inadequate. The tenant seems to have made the above statement merely intending thereby that even if the law contained in the proviso enjoined upon him to deposit rent up to the date of the first hearing, he had deposited the full amount of rent due; he could not have meant to state that the amount of rent, due only up to the date of the landlord's application, exclusive of interest, had been deposited. Indeed, even Mr. Bahri does not contend that the full amount actually deposited does not cover the amount of interest due on the date of the petition. But this apart, the point now sought to be raised by Mr. Bahri was not raised either before the Rent Controller or before the Appellate Authority and, in my opinion, it is not open to him on revision even as a respondent, to raise this mixed question of fact and law in this Court.

For the reasons given above, the revision is allowed and the orders of the Appellate Authority as well as of the Rent Controller are set aside and the petition of the landlord dismissed. In the circumstances of the case, however, the parties will bear their own costs throughout.

FALSHAW, J.—I agree.

B. R. T.

SUPREME COURT

Before Sudhanshu Kumar Das, A. K. Sarkar and K. Subba Rao, JJ.

ASSOCIATED HOTELS OF INDIA LTD.,—*Appellant*

versus

R. N. KAPOOR,—*Respondent*

Civil Appeal No. 38 of 1955

May, 19th 1959

Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Section 2(b)—Room in a hotel—Meaning of—Room

let out to Hairdresser for his business—Whether exempt—Transfer of Property Act (IV of 1882)—Section 105—Lease—Meaning of—Indian Easements Act (V of 1882)—Section 52—Licence—Meaning of—Lease and licence—Difference between—Document whether creates a licence or a lease—Principles for determination of.

Held (per S. K. Das, J.) (1) That a room in a hotel must fulfil two conditions: (1) it must be part of a hotel in the physical sense and (2) its user must be connected with the general purpose of the hotel of which it is a part. The spaces in a hotel let out to a hair-dresser for carrying on the business of hair-dressing, are rooms in a hotel within the meaning of Section 2(b) of Delhi and Ajmer-Merwara Rent Control Act, 1947 and are exempt from its operation as it is one of the amenties which a modern hotel provides.

(2) That in its ordinary connotation the word "hotel" means a house for entertaining strangers or travellers; a place where lodging is furnished to transient guests as well as one where both lodging and food or other amenities are furnished.

Held (per A. K. Sarkar, J.)—(1) That the word "hotel" in Section 2(b) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, refers to a building in which the business of an hotel is carried on. It is not necessary that room in an hotel within the Act must be a room normally used for lodging. A lodger in an hotel is a mere licensee and not a tenant for there is involved in the term "lodger" that the man must lodge in the house of another.

(2) That the spaces in the cloak rooms of an hotel let out to an hair-dresser for his business are rooms in an hotel and excluded from the operation of the Delhi and Ajmer-Merwara Rent Control Act, 1947.

Held, (per K. Subba Rao, J.)—(1) That the word "hotel" in common parlance means a place where a proprietor makes it his business to furnish food or lodging or both to travellers or other persons. A building cannot be run as a hotel unless services necessary for the comfortable stay of lodgers and borders are maintained. Services so maintained vary with the standard of the hotel and the class of

persons to which it caters; but the amenities must have relation to the hotel business. Provisions for heating or lighting, supply of hot water, sanitary arrangements, sleeping facilities, and such others are some of the amenities a hotel offers to its constituents. But every amenity however remote and unconnected with the business of a hotel cannot be described as service in a hotel.

(2) That a room in the building, in which a hotel is run, let out to a person for carrying on his business different from that of a hotel, though incidentally the inmates of the hotel take advantage of it because of its proximity, such as a room let out to an hair-dresser for his business will not be "a room in the hotel" within the meaning of Section 2(b) of the Delhi and Ajmer-Merwara Rent Control Act, 1947 and exempt from its operation.

(3) *Held*, that section 105 of the Transfer of Property Act, 1882, defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under section 108 of the Transfer of Property Act, 1882, the lessee is entitled to be put in possession of the property. A lease is, therefore, a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

(4) *Held*, that if a person gives to another only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred.

