JUDGEMENT READ BY THE DEPUTY BAILIFF 5th February, 1979.

This is an action brought by Mr. Colin John Hamilton, formerly Styles, against firstly, l'Ancienneté Limited, and secondly, Corbière Pavilion Hotel Limited. By order of the Greffier of the 18th April, 1978, the two actions were consolidated.

Mr. Hamilton, and this is the name by which we shall refer to him, (although in his professional capacity as an entertainer he used the surname Styles, and was so described by several witnesses in the course of the hearing), became employed by l'Ancienneté Limited in March, 1977. The first question we have to decide is what was the contract. I should say at the outset, that this case is judged by the common law of Jersey as regards the question of summary dismissal and in no way are we to look for any guidance to the statutory provisions of the Industrial Relations Act 1971, of the United Kingdom, which, of course, does not apply here. It follows, of course, as a result of the introduction of that Act into the laws of the United Kingdom, that the latest text books, such as the latest edition of Chitty, dealing with the question of summary dismissal, inevitably take into account that legislation, but we are not, I repeat, concerned in any way with that legislation, but only the position at common law.

So we have to decide what was the contract. Were there in fact, two contracts?. That is to say, one between Mr. Hamilton and the first defendant and another between Mr. Hamilton and the second defendant, and if so, between which persons were these contracts entered into and at what time.

Now /

Now it is perfectly true from the evidence we have heard that at the time Mr. Hamilton was working partly at l'Ancienneté or St. Aubins Hotel as it was called and partly at Corbière, he was paid for two jobs, in the sense of the companies' accounts being debited with the salary as if in fact he was employed by two different companies. But that was purely for book-keeping purposes and he was employed, and continued to be employed by the first defendant throughout the whole of the events which subsequently took place. We accept his evidence on this point and it is not disputed that, while being employed at St. Aubins, he was asked that because trade was not particularly good whether he would mind singing or performing at The Pavilion, Corbière, which was owned by another company in the same beneficial ownership as the company which owned the St. Aubins Hotel, and therefore are satisfied and we so find that there were not two employers, not two contracts but one employer and one contract. It follows that if he was dismissed from his employment, that he was dismissed from his employment at both premises.

Now in considering what the contract was, we have to decide whether we are prepared to accept the evidence of the plaintiff because as regards the actual agreement, there is only his evidence and to a very limited extent, that of Mr. Thomasson and some letters. Mr. Hamilton has said that he first started work at a salary of £60 or £10 for six sessions, and that that was subsequently varied to £70 and free meals. If we accept his evidence a good deal of his credibility depends on the weight we attach to the letter which he produced and which he says was signed by Mr. D. Brass, who was the Manager at that time and who had the oversight not only of the St. Aubin Hotel but the Pavilion Corbière

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as well. This letter is signed and dated on the 25th April, 1977, and sets out the original terms. We are prepared to accept that letter as a genuine letter for this reason, that Mr. Hamilton said that when he was dismissed as he was later after the events which I will come to in a moment, Mr. Brass at his request, signed a dismissal notice and that he, Mr. Hamilton, saw Mr. Brass sign it. It is quite true that we have had no expert evidence as to whether the signatures are the same, that is to say the same on the letter of the 25th April, and the same on the letter of dismissal of the 15th June, but we are prepared to accept that they are the same. They look very, very similar, and indeed although Mr. Hamilton was cross-examined on this matter, in the sense that Counsel for the defendant companies' said, when Mr. Hamilton asserted that the signature on the letter of the 25th April was that of Mr. Brass, that in fact it was not, Mr. Thomasson, however, the beneficial owner of the two companies was not able to say whether it was or not. Therefore we think that we are entitled to accept the letter with the evidence of Mr. Hamilton as to what the contract really was. It was suggested that Mr. Brass had no authority to make such a contract. We disagree. If a company holds out a Manager as having authority to make contracts with the staff then it cannot withdraw that authority unless it notifies the staff accordingly. We are satisfied that at the time Mr. Brass concluded the written agreement of the 25th April, 1977, with the plaintiff, he had the authority to enter into such an agreement. Indeed Mr. Thomasson himself said that he left the question of engaging and dismissing staff to Mr. Brass. Moreover, Mr. Coakley, whom we found a most interesting and reliable and honest witness confirmed the evidence

