsel may be heard by Counsel on behalf of William Henry

In the Supreme Court of the Bahama Islands.

Sands, the Plaintiff in the above-mentioned action, for an Order granting to the Plaintiff permission to appeal to Her Majesty's Privy Council against the Rulings, Direction, Judgment and Order of the said Honourable Court dated the 30th day of January, 1954.

No. 9. Notice of Motion. 5th February, 1954—*continued.*

TAKE FURTHER NOTICE that this Honourable Court will also be moved to suspend execution pending the appeal of the Rulings, Direction, Judgment, and Order appealed from upon the Appellants giving security to the satisfaction of the Court for the performance of such Order as Her Majesty in Council may think fit to make.

Dated this Fifth day of February, 1954.

10

LEONARD KNOWLES,
Attorney for the Plaintiff.

To the Registrar of the Supreme Court, Nassau, and
To E. A. P. Dupuch, Esq., Attorney for the Defendants.

No. 10. Notice of Motion for Supplemental Judgment. 12th February, 1954.

No. 10.
Notice of Motion for Supplemental Judgment.

No. 29. 1953.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
Equity Side.

20

	Between					
WILLIAM HENRY SANDS	...	...	...	...	...	<i>Plaintiff</i>
	and					
HARBOUR CLUB, LIMITED	...	...	...	...	...	<i>Defendants.</i>

TAKE NOTICE that this Honourable Court will be moved on Tuesday, the 9th day of March, 1954, at ten o'clock in the forenoon by Mr. Leonard J. Knowles, counsel on the part of the Plaintiff that the Court may deliver a further judgment supplemental to the judgment pronounced in this action on the 30th day of January, 1954 (which has not been entered in accordance with Rule 361 of the Bahamas Practice at the date hereof) in regard to the following issues in the above-entitled action :

- (1) If there was a breach of the covenant in the lease by the Defendants relating to subletting or parting with possession of the demised premises, was there a waiver by the Plaintiff by acceptance of rent ?

30

- (2) If the Defendants committed the said breach of covenant, did the Plaintiff give the necessary consent either verbally or otherwise or did he unreasonably withhold that consent?
- (3) If the Defendants committed the said breach of covenant and there was no waiver and consent was not unreasonably withheld, what are the damages, if any ?

In the Supreme Court of the Bahama Islands.

No. 10. Notice of Motion for Supplemental Judgment. 12th February, 1954—*continued.*

Or alternatively, that the said judgment dated the 30th day of January, 1954, may be amended by adding a finding on each of the said issues.

Dated the 12th day of February, 1954.

10

LEONARD J. KNOWLES,
Attorney for the Plaintiff.

To the Defendants and
E. A. P. Dupuch, Esq., their Attorney.

No. 11.
Order refusing Supplemental Judgment

No. 29. 1953.

No. 11. Order refusing Supplemental Judgment. 9th March, 1954.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
Equity Side.

20

Between

WILLIAM HENRY SANDS	...	...	...	...	...	<i>Plaintiff</i>
						and
HARBOUR CLUB, LIMITED	...	...	...	...	...	<i>Defendants.</i>

Dated the 9th day of March, 1954.

Upon hearing Mr. Leonard Knowles of Counsel for the Appellant, and the Honourable E. A. P. Dupuch of Counsel for the Respondents.

IT IS ORDERED that no further judgment supplemental to the judgment pronounced in this action on the 30th day of January, 1954, be delivered.

By Order of the Court,

30

JAMES LIDDELL,
L.S.,
Registrar.

No. 12.

Order Granting Conditional Leave to Appeal to Privy Council.

In the
Supreme
Court of
the Bahama
Islands.

No. 29. 1953.

No. 12.
Order
Granting
Conditional
Leave to
Appeal.
9th March,
1954.

BAHAMA ISLANDS.
IN THE SUPREME COURT.
Equity Side.

Between

WILLIAM HENRY SANDS *Plaintiff*
and
HARBOUR CLUB, LIMITED *Defendants.* 10

Dated the 9th day of March, 1954.

UPON HEARING Mr. Leonard Knowles of Counsel for the Appellant,
and the Honourable E. A. P. Dupuch of Counsel for the Respondents.

IT IS ORDERED that leave be granted to the Appellants for permission
to appeal to Her Majesty in Her Majesty's Privy Council against the Rulings
Direction Judgment and Order of this Honourable Court dated the 30th day
of January, 1954, upon the Appellants depositing with the Registrar within
two months from the date hereof a certified cheque for £500 0s. 0d. as
security for any costs which might be awarded to the Respondents by Her
Majesty in Council ; and upon the Appellants within three months from 20
the date hereof procuring the preparation of the Record and the despatch
thereof to England.

By Order of the Court,

JAMES LIDDELL,
L.S.,
Registrar.



EXHIBITS.

Exhibit A.—Lease.

Bahama Islands.
New Providence.

Exhibits.