(5) *Held*, that the following propositions are well-established in order to ascertain whether a particular document creates a licence or lease:—

(i) the substance of the document must be preferred to the form.

(ii) the real test is the intention of the parties—whether they intended to create a lease or a licence;

(iii) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

(iv) if under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

Apeal by Special Leave from the Judgment and Order, dated the 29th April, 1953, of the Punjab High Court at Simla in Civil Revision No. 761 of 1951, arising out of the Appellate Order, dated the 6th October, 1951, of the Court of District Judge, Delhi in Miscelleanous Civil Appeal, No. 248 of 1950, against the Order of the Rent Controller, Delhi dated the 14th December, 1950.

C. K. DAPHTARY, Solicitor General of India & N. C. CHATTERJEE with S. N. ANDLEY & J. B. DADACHANJI of M/s. RANJINDER NARAIN & Co., for Appellant.

JUDGMENT

The following Judgments of the Court were delivered by —

S. K. Das, J.

S. K. DAS, J.—I have had the advantage and privilege of reading the judgments prepared by my learned brethren, Sarkar; J. and Subba Rao; J. I agree with my learned brother Subba Rao, J., that the deed of May 1, 1949, is a lease and not a licence. I have nothing useful to add to what he has said on this part of the case of the appellant.

On the question of the true scope and effect of section 2(b) of the Delhi and Ajmer-Merwara Rent Control Act, (19 of 1947) hereinafter called the Rent

Control Act, I have reached the same conclusion as has been reached by my learned brother Sarkar, J., namely, that the rooms or spaces let out by the appellant to the respondent in the Imperial Hotel, New Delhi, were rooms in a hotel within the meaning of section 2(b) of the Rent Control Act therefore, that Act did not apply and the respondent was not entitled to ask for the determination of fair rent under its provisions. The reasons for which I have reached that conclusion are somewhat different from those of my learned brother, Sarkar, J., and it is, therefore, necessary that I should state the reasons in my own words.

I read first section 2 (b) of the Rent Control Act so far as it is relevant for our purpose:

"Section 2. In this Act, unless there is anything repugnant in the subject or context:—

(a) .....

(b) 'premises' means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose .....but does not include a room in a dharamshala, hotel or lodging house."

The question before us is—what is the meaning of the expression 'a room in a hotel'? Does it merely mean a room which in a physical sense is within a building or part of a building used as a hotel; or does it mean something more, that is, the room itself is not only within a hotel in a physical sense but is let out to serve what are known as 'hotel purposes'? If a strictly literal construction is adopted, then a room in a hotel or

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dharamshala or lodging house means merely that the room is within, and part of, the building which is used as a hotel, dharamshala or lodging house. There may be a case where the entire building is not used as a hotel, dharamshala or lodging house, but only a part of it so used. In that event, the hotel, lodging house or dharamshala will be that part of the building only which is used as such, and any room therein will be a room in a hotel, dharamshala or lodging house. Rooms outside that part but in the same building will not be rooms in a hotel, dharamshala or lodging house. Take, however, a case where the room in question is within that part of the building which is used as a hotel, dharamshala or lodging house, but the room is let out for a purpose totally unconnected with that of the hotel, lodging house or dharamshala as the case may be. Will the room still be a room in a hotel, lodging house or dharamshala? That, I take it, is the question which we have to answer.

The word 'hotel' is not defined in the Rent Control Act. It is defined in a cognate Act called the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 47.) The definition there says that a hotel or lodging house means a building or a part of a building where lodging with or without board or other service is provided for a monetary consideration. I do not pause here to decide whether that definition should be adopted for the purpose of interpreting section 2(b) of the Rent Control Act. It is sufficient to state that in its ordinary connotation the word 'hotel' means a house for entertaining strangers or travellers: a place where lodging is furnished to transient guests as well as one where both lodging and food or other amenities are furnished. It is worthy of note that in

section 2(b) of the Rent Control Act three different words are used 'hotel', 'dharamshala' or 'lodging house'. Obviously, the three words do not mean the same establishment. In the cognate Act, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, however, the definition clause gives the same meaning to the words 'hotel' and 'lodging house'. In my view, section 2(b) of the Rent Control Act by using two different words distinguishes a hotel from a lodging house in some respects and indicates that the former is an establishment where not merely lodging but some other amenities are provided. It was, however; never questioned that the Imperial Hotel, New Delhi; is a hotel within the meaning of that word as it is commonly understood, or even as it is defined in the cognate Act.