of Mr. Hamilton in one minor, but nevertheless an important respect, when he said that Mr. Hamilton had taken some meals at the hotel and had had them provided free. There is no dispute that certain events occurred on the night of the 14th June, 1977, and that as I have just said on the 15th June, Mr. Hamilton was dismissed. Now what were the grounds for that dismissal, which it cannot be denied and Counsel for the defendant companies has not attempted to deny it, was indeed a summary and immediate dismissal?. There are, under the heading of particulars supplied by the first defendant company five main heads, and I will read them:-

> "(a) THAT the Plaintiff regularly arrived late for his work without authority or reasonable excuse.
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> (b) THAT the Plaintiff regularly took breaks in addition to the two fifteen-minute breaks that had been agreed and this without authority or reasonable excuse.
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> (c) THAT the Plaintiff regularly prolonged the breaks that had been agreed without authority or reasonable excuse.
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> (d) THAT the Plaintiff regularly stopped work prior to the agreed time of 12.45 a.m. without authority or reasonable excuse.
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> (e) THAT after the Plaintiff was reprimanded for the aforesaid breaches of his contract of employment, he continued to misconduct himself as aforesaid."

There is one matter that I think I should deal with now. Knowledge of grounds for dismissal at the time of dismissal is not essential, here we differ from the submission advanced by Mr. Thacker for the plaintiff. If an employer can show a good ground existing at the time he dismissed the employee, although he only became aware of it subsequently, he is nevertheless entitled if he can support the knowledge with evidence to justify his conduct

accordingly. In effect, what the first defendant company alleges is misconduct. There is no rule of law which defines the degree of misconduct. The well-known authority Eversley "On Domestic Relations", (sixth edition) says this at page 658:

> "There are four principal grounds which may be taken to justify the discharge of a servant. They are:-
> (a) Wilful disobedience of any lawful order of the master; (b) gross moral misconduct; (c) habitual negligence in business or conduct calculated seriously to injure the master's business; (d) incompetence or permanent disability from illness."

Well we are not concerned with three of those matters. It is quite clear that there has been no allegations of wilful disobedience of any lawful order or any allegation of gross moral misconduct or any question of incompetence or permanent disability through illness. What is suggested is a degree of habitual negligence in his employment calculated seriously to injure the master's business. It is to be noted that it is essential to prove not only some negligence but that it was calculated seriously to injure the master's business.

New let us assume for the minute, ex hypothesi, that there was some negligence in the conduct of the business by which it is alleged that as the plaintiff did not play all the time that he should have done and thus kept the guests entertained as was his job to do. But there has to be, if it is only a temporary neglect, as I have said, injury to the master. As Eversley says on page 660 of the same work "but mere temporary neglect which does not injure the master does not justify an instant dismissal. Or again, so to where the acts in a way incompatible with a due and faithful discharge to his master". Now was his conduct throughout the period of time we have been considering, inconsistent with his duty?.

We / ...

We have the advantage of having cited to us a leading case, the Privy Council case of Clouston & Co., Limited and Corry, (ref.?) which is a very important case from the point of view of this Court as it is a case before the highest tribunal to which persons litigating in this Gourt can go, should they be so-minded. However we think that more help is to be found in a later case which is reported in the Court of Appeal of Laws v London Chronicle (Indicator Newspapers) Limited, Weekly Law Reports 1959, because there the Master of the Rolls, Lord Evershed referred to Clouston and Corry, but also cited some very relevant passages from Halsburys' Laws of England, third edition, Volume 25, pages 485-486, and I will now read from the passage in his judgement where he cites Halsbury and then goes on to consider Clouston and Corry:-