A.
Lease.
18th April,
1950.

THIS INDENTURE is made the 18th day of April in the year of Our Lord One thousand nine hundred and fifty BETWEEN William Henry Sands of the City of Nassau in the Island of New Providence (hereinafter called the Landlord which expression where the context so admits shall include the reversioner for the time being immediately expectant upon the term
10 hereby created) of the first part HARBOUR CLUB LIMITED a Company incorporated in and under the Laws of the Bahama Islands and carrying on business within the said Bahama Islands and having its Registered Office in the City of Nassau in the said island of New Providence (hereinafter called the Company) of the second part and William George Elcock of Number Nine Shirley Slope in the Eastern District of the aforesaid Island of New Providence (hereinafter called the Surety) of the third part WITNESSETH as follows :—

£2.5.6
Stamps
on one copy

1.—In consideration of the rent and tenants covenants hereinafter reserved and contained the Landlord hereby demises unto the Company
20 ALL THOSE premises known as the SPIDER WEB GARDEN CLUB together with the entrance thereto from Bay Street and the open sections of the Harbour of Nassau (hereinafter called the premises) situate on the Northern Side of Bay Street in the said City of Nassau which said premises are more particularly set out and delineated in those portions coloured pink of the diagram or plan hereto attached To HOLD to the Company from the First day of May in the year of Our Lord One thousand nine hundred and fifty for the term of Eight (8) years PAYING therefore during the said term yearly and proportionately for any fraction of the year the rent of NINE HUNDRED POUNDS by half yearly payments to be made in the following manner :—

30 The sum of FOUR HUNDRED AND FIFTY POUNDS on the First day of May and the sum of FOUR HUNDRED AND FIFTY POUNDS (£450) on the First day of November in every year during the continuance of this Lease.

2.—The Company for itself and its assigns and to the intent that the obligations may continue throughout the term hereby created hereby covenants with the Landlord as follows :—

(a) To pay the reserved rent on the days and in manner aforesaid.

(b) To pay and discharge all future accounts for electricity, water,
40 telephone and sewerage in connection with the premises during the continuance of this lease.

Exhibits
 ———
 A.
 Lease.
 18th April,
 1950—
continued.

(c) To keep the exterior and interior of the demised premises and all additions thereto and the boundary walls and fences thereof and the drains soil and other pipes and sanitary and water apparatus thereof in good and tenantable repair and condition provided always that the Company shall not be bound to maintain (notwithstanding anything hereinafter contained) or to yield up the demised premises in any better repair or condition than the same are now in.

(d) To permit the Landlord at all reasonable times to enter upon the demised premises and to view the condition thereof.

(e) To forthwith insure and keep insured in the name of the Company the demised premises from loss or damage by fire and/or hurricane in the full assessed value of the same in some Insurance Office to be approved by the Landlord and to pay all premiums necessary for that purpose when the same shall become due and whenever required to produce to the Landlord or his agent the Policy of Insurance and the receipt for current year's premium. 10

(f) Not to assign underlet or part with the possession of the premises or any part thereof without first obtaining the written consent of the landlord such consent however not to be unreasonably withheld in the case of a responsible person. 20

(g) To yield up the premises with the fixtures (except "Tenants Fixtures") and additions thereto at the determination of the tenancy in good and tenantable repair and condition in accordance with the covenants hereinbefore contained. "Tenants Fixtures" to include toilet bowls, basins, baths, sinks, bars, kitchen equipment and all fixtures which can be removed without causing material damage to the freehold.

3.—The Surety in consideration of the demise hereinbefore contained having been made at his request hereby covenants with the Landlord that the Tenant shall pay the rents hereby reserved on the days and in manner aforesaid and shall duly perform and observe all the covenants hereinbefore contained and that in case of default in such payment of rent or performance or observance of covenants as aforesaid the Surety will pay and make good to the Landlord on demand all loss damages costs and expenses thereby arising or incurred by the Landlord Provided always and it is agreed that any neglect or forbearance of the Landlord in endeavouring to obtain payment of the several rents hereby reserved when the same become payable or to enforce performance or observance of the several stipulations herein on the Tenants' part contained and any time which may be given by the Landlord to the Tenant shall not release or exonerate or in any way affect the liability of the Surety under this covenant. 30 40

4.—The Landlord hereby covenants with the Company as follows :—

(a) That the Company paying the rent hereby reserved and observing and performing the several covenants and stipulations herein

on its part contained shall peaceably hold and enjoy the premises during the said term without any interruption by the Landlord or any person rightfully claiming under or in trust for him.

(b) The Company shall be permitted to make any alterations in or additions to the demised premises.

Exhibits

A.

Lease.
18th April,
1950—

continued.

5.—PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED as follows :—

10 (a) If the rent hereby reserved or any part thereof shall be unpaid for twenty-one (21) days after becoming payable (whether formally demanded or not) or if any covenant on the Company's part herein contained shall not be performed or observed or if the Company or any other person in whom for the time being the term hereby created shall be vested shall become bankrupt then and in any of the said cases it shall be lawful for the Landlord at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any breach of the Company's covenants herein contained.