Passing now from definitions which are apt not to be uniform, the question is whether the partitioned spaces in the two cloak rooms let out to the respondent were rooms in that hotel. In a physical sense they were undoubtedly rooms in that hotel. I am prepared, however, to say that a strictly literal construction may not be justified and the word 'room' in the composite expression 'room in a hotel' must take colour from the context or the collocation of words in which it has been used; in other words, its meaning should be determined *noscitur a sociis*. The reason why I think so may be explained by an illustration. Suppose there is a big room inside a hotel; in a physical sense it is a room in a hotel, but let us suppose that it is let out, to take an extreme example, as a timber godown. Will it still be a room in a hotel, though in a physical sense it is a room of the building which is used as a hotel? I think it would be doing violence to the context if the expression 'room in a hotel' is interpreted in a strictly literal

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sense. On the view which I take a room in a hotel must fulfil two conditions: (1) it must be part of a hotel in the physical sense and (2) its user must be connected with the general purpose of the hotel of which it is a part. In the case under our consideration the spaces were let out for carrying on the business of a hair dresser. Such a business I consider to be one of the amenities which a modern hotel provides. The circumstances that people not resident in the hotel might also be served by the hair dresser does not alter the position; it is still an amenity for the residents in the hotel to have a hair dressing saloon within the hotel itself. A modern hotel provides many facilities to its residents; some hotels have billiard rooms let out to a private person where residents of the hotel as also non-residents can play billiards on payment of a small fee; other hotels provide post-office and banking facilities by letting out rooms in the hotel for that purpose. All these amenities are connected with the hotel business and a barber's shop within the hotel premises is no exception.

These are my reasons for holding that the rooms in question were rooms in a hotel within the meaning of section 2(b) of the Rent Control Act, 1947, and the respondent was not entitled to ask for fixation of fair or standard rent for the same. I, therefore, agree with my learned brother Sarkar, J. that the appeal should be allowed, but in the circumstances of the case there should be no order for costs.

SARKAR, J.—The appellant is the proprietor of an hotel called the Imperial Hotel which is housed in a building on Queensway, New Delhi. R. N. Kapoor, the respondent named above who is now dead, was the proprietor of a business

carried on under the name of Madam Janes. Under an agreement with the appellant, he came to occupy certain spaces in the Ladies' and Gents' cloak rooms of the Imperial Hotel paying therefor initially at the rate of Rs. 800 and subsequently Rs. 700, per month.

On September 26, 1950, R. N. Kapoor made an application under section 7(1) of the Delhi and Ajmere-Merwara Rent Control Act, 1947 (19 of 1947), to the Rent Controller, New Delhi, alleging that he was a tenant of the spaces in the cloak rooms under the appellant and asking that standard rent might be fixed in respect of them. The appellant opposed the application, contending for reasons to be mentioned later, that the Act did not apply and no standard rent could be fixed. The Rent Controller, however, rejected the appellant's contention and allowed the application fixing the standard rent at Rs. 94 per month. On appeal by the appellant, the District Judge of Delhi set aside the order of the Rent Controller and dismissed the application. R. N. Kapoor then moved the High Court in revision. The High Court set aside the order of the District Judge and restored that of the Rent Controller. Hence this appeal. We are informed that R. N. Kapoor died pending the present appeal and his legal representatives have been duly brought on the record. No one has however appeared to oppose the appeal and we have not had the advantage of the other side of the case placed before us.

As earlier stated, the appellant contends that the Act does not apply to the present case and the Rent Controller had no jurisdiction to fix a standard rent. This contention was founded on two grounds which I shall presently state, but before doing that I wish to refer to a few of the provisions of the

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Act as that would help to appreciate the appellant's contention.

