2.1950

No. 37 of 1948.

In the Privy Council.

ON APPEAL

FROM HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

DEVJI HAMIR and NARSHI HAMIR, together trading under the style or firm of THE AFRICAN BOOT COMPANY (Defendants) - - - - - *Appellants*

and

GILBERT SCOTT MORLEY (Plaintiff) - - - - - *Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

In the Privy Council.

ON APPEAL

FROM HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

DEVJI HAMIR and NARSHI HAMIR, together trading under the style or firm of THE AFRICAN BOOT COMPANY (Defendants) - - - - - *Appellants*

and

GILBERT SCOTT MORLEY (Plaintiff) - - - *Respondent.*

RECORD OF PROCEEDINGS

In the Supreme Court.

No. 1.
Plaint,
23rd November 1946.

No. 1.
PLAINT.

The above named plaintiff states as follows:—

1. That he is a clerk working for Dondora Estate near Nairobi in the Colony of Kenya and his address for service of all process in this suit is care of R. C. Gautama, Advocate, Rahintulla Trust Buildings, Government Road, Nairobi aforesaid.

2. That the defendants are duly registered as the joint owners of Plot No. 1635/2 together with all buildings and improvements existing thereon and situate on Fairview Road, Nairobi aforesaid and their address for service is Delamere Avenue, Nairobi aforesaid.

3. That the plaintiff at all material times was and still is the lawful statutory tenant of the defendants in respect of 2 living rooms, 1 kitchen, and a closed verandah with a common share of use of W.C. and bathroom with other tenants of the defendants in the said building referred to in paragraph 2 supra on a monthly tenancy at Sh.60/- payable in arrears exclusive of charges.

4. That the plaintiff has been paying and has paid all his rents and charges due and payable by him in respect of the said portions of the premises up to and including 28th day of February, 1946, but since then the defendants have refused to accept payment of rent for the month of March, 1946, tendered to them by the plaintiff which is deposited in Court herewith.

5. That on or before the 15th day of February, 1946, the plaintiff requested the defendants to grant their formal consent to sublet the said portions of the premises to one Rodrigues, a photographer of Nairobi, during the plaintiff's temporary absence from Nairobi to which request the defendants refused to accede to, whereupon the plaintiff applied for such consent to the

In the Supreme Court.

No. 1. Plaint, 23rd November 1946. *continued.*

Rent Control Board, Central Province, Nairobi, under section 6 of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance No. XXVI of 1943 and while the matter was under investigation by the said Board the defendants and/or their servants or agents put their locks on the locks of the plaintiff thus preventing him—the plaintiff—from getting lawful access to his said portions of the premises and ultimately on or about the 16th day of April, 1946, the defendants and/or their servants or agents wrongfully and unlawfully broke the plaintiff's locks and entered into or upon the said portions of the premises which were then in possessory occupation of the plaintiff, and took unlawful possession thereof and they, the defendants, still wrongfully and unlawfully retain the same in violation of the protection provided to the plaintiff as a lawful tenant under the provisions of the Ordinance.

6. That the defendants and/or their servants or agents further wrongfully and unlawfully took possession of the plaintiff's goods which were in the said portions of the premises out of which goods various articles were found missing, damaged and/or lost, particulars whereof were duly furnished to the defendants through their Advocate Mr. D. N. Khanna by the plaintiff's Advocate Mr. R. C. Gautama by a letter dated 22nd October, 1946, a copy of which letter is annexed hereto marked "A" to which the plaintiff craves leave to refer. The plaintiff claims the said sum of Shs.1495/- from the defendants as special damage. Payment of the said sum was duly demanded by the plaintiff from the defendants but they have neglected and/or refused to pay the same or any part thereof and still neglect and/or refuse so to do.

7. That as a result of unlawful physical interference and action by the defendants their servants and/or agents as aforesaid the plaintiff has lost enjoyment and use of the premises and suffered both special and general damage as under :—

(a) Shs.1495/- as set out in the letter referred to in paragraph 6 supra ;

(b) General damages for personal inconvenience hardship and loss of use of the said premises.

8. That the plaintiff has duly complied with the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Ordinance and has obtained the necessary consent to institute these proceedings from the Rent Control Board, Central Province, Nairobi. Copy of such consent is annexed hereto marked "B."

9. That cause of action having arisen at Nairobi, the property the subject matter of this suit being situate at Nairobi, and the parties to this suit residing at Nairobi, this Honourable Court has jurisdiction to try and decide this case.

10. That annual rental value of the portions of the premises the subject matter of this suit is, for the purposes of Court fees, Shs.720/-.

REASONS WHEREFORE the plaintiff prays for judgment against the defendants for :—

(i) Shs.1495/- in respect of special damage.

(ii) General damages in such sum as to this Honourable Court may seem just or adequate whereon the plaintiff hereby undertakes to pay the court fees.