> " The law to be applied is stated (for example) in the paragraphs of Halsburys' Laws of England 3rd ed., Vol. 25, at pp 485 and 486, ...; and I will cite a sentence or two as a foundation to what follows: "Wilful disobedience to the lawful and reasonable order of the master justifies summary dismissal". Then, a little later, "Misconduct, inconsistent with the due and faithful discharge by the servant of the duties for which he was engaged, is good cause for his dismissal but there is no fixed rule of law defining the degree of misconduct which will justify dismissal". Later again. "There is good ground for the dismissal of a servant if he is habitually neglectful in respect of the duties for which he was engaged". And in one of the foot-notes on that page there is a further statement, in reference to 'Edwards v Levy', observing that in that case "it was pointed out that a single instance of insolence in the case of a servant in such a position as that of a newspaper critic would hardly justify dismissal".
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> To my mind, the proper conclusion to be drawn from the passages I have cited and the cases to which we have been referred is that, since a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it follows that the question must be - if summary dismissal is claimed to be justifiable.."

I interject there, that is in fact, what the defendant company is claiming -

"-whether / ...

"-whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. It is, no doubt therefore, generally true that wilful disobedience of an order will justify summary dismissal, since wilful disobedience of a lawful and reasonable order shows a disregard - a complete disregard - of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master and that unless he does so the relationship is, so to speak, struck at fundamentally.

In the passages which I have read, it will be remembered there is a statement "... there is no fixed rule of law defining the degree of misconduct which will justify dismissal". That statement is derived from the judgement of the Privy Council delivered by Lord James of Hereford in the case to which Mr. Steward referred of 'Clouston & Co. Ltd., v Corry'. I will read a rather larger passage which provides the context. Lord James said; "Now the sufficiency of the justification depended upon the extent of misconduct. There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal".

I leave the next paragraph because it is not relevant; and I carry on with the following paragraph.

" With all respect to the judge, I think that his proposition is not justified in the form in which he stated it. I think it is not right to say that one act of disobedience, to justify dismissal, must be of a grave and serious character. I do, however, think (following the passages which I have already cited) that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions; and for that reason, therefore, I think that you will find in the passages I have read that the disobedience ..".

I interject again and I think that you can also use the words "misconduct"

" must at least have the quality that it is "wilful": it does (in other words) connote a deliberate flouting of the essential contractual conditions".

It is perfectly true that the letter of dismissal of the 15th June, 1977, invoked only the episode with Mr. Coakley, and it is

equally /...

equally perfectly true, however, at that time that Mr. Hamilton did not know of Mr. Coakley's authority because, indeed, even Mr. Coakley said that he, Mr. Hamilton was not a member of the staff and that therefore he was not expected to be under his control.

Now in this case, there are two really main allegations of misconduct. First, the incident of the 14th June, 1977, and secondly, an accumulation, as it was put by Mrs. Pearmain, of the other matters alleged in the particulars and I take first the incident of the 14th June, 1977. According to Mr. Coakley, there are five matters to which I now turn. First of all, he didn't attach much importance to the episode. Secondly, he would have gone on working with Mr. Hamilton as a paid colleague or employee, or employed by the same company. Thirdly, he said that it was a fair comment, in reply to a question in cross-examination that today he was rather unsure of what had happened. Fourthly, at the time he was not put in fear. And, fifthly, it was the third or fourth time he'd spoken to him. The incident of course, is described in the pleadings and we need not go into the details here, in greater depth than I have already done. Suffice it to say that as a result of Mr. Hamilton finding on that evening that his playing did not appear to be appreciated - some visitors were rude to him - he decided to leave at half past twelve and not at quarter to one. He was followed out of the hotel by Mr. Coakley, there were some words between them and something took place, which were described somewhat differently by Mr. Hamilton and Mr. Coakley, but something very similar to what both described took place. Mr. Coakley asked Mr. Hamilton to continue to play, and called him back to the hotel while asking him why he was not playing.