For the purpose of the present case it may be stated that the object of the Act is to control rents and evictions. Section 3 says that no tenant shall be liable to pay for occupation of any premises any sum in excess of the standard rent of these premises. Section 2(d) defines a tenant as a person who takes on rent any premises. Section 2(b) defines what is a premises within the meaning of the Act and this definition will have to be set out later because this case largely turns on that definition. Section 2(c) provides how standard rent in relation to any premises is to be determined. Section 7(1) states that if any dispute arises regarding the standard rent payable for any premises, then it shall be determined by the Court. It is under this section that the application out of which this appeal arises was made, the Court presumably being the Rent Controller. It is clear from these provisions of the Act that standard rent can be fixed only in relation to premises as defined in the Act and only a tenant, that is, the person to whom the premises have been let out, can ask for the fixing of the standard rent.

I now set out the definition of "premises" given in the Act so far as is material for our purposes:—

> " "premises" means any building or part of a building which is or is intended to be let separately .....
> but does not include a room in a dharamshala, hotel or lodging house."

It is clear from this definition that the Act did not intend to control the rents payable by and evictions of, persons who take on rent rooms in a dharamshala, hotel or lodging house.

The appellant contends that the spaces are not premises within the Act as they are rooms in a hotel and so no standard rent could be fixed in respect of them. Thus the first question that arises in this appeal is, are the spaces rooms in an hotel within the definition? If they are rooms in an hotel, clearly no standard rent could be fixed by the Rent Controller in respect of them.

The Act does not define an hotel. That word has therefore to be understood in its ordinary sense. It is clear to me that the Imperial Hotel is an hotel however the word may be understood. It was never contended in these proceedings that the Imperial Hotel was not an "hotel" within the Act. Indeed, the Imperial Hotel is one of the best known hotels of New Delhi. It also seems to me plain that the spaces are "rooms", for, this again has not been disputed in the Courts below and I have not found any reason to think that they are not rooms.

The language used in the Act is "room in a... hotel". The word "hotel" here must refer to a building for a room in an hotel must be a room in a building. That building no doubt must be an hotel, that is to say, a building in which the business of an hotel is carried on. The language used in the Act would include any room in the hotel building. That is its plain meaning. Unless there is good reason to do otherwise, that meaning cannot be departed from. This is the view that the learned District Judge took.

Is there then any reason why the words of the statute should be given a meaning other than their ordinary meaning? The Rent Controller and the High Court found several such reasons and these I will now consider.

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The learned Rent Controller took the view that a room in an hotel would be a room normally used for purposes of lodging and not any room in an hotel. He took this view because he thought that if, for example, there was a three storeyed building, the ground floor of which was used for shops and the two upper floors for an hotel, it could not have been intended to exclude the entire building from the operation of the Act, and so the rooms on the ground floor would not have been rooms in an hotel. I am unable to appreciate how this illustration leads to the conclusion that a room in an hotel contemplated is a room normally used for lodging. The learned Rent Controller's reasoning is clearly fallacious. Because in a part of a building there is a hotel, the entire building does not become a hotel. Under the definition, a part of a building may be a premises and there is nothing to prevent a part only of a building being a hotel and the rest of it not being one. In the illustration imagined the ground floor is not a part of the hotel. The shoprooms in the ground floor cannot for this reason be rooms in a hotel at all. No question of these rooms being rooms in an hotel normally used for lodging, arises. We see no reason why a room in an hotel within the Act must be a room normally used for lodging. The Act does not say so. It would be difficult to say which is a room normally used for lodging for the hotel owner may use a room in an hotel for any purpose of the hotel he likes. Again, it would be an unusual hotel which lets out its lodging rooms; the usual thing is to give licenses to boarders to live in these rooms.