20 (b) In the event of loss or damage by fire and/or hurricane the Company shall not be obliged to rebuild or reinstate the said premises from monies received by virtue of any such Insurance or at all but that the Company will pay to the Landlord the sum of THREE THOUSAND POUNDS (£3,000) in the event of a total loss and in the event of partial loss or damage the Company shall pay to the Landlord a proportionate part of the said sum of THREE THOUSAND POUNDS (£3,000).

30 (c) In case the buildings erected upon the demised premises or any part thereof shall at any time during the said term be destroyed or damages by fire or hurricane storm or tempest so as to be unfit for occupation and use and the policy or policies shall not have been vitiated or payment of the policy monies refused in consequence of some act or default of the Company a fair proportion of the rent hereby reserved according to the nature and extent of the damage sustained shall be suspended until the said premises shall be again rendered fit for occupation and use and in case of difference touching this proviso the same shall be referred to arbitration in accordance with the provisions of The Arbitration Act 1889 or any statutory modification thereof for the time being in force.

40 (d) If at the expiration of the period hereby granted the Landlord shall have no immediate plan for occupation of the demised premises for his personal use and shall be desirous of continuing the Lease of the said premises hereby created the Company shall have the first refusal to lease the said premises for a period of Five (5) years on terms to be mutually agreed upon.

Exhibits. IN WITNESS whereof William Henry Sands has hereunto set his hand
 — and Seal the day and year first hereinbefore written.
 A.
 Lease.
 18th April,
 1950—
continued.

WM. H. SANDS.

Signed, Sealed and Delivered by the said William Henry Sands in the
 presence of :—

A. F. ADDERLEY.

IN WITNESS WHEREOF Harbour Club Limited has caused its Common
 Seal to be hereunto affixed by its President.

JANET MEGREW ELCOCK (Seal).

The Common Seal of Harbour Club Limited was affixed hereto by 10
 Janet Megrew Elcock the President of the Company and the said Janet
 Megrew Elcock affixed her signature hereto on the 18th day of April in the
 Year of Our Lord One thousand nine hundred and fifty in the presence of :—

HEDWIG HAUCK,
Secretary.

IN WITNESS WHEREOF the said William George Elcock hath hereunto
 set his hand and Seal the day and year first hereinbefore written.

WM. G. ELCOCK (Seal).

Signed, Sealed and Delivered by the said William George Elcock in 20
 the presence of :—

A. F. ADDERLEY.

NOTE.—The foregoing is a true copy of LEASE with the exception of
 Plan referred to therein, which is not required. The said LEASE having been
 drawn BETWEEN William Henry Sands, of the City of Nassau in the Island
 of New Providence, Landlord

and

HARBOUR CLUB, LIMITED, of the Second Part

and

WILLIAM GEORGE ELCOCK, the Surety, of the Third Part.

(Sgd.) JAMES LIDDELL,
Registrar General.

30

31st May, 1954.
 The Registry,
 Nassau, N.P.,
 Bahamas.

Exhibit C.—Letter, Leonard Knowles to Hon. A. F. Adderley.

Exhibits.

CHAMBERS.

Nassau.
 Hon. A. F. Adderley,
 Chambers,
 Nassau, Bahamas.

Bahamas,
 10th December, 1952.

C.
 Letter,
 Leonard
 Knowles to
 Hon. A. F.
 Adderley,
 dated 10th
 December,
 1952.

Dear Sir,

Mr. William H. Sands has handed to me your letter of the 6th instant
 10 enclosing a cheque for £450 drawn by Mrs. Janet Megrew Elcock in his
 favour.

Mr. Sands has instructed me to return this cheque, and inform you that
 he regards the lease between himself and the Harbour Club, Limited, as
 terminated on account of your clients' breach of the covenant not to assign
 underlet or part with possession of the premises without obtaining the
 landlord's consent (Clause 2 (f)) and the covenant to pay the reserved rent
 at the specified times (Clause 2 (a)).

I trust that your clients will be prepared to deliver up the demised
 premises at once, and I am returning Mrs. Elcock's cheque herewith.

20

Yours faithfully,

LEONARD KNOWLES,

Leonard Knowles.

Encl.

In the Privy Council.

No. 28 of 1954.

ON APPEAL FROM THE SUPREME COURT OF
THE BAHAMA ISLANDS EQUITY SIDE.

Suit No. 29 of 1953.

BETWEEN

WILLIAM HENRY SANDS
(Plaintiff) Appellant

AND

HARBOUR CLUB LIMITED
(Defendants) Respondents.

RECORD OF PROCEEDINGS

LOVELL, WHITE & KING,
5 Thavies Inn,
London, E.C.1,
Solicitors for the Appellant.

UPTON, BRITTON & LUMB,
22 Hans Road,
London, S.W.3,
Solicitors for the Respondents.