(iii) An order for ejectment of the defendants from the said portions of the premises and an order for restoration of possession thereof to the plaintiff.

(iv) Costs of this suit.

(v) Such further or other alternative relief as to this Honourable Court may seem just.

DATED at NAIROBI this 23rd day of November, 1946.

R. C. GAUTAMA
ADVOCATE FOR THE PLAINTIFF.

No. 2.
Annexure "A" to Plaint, 22nd October 1946.

No. 2.

ANNEXURE "A" TO PLAINT.

22nd October, 1946.

D. N. Khanna Esqr.
Advocate,
NAIROBI.

Dear Sir,

Re PLOT NO. 1635/2—FAIRVIEW ROAD.
Africa Boot Co. vs. G. S. Morley.

Reference your letter of 9th instant.

My client has inspected his articles in possession of your clients and the following things were found missing :—

1 Dress suit — estimated value	Shs.300.00
1 pair mosquito boots ,, ,,	40.00
1 silk suit ,, ,,	150.00
2 cooking pots (Aluminium) ,,	35.00
1 sauce pan (estimated) ,,	15.00
Crockery—5 pairs cups & saucers and tea pot ,, ,,	25.00
4 white duck suits, estimated value	180.00
2 pair shoes ,, ,,	60.00
Babies' clothes ,, ,,	150.00
Picture frames & glasses (broken)	150.00
1 pressure stove (incomplete)	20.00
1 box magic instruments	300.00
1 picture album (torn)	70.00
TOTAL SHS.	1495.00

Trunks were found unlocked and some of my client's goods such as bed, mattress and cupboard and table are being used by your clients ; and in addition to this, there were some Great War Medals including Boer War Medals to which my client attaches considerable sentimental value which have been found also missing.

I shall be glad to hear from you by return whether your clients are prepared to settle this claim so that I may advise my client to remove his remaining goods and file suit for repossession of the premises and general damages.

In the Supreme Court.

No. 2. Annexure " A " to Plaint, 22nd October 1946. *continued.*

Failing to hear from you herein by or before 4.00 p.m. on 25th instant a suit will be filed including the above claim and other special and general damages without further notice.

Yours faithfully,
R. C. GAUTAMA.

No. 3.

ANNEXURE " B " TO PLAINT.

No. 3. Annexure " B " to Plaint, 8th May 1946.

Registered

COLONY & PROTECTORATE OF KENYA.

Rent Control Board (Central Province). 10
TOWN HALL
P.O. BOX 651
NAIROBI.

Ref. No. 826/50
8th May, 1946.
Mr. R. C. Gautama
P.O. Box 1765,
Nairobi.
Mr. D. N. Khanna
P.O. Box 1197, 20
Nairobi.

Plot 1635/2 Fairview Rd.
G. S. Morley vs African Boot Co.

Sir,

The Board hereby sanctions court action against the African Boot Co. under section 4 of the Rent Restrictions Ordinance.

Yours faithfully,
A. M. ELLIS
ASST. SECRETARY.

Refund voucher encd. 30

No. 4. Defence, 13th December 1946.

No. 4.

DEFENCE.

The defendants above named state as follows:—

1. The defendants admit the contents of paragraphs 1 and 2 of the Plaint, and further of paragraph 3 hereof, save so much thereof as alleges that the plaintiff was and is a statutory tenant of the said premises.

2. By reason of the sharing with other tenants of the use in common of the W.C. and bathroom, as admitted and pleaded in paragraph 3 of the plaint, the defendants will maintain that the plaintiff's tenancy was not a protected tenancy at all. 40

3. The plaintiff's implied contract of tenancy (if any) arising from the payment and acceptance of rent was duly determined with effect from the 1st April, 1946, by a notice to quit, given by the plaintiff, on the 20th February, 1946.

4. The plaintiff accordingly, after the 1st April, 1946, held over and was a trespasser, and the defendants were entitled to (as they did on the 25th April, 1946) re-enter into the premises and take possession thereof.

5. With regard to paragraph 4 of the Plaint, the defendants state, the plaintiff despite demands has never paid or tendered the rent, which remains in arrears and unpaid to this date, for March, 1946, and is by reason of what is pleaded in foregoing paragraphs liable to pay mesne profits from 1st April, 1946, to 25th April, 1946, at the rate of Sh.2/- per day or Shs.60/- per mensem.

Particulars of outstanding rent and mesne profits.

March, 1946—rent for this month in arrears and unpaid	60.00
April, 1946—25 days' mesne profits at Sh.2/- per day	50.00

Particulars of written demands for arrears of rent and mesne profits.

By letters dated 13th September, 1946, 26th September, 1946, and 24th October, 1946, respectively written by D. N. Khanna, Advocate for the defendants to R. C. Gautama Esqr. Advocate for the plaintiff.