I now pass on to the judgment of the High Court. Khosla J. who delivered the judgment, thought that a room in an hotel would be within the definition if it was let out to a person to whom

board or other service was also given. It would seem that according to the learned Judge, a room in an hotel within the Act is a room let out to a guest in an hotel, for only a guest bargains for lodging and food and services in an hotel. But the section does not contain words indicating that this is the meaning contemplated. In defining a room in an hotel it does not circumscribe the terms of the letting. If this was the intention, the tenant would be entirely unprotected. Ex hypothesi he would be outside the protection of the Act. Though he would be for all practical purposes a boarder in an hotel, he would also be outside the protection of the cognate Act. The Bombay Rents, Hotels and Loding House, Rates Control Act, 1947, (Bom. 57 of 1947), which has been made applicable to Delhi, for that Act deals with lodging rates in an hotel which are entirely different from rents payable when hotel rooms are let out. A lodger in an hotel is a mere licensee and not a tenant for "there is involved in the term "lodger" that the man must lodge in the house of another": see Foa on Landlord and Tenant (8th Edition) page 9. It could hardly have been intended to leave a person who is practically a boarder in an hotel in that situation. As I have earlier said, it would be a most unusual hotel which lets out its rooms to a guest, and the Act could not have been contemplating such a thing.

Khosla, J. also said that the rooms in a hotel need not necessarily be a bed room but it must be so intimately connected with the hotel as to be a part and parcel of it, that it must be a room which is an essential amenity provided by an hotel e. g., the dining room in an hotel. I am unable to agree. I do not appreciate why any room in an hotel is not intimately connected with it, by which apparently is meant, the business of the hotel. The

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business of the hotel is carried on in the whole building and therefore in every part of it. It would be difficult to say that one part of the building is more intimately connected with the hotel business than another. Nor do I see any reason why the Act should exempt from its protection a part which is intimately connected as it is said, and which I confess I do not understand, and not a part not so intimately connected. I also do not understand what is meant by saying that a part of an hotel supplies essential amenities. The idea of essentiality of an amenity is so vague as to be unworkable. This test would introduce great uncertainty in the working of the Act which could not have been intended. Nor do I see any reason why the Act should have left out of its protection a room which is an essential amenity of the hotel and not other rooms in it.

Though it is not clear, it may be that Khosla, J. was thinking that in order that a room in an hotel may be within the definition it must be let out for the purposes of the hotel. By this it is apparently meant that the room must be let out to supply board or give other services to the guests, to do which are the purposes of an hotel. Again, I find no justification for the view. There is nothing in the definition about the purposes of the letting out. Nor am I aware that hotel proprietors are in the habit of letting out portions of the hotel premises to others for supplying board and services to the guests in the hotels. It may be that an hotel proprietor grants licenses to contractors to use parts of his premises to provide board and services to the guests in the hotel. This however is a different matter and with such licenses we are not concerned. Again, a proprietor of a different kind of business who lets out a portion of his business premises for the purposes

of his business does not get an exemption from the operation of the Act. I am unable to see why the proprietor of an hotel business should have special consideration. The Act no doubt exempts a room in an hotel but it says nothing about the purposes for which the room must be let out to get the exemption. Further, not only a room in an hotel is exempted by the definition but at the same time also a room in a dharamshala. If a room in a hotel within the Act is a room let out for the purposes of the hotel so must therefore be a room in a dharamshala. It would however be difficult to see how a room in a dharamshala can be let out for the purposes of the dharamshala for a dharamshala does not as a rule supply food or give any services, properly so called.

Having given the matter my best consideration I have not been able to find any reason why the words used in the definition should not have their plain meaning given to them. I therefore come to the conclusion that a room in an hotel within the definition is any room in a building in the whole of which the business of an hotel is run. So understood, the definition would include the spaces in the cloak rooms of the Imperial Hotel with which we are concerned. These spaces are, in my view, rooms in an hotel and excluded from the operation of the Act. The Rent Controller had no power to fix any standard rent in respect of them.

The appellant also contended that Kapoor was not a tenant of the spaces but only a licensee and so again the Act did not apply. The question so raised depends on the construction of the written agreement under which Kapoor came to occupy the spaces and the circumstances of the case. I do not consider it necessary to express any opinion

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on this question for this appeal must in my view be allowed as the spaces are outside the Act being rooms in an hotel.

In the result I would allow the appeal and dismiss the application for fixing standard rent. I do not propose to make any orders for costs.