Now /

Let us look at the time factor, first of all. Mr. Coakley believed that it was earlier than 12.30 and if it was much earlier than 12.30 obviously that was quite a long time before the contractual liability of Mr. Hamilton expired to play in the evenings. However Mr. Hamilton says that this incident took place at 12.30 and Mr. Coakley agreed that it was possible that the only person present in the Peking Restaurant which was the part of the building through which both Mr. Hamilton and he walked that evening on their way to the road, was the Manager, and if that is so, Mr. Thacker has invited us to infer that that probably showed that Mr. Hamilton's recollection was to be preferred because that would be nearer to closing time and one would expect there to be fewer persons in the Restaurant if any at all.

When one comes to the incident between the two men in the street, Mr. Hamilton admits that he raised his fist; on the other hand, Mr. Coakley says that Mr. Hamilton took a swing at him. Mr. Hamilton said that Mr. Coakley pushed him and Mr. Coakley said that he thought he touched Mr. Hamilton with his hand. Well there is a great similarity between the events, is there not, as detailed by both the participants?. However, Mr. Coakley did say in cross-examination that, and this sums up really his evidence on this incident, that his recollection of the event was a bit hazy, although true he supports Mr. Hamilton in the latter's recollection of there being a rota of guests generally arriving on Wednesdays.

We therefore find as regards the incident of the 14th June, 1977, that that in itself was not of sufficiently grave nature to indicate a repudiation of the contract or was of such misconduct, that it alone would have entitled the defendant company in the first action summarily to dismiss Mr. Hamilton.

We / ...

We now turn to the other matters because as I have already said, the defendant company is entitled to reply not only on the incident of the 14th June, but also on all the other matters and to ask us to look at the picture as a whole. Looking at the particulars again, under (a) it is to be noted and I stressed the words when I read the particulars, that throughout the particulars the word 'regularly' is used. All that was adduced in support of allegation (a), that Mr. Hamilton was regularly late for work, was the evidence of Mr. Coakley. Indeed, most of the allegations were supported by Mr. Coakley's evidence alone, although Mr. Thomasson did tell us that on one occasion when he went to the premises and found that Mr. Hamilton was not playing and although he didn't describe it in this light, we can infer this from what he said, he gave him a few words of fatherly advice. As regards (a) Mr. Coakley said that the plaintiff was erratic in his arrival and did not always start on time and that is in summary form what he said as regards (a). As regards (b), taking more breaks than his entitlement, he merely said that Mr. Hamilton might have taken more breaks but he wasn't sure of the number. Again he said that he didn't always start on time. Under (c) and (d) he was unable to give us details of any complaint because that would have been hearsay, but he did say that he probably thought that there were between half a dozen and a dozen times, but then he went on to qualify this by saying that 'there was nothing that he could really remember.' In any case 'it was Mr. Brass, the General Manager who dealt with these kind of things'. Under (e) he heard Mr. Brass speak to Mr. Hamilton about his playing on one occasion only. Well now, is this enough?.

Really / ...

Really basically, it comes to this, that Mr. Hamilton thought that when the bar was empty it was not worth playing, because there were no customers to entertain, by customers of course, one would include not only the residents, but the non-residents who might have been taking a meal either in the main Restaurant or the Chinese Restaurant. Mr. Thomasson as an experienced hotellier, thought otherwise. It is fair to say that Mr. Hamilton is an experienced musician, inasmuch as he told us that he had been playing in Jersey, although part-time, but nevertheless he left the impression with us, that that was a lucrative form of work, since 1968. Did in fact, his conduct over three months considered with the events of the 14th June, 1977, and it is three months that we are discussing, from March to June, amount to a repudiation of his contractual liabilities? Did his actions alleged by the defendant company in the first action injure the company? We have come to the conclusion that the answer to both these questions is in the negative and therefore we find for the plaintiff on the question of liability, both in the first and second actions.