6. The defendants had let the house as a whole to one Mrs. D'Silva, who had in turn sub-let the part described in paragraph 3 of the Plaint, to the plaintiff, who with effect from the 25th October, 1946, became a direct tenant to the defendants, on which said date, the interest in the tenancy of the said Mrs. D'Silva was determined, and further on the 9th February, 1946, this plaintiff gave up residence in the said premises, having gone to reside elsewhere namely at the Dondora Estate, where he has resided ever since and is so residing to this day.

7. By reason of the foregoing if and so far as if at all, any implied contract of tenancy from month to month arose, the same was duly determined, by virtue of facts pleaded in paragraph 3 hereof, and the plaintiff having ceased to reside in the premises on and after the 9th February, 1946, no statutory tenancy, the defendants will maintain, came into being, after 1st April, 1946, or at all, with consequences mentioned in paragraphs 4 and 5 thereby ensuing.

8. With reference to paragraph 5 of the Plaint, no bona fide grounds for the proposed sub-letting existed, nor was the application for the purpose competent in law or in fact, and in any event, the same was withdrawn by the plaintiff on the 11th April, 1946.

9. The defendants in order to prevent the plaintiff from putting any one into possession of the premises, or any one else getting into the same with his connivance (as was actually attempted in fact) unlawfully and without the defendants' consent, did, as they were entitled so to do, put their own padlock over the plaintiff's padlock.

10. The defendants further (as they were entitled so to do) did on the 25th April, 1946, or thereabouts, re-enter into the premises and resume possession, by gaining access to the premises by breaking open the plaintiff's padlock, and by removing the plaintiff's belongings therefrom.

11. The defendants duly made an inventory of the articles found in the premises, in the presence of witnesses who signed the same, and without

In the Supreme Court.

No. 4. Defence, 13th December 1946. *continued.*

admitting the existence of any circumstances rendering them responsible in law for any alleged loss or damage, the defendants state that the articles are still intact and complete as found.

12. The plaintiff, despite requests, failed to take charge of his belongings, after their removal from the premises as aforesaid.

Particulars:

The defendants will rely on letters dated 25th April, 1946, 13th September, 1946, 26th September, 1946, and 9th October, 1946, written by D. N. Khanna, Advocate for the defendants to R. C. Gautama Esqr. Advocate for the plaintiff.

13. The defendants admit the Rent Control Board has sanctioned court action under section 4 of the Ordinance aforesaid, for whatever it is worth.

14. The defendants reserve their right to sue for the recovery of Sh.110/- for arrears of rent and mesne profits as pleaded in paragraph 5 hereof.

WHEREFORE the defendants pray for the dismissal of the suit with costs.

DATED at Nairobi this 13th day of December, 1946.

D. N. KHANNA
ADVOCATE FOR THE DEFENDANTS.

No. 5. Production of Exhibits, 27th March 1947. Ex. A1-A29.

No. 5.

PRODUCTION OF EXHIBITS.

Gautama for plaintiff.

Khanna for defendants.

By consent 29 letters in a bundle of correspondence put in and marked (A1-A29) as coming from defendants.

By consent a defence witness called to produce R.C.B. File.

Marie Louise Examined Ex. B.

ENA MARIE LOUISE, SWORN : Assistant Secretary to Rent Control Board, Central Province. I am in charge of official records of Board. I have a file concerning plaintiff and defendants. I produce it. (Ex.B.).

No. XXn. T.A.R.

M. C. NAGEON DE LESTANG.

Plaintiff's Evidence.

No. 6.

EVIDENCE OF GILBERT SCOTT MORLEY.

No. 6. Gilbert Scott Morley. Examination.

GILBERT SCOTT MORLEY, Sworn : In November, 1943, I rented certain premises from Mrs. De Silva. The premises consisted of 2 living rooms, 1 kitchen, a closed verandah and a common share of W.C. and bathroom. In November, 1945, the defendants took over the premises and I became their direct tenant. I was paying 60/- p.m. rent and I paid rent until

and including February 1946 regularly. As I received no receipt for two months I obtained cheque from one Mr. A. Fernandes and made it payable to defendants and handed it to them. In February 1946 I had occasion to leave Nairobi on a job which might have kept me engaged up to six months depending on my employers. When I left on 1st February 1946 I left my wife and all my belongings in my premises. The job I took was at Dondora about 15 miles from Nairobi. In the wet weather especially the roads are impassable especially on the estate. I do not own a car and never owned one. My wife joined me at Dondora within a fortnight. She did not bring all our belongings with her. My job was that of a clerk on Dondora Estate. I had no contract or any definite term. I was taken on trial for six months. On 15th February 1946 I applied to Rent Control Board for permission to sub-let premises. I subsequently withdrew the application. I wanted to sub-let because I could not afford to keep two places. When I left for Dondora my wife was expecting a baby. There is no hospital at Dondora and for medical attention one must come to Nairobi. I wanted to keep the house in Nairobi because I wanted my family to stay in Nairobi. On or about the middle of February, 1946, or March I came to Nairobi and went to my premises. I found them locked. There was a padlock over and above the ordinary lock of which I had the key. I learned subsequently that the defendants had taken possession of the rooms. The defendants removed my belongings and when they were examined the following articles were missing :—

1 dress suit 300.00
1 silk suit 150/-
4 white duck suits at 45/- each 180/-
1 pair mosquito boots 20/- to 25/-
1 pair men's shoes 40/-
1 pair women's shoes ?

and many other things.