SUBA RAO J.—I have had the advantage of perusing the judgment of my learned brother Sarkar J., and I regret my inability to agree with him.

The facts material to the questions raised are in a narrow compass. The appellants, the Associated Hotels of India Ltd., are the proprietors of Hotel Imperial, New Delhi. The respondent, R. N. Kapur, since deceased, was in occupation of two rooms described as ladies' and gentlemen's cloak rooms and carried on his business as a hairdresser. He secured possession of the said rooms under a deed dated May 1, 1949, executed by him and the appellants. He got into possession of the said rooms agreeing to pay a sum of Rs. 9,600 a year i.e., Rs. 800 per month, but later on, by mutual consent, the annual payment was reduced to Rs. 8,400 i.e., Rs. 700 per month. On September 26, 1950, the respondent made an application to the Rent Controller, Delhi, alleging that the rent demanded was excessive and therefore a fair rent might be fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947), hereinafter called the Act. The appellants appeared before the Rent Controller and contended that the Act had no application to the premises in question as they were premises in a hotel exempted under section 2 of the Act from its operation, and also on the ground that under the aforesaid document the respondent was not a tenant but only a licensee. By order dated October 24, 1950,

the Rent Controller held that the exemption under section 2 of the Act related only to residential rooms in a hotel and therefore the Act applied to the premises in question. On appeal the District Judge; Delhi; came to a contrary conclusion , he was of the view that the rooms in question were rooms in a hotel within the meaning of section 2 of the Act and therefore the Act had no application to the present case. Further on a construction of the said document, he held that the appellants only permitted the respondent to use the said two rooms in the hotel; and, therefore, the transaction between the parties was not a lease but a licence. On the basis of the aforesaid two findings, he came to the conclusion that the Rent Controller had no jurisdiction to fix a fair rent for the premises. The respondent preferred a revision against the said order of the District Judge to the High Court of Punjab at Simla; and Khosla J. held that the said premises were not rooms in a hotel within the meaning of section 2 of the Act and that the document executed between the parties created a lease and not a licence. On those findings, he set aside the decree of the learned District Judge and restored the order of the Rent Controller. The present appeal was filed in this Court by special leave granted to the appellants on January 18, 1954.

The learned Solicitor-General and Mr. Chatterjee who followed him, contended that the Rent Controller had no jurisdiction to fix a fair rent under the Act in regard to the said premises for the following reasons: (1) The document dated May 1, 1949; created a relationship of licensor and licensee between the parties and not that of lessor and lessee as held by the High Court , and (2) the said rooms were rooms in a hotel within the meaning of section 2 of the Act; and,

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therefore they were exempted from the operation of the Act. Unfortunately, the legal representative of the respondent was *ex parte* and we did not have the advantage of the opposite view being presented to us. But we have before us the considered judgment of the High Court, which has brought out all the salient points in favour of the respondent.

The first question turns upon the true construction of the document, dated May 1, 1949, whereunder the respondent was put in possession of the said rooms. As the argument turns upon the terms of the said document, it will be convenient to read the relevant portions thereof. The document is described as a deed of licence and the parties are described as licensor and licensee. The preamble to the document runs thus:—

> "Whereas the Licensee approached the Licensor through their constituted Attorney to permit the Licensee to allow the use and occupation of space allotted in the Ladies and Gents Cloak Rooms at the Hotel Imperial, New Delhi, for the consideration and on terms and conditions as follows:—

The following are its terms and conditions:—

> "(1) In pursuance of the said agreement, the Licensor hereby grants to the Licensee, Leave and License to use and occupy the said premises to carry on their business of Hair Dressers from 1st May, 1949 to 30th April, 1950.
>
> (2) That the charges of such use and occupation shall be Rs. 9,600 a year payable in four quarterly instalments i.e., 1st

immediately on signing the contract; 2nd on the Ist of August, 1949, 3rd on the 1st November, 1949 and the 4th on the 1st February, 1950, whether the Licensee occupy the premises and carry on the business or not.

(3) That in the first instance the Licensor shall allow to the Licensee leave and license to use and occupy the said premises for a period of one year only.

(4) That the licensee shall have the opportunity of further extension of the period of license after the expiry of one year at the option of the licensor on the same terms and conditions but in any case the licensee shall intimate their desire for an extension at least three months prior to the expiry of one year from the date of the execution of this DEED.

(5) The licensee shall use the premises as at present fitted and keep the same in good condition. The licensor shall not supply any fitting or fixture more than what exists in the premises for the present. The licensee will have their power and light meters and will pay for electric charges.

(6) That the licensee shall not make any alterations in the premises without the prior consent in writing from the licensor.

(7) That should the licensee fail to pay the agreed fee to the licensor from the date and in the manner as agreed, the licensor shall be at liberty to terminate this

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DEED without any notice and without payment of any compensation and shall be entitled to charge interest at 12 per cent per annum on the amount remaining unpaid.

(8) That in case the licensee for reasons beyond their control are forced to close their business in Delhi, the licensor agrees that during the remaining period the license shall be transferred to any person with the consent and approval of the licensor subject to charges so obtained not exceeding the monthly charge of Rs. 800."

The document no doubt uses phraseology appropriate to a licence. But it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camouflage the real intention of the parties.

What is the substance of this document ? Two rooms at the Hotel Imperial were put in possession of the respondent for the purpose of carrying on his business as hair-dresser from May 1, 1949. The term of the document was, in the first instance for one year, but it might be renewed. The amount payable for the use and occupation was fixed in a sum of Rs. 9;600 per annum. payable in four insalments. The respondent was to keep the premises in good condition. He should pay for power and electricity. He should not make alterations in the premises without the consent of the appellants. If he did not pay the prescribed amount in the manner agreed to, he could be evicted therefrom without notice, and he would also be liable to pay compensation with interest. He could transfer his interest in the document

with the consent of the appellants. The respondent agreed to pay the amount prescribed whether he carried on the business in the premises or not. Shortly stated, under the document the respondent was given possession of the two rooms for carrying on his private business on condition that he should pay the fixed amount to the appellants irrespective of the fact whether he carried on his business in the premises or not.

There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is, therefore, a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas section 52 of the Indian Easements Act defines a licence thus:—

> "Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable priperty of the grantor, something which would, in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in

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possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington* v. *Errington* (1), wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussions thus at page 155: —

> "The result of all these cases is that, although a person who is let into exclusive possession is, *prima facie* to be considered to be tenant; nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

The Court of Appeal again in *Cobb* v. *Lane* (2), considered the legal position and laid down that the intention of the parties was the real test for ascertining the character of a document. At page 1201, Somervell L. J. stated:—

> ".....the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties."

(1) [1952] I. All. E.R. 149
(2) [1952] I.A. E.R. 1199

Denning L. J. said much to the same effect at page 1202:—

> "The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

The following propositions may, therefore, be taken as well-estblished: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties—whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but; if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, *prima facie* he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of the appellants. The covenants are those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case are situated in a building wherein a hotel is run cannot make

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any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document-writer hardly conceals the real intent. I, therefore, hold that under the document there was transfer of a right to enjoy the two rooms, and; therefore, it created a tenancy in favour of the respondent.

The next ground turns upon the construction of the provisions of section 2 of the Act. Section 2(b) defines the term "premises" and the material portion of it is as follows:—

> " "Premises" means any building or part of a building which is, or is intended to be, let separately.....
> ... ...
> ... ...
> but does not include a room in a dharamshala, hotel or lodging house."

What is the construction of the words " a room in a hotel"? The object of the Act as disclosed in the preamble is "to provide for the control of rents and evictions, and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara". The Act was, therefore, passed to control exorbitant rents of buildings prevailing in the said States. But section 2 exempts a room in a hotel from the operation of the Act. The reason for the exemption may be to encourage running of hotels in the cities, or it may be for other reasons. Whatever may be the object of the Act, the scope of the exemption cannot be enlarged so as to limit the operation of the Act. The exemption from the Act is only in respect of a room in a hotel. The collocation of the words brings out the characteristics of the exempted

room. The room is part of a hotel. It partakes its character and does not cease to be one after it is let out. It is, therefore, necessary to ascertain the meaning of the word "hotel". The word "hotel" is not defined in the Act. A hotel in common parlance means a place where a proprietor makes it his business to furnish food or lodging or both to travellers or other persons. A building cannot be run as a hotel unless services necessary for the comfortable stay of lodgers and boarders are maintained. Services so maintained vary with the standard of the hotel and the class of persons to which it caters; but the amenities must have relation to the hotel business. Provisions for heating or lighting supply of hot water, sanitary arrangements; sleeping facilities; and such others are some of the amenities a hotel offers to its constituents. But every amenity however remote and unconnected with the business of a hotel cannot be described as service in a hotel. The idea of a hotel can be better clarified by illustration, than by definition and by giving examples of what is a room in a hotel and also what is not a room in a hotel: (1) A owns a building in a part whereof he runs a hotel but leases out a room to B in the part of the building not used as hotel; (2) A runs a hotel in the entire building but lets out a room to B for a purpose unconnected with the hotel business; (23) A runs a hotel in the entire building and lets out a room to B for carrying on his business different from that of a hotel, though incidentally the inmates of the hotel take advantage of it because of its proximity, (4) A lets out a room in such a building to another with an express condition that he should cater only to the needs of the inmates of the hotel, and (5) A lets out a room in a hotel to a lodger, who can command all the services and amenities of a hotel. In the first illustration, the room has never been a

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part of a hotel though it is part of a building where a hotel is run. In the second though a room was once part of a hotel it ceased to be one, for it has been let out for a non-hotel purpose. In the fifth, it is let out as part of a hotel, and, therefore, it is definitely a room in a hotel. In the fourth, the room may still continue as part of the hotel as it is let out to provide an amenity or service connected with the hotel. But to extend the scope of the words to the third illustration is to obliterate the distinction between a room in a hotel and a room in any other building. If a room in a building, which is not a hotel but situated near a hotel, is let out to a tenant to carry on his business of a hair-dresser, it is not exempted from the operation of the Act. But if the argument of the appellants be accepted, if a similar room in a building, wherein a hotel in situated is let out for a similar purpose, it would be exempted. In either case, the tenant is put in exclusive *possession of* the room and he is entitled to carry on his business without any reference to the activities of the hotel. Can it be said that there is any reasonable nexus between the business of the tenant and that of the hotel. The only thing that can be said is that a lodger in a hotel building can step into the saloon to have a shave or hair-cut. So too he can do so in the case of a saloon in the neighbouring house. The tenant is not bound by the contract to give any preferential treatment to the lodger. He may take his turn along with others; and when he is served he is served not in his capacity as a lodger but as onet of the general customers. What is more; under the document the tenant is not even bound to carry on the business of a hair-dresser. His only liability is to pay the stipulated amount to the landlord. The room therefore for the purpose of the Act ceases to be a part of the hotel and becomes a place of business of the respondent.

As the rooms in question were not let out as part of a hotel or for hotel purposes, I must hold that they are not rooms in a hotel within the meaning of section 2 of the Act.

In this view; the appellants are not exempted from the operation of the Act. The judgment of the High Court is correct. The appeal fails and is dismissed.

ORDER

In accordance with the opinion of the majority, the appeal is allowed. No order as to costs.

B.R.T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

ACHHRU RAM AND OTHERS,—*Defendants-Appellants.*

versus

HARI SINGH,—*Plaintiff-Respondent*

Regular Second Appeal No. 596 of 1957

1959

May, 19th

Specific Relief Act (I of 1877)—Section 20—Contract in the alternative—Meaning and enforcement of.

Held, that it is only when the contract provides for either performance or for payment of money as damages for its breach that a contract can be said to be a contract in the alternative. In such a case an election has to be made as to which relief is to be sought for when the party entitled to the relief can only seek one of the two alternative reliefs and not both. But where the term as to payment of money as damages is put in to secure the performance of the main condition, i.e., in the instant contract, to secure the transfer of property within the time specified in the contract, it cannot be said that the contract provides for two separate alternatives. Such contract clearly falls within the ambit of section 20 of the Specific Relief Act.