A Boer War medal belonging to my father and my son's award of the Greek Govt. D.S.M. are also missing.

I was greatly inconvenienced by the defendants taking possession of my rooms because I had no place to stay in Nairobi and the day my child was operated on it had to be taken back to Dondora after the operation.

Mrs. De Silva was a tenant of the whole premises from the defendants. I received letter A1. I took it to Mandavia who wrote A2 on my instructions. I agreed to become direct tenant of defendants. I caused A5 to be written. I was proposing to sub-let to Rodrigues with certain arrangements about my wife staying there when she required. At the time Rodrigues was staying at Parklands. It was I who persuaded Rodrigues to take my premises and he was giving up the premises he occupied because he was going to India. He proceeded to India in June, 1946. He is not a photographer. His initials are I think G. C.

I had not completely left the premises in February when I went to Dondora. I applied to R. C. B. when defendants refused to allow me to sub-let. On 9th February 1946 I was residing at Dondora Estate. There was correspondence on the question of sub-letting. When I went to Dondora I had no job in Nairobi. I went to a new job at Dondora. I resided at Dondora. I wanted to keep my premises in Nairobi because of my child's health and because my wife was not going to stay permanently at Dondora. I could

In the Supreme Court.

Plaintiff's Evidence.

No. 6.

Gilbert Scott Morley Examination. *continued.*

leave my job at any time within six months. I could not afford two houses and this is why I wanted to sub-let to a friend with whom I had arrangements. I withdrew my application for permission to sub-let when the premises were locked. I required them for myself.

I do not know what sort of premises Rodrigues was occupying. I did not enquire what sort of furniture he had. He had promised to leave if I required the premises. I intended to sub-let for a year. My object was to have a place to go if I lost my job at Dondora and to save money.

I used the verandah in common with Mrs. De Silva. I had 2 living rooms and 1 kitchen for exclusive use.

When my wife and I left on 9th February 1946 there was nobody in my rooms. We locked the rooms and put nobody in possession. I think that my lock was removed and another lock placed in its place. Even if I stayed in Dondora I wanted my family to live in Nairobi on account of the health of my child. I also wanted a place to go to in the event of my not losing my job. There is no permanency in the job because I do not like the place and want to find something else.

I have about six suits. I only took two duck suits with me to Dondora. In ex. A16 I did not say that I had clothes in my boxes. All along I wanted to keep the house because of my family circumstances as my child always enjoyed bad health. I never took persons to view the premises with a view to putting them in. I do not know if I received copy of A20. I was worried about my child who was very sick and eventually died. I received no premium from people to put them in.

I did not come to take my things when asked to because my child was very ill at the time.

I occupy a two-roomed house in Dondora which also contain my employer's belongings. No room in it for all my belongings. My suits were brand new having been used once or twice only. I have given the original costs. I did not take possession of my goods because it would have been said that I had given up possession of the rooms voluntarily. I wanted my things in Nairobi. The defendants returned my cheque for March. I cannot say why I did not say so in answer to claims for rent. The cheque was presented by Mr. Fernandes on my behalf and it was returned to him after two or three days by the defendants. Eventually I left the money with my advocate. I still maintain that my articles are missing.

Cross-Examined

Cross-examination.

(Document purporting to be an inventory handed over to witness. Ex.C for identification).

This inventory is incorrect. We have taken nothing of the things we left behind. We had no list of our possessions.

Re-Examined

Re-examination.

Had I not been dispossessed I would have come back to Nairobi. I had no other place in Nairobi to keep my things.

T.A.R. M. C. NAGEON DE LESTANG.

In the Supreme Court.

Plaintiff's Evidence.

No. 7.

EVIDENCE OF CUTHBERT WIGHAM.

No. 7. Cuthbert Wigham Examination.

CUTHBERT WIGHAM, Sworn: Manager of Dondora Estate. I know plaintiff. I employed him at Dondora Estate in February, 1946. He was taken on temporarily for three or four months as a clerk on the Estate. He is now on a monthly basis.

Cross-Examined

Cross-examination.

I employed plaintiff on monthly terms stating that he would be on three or four months' trial. No term was stated if proved suitable. He has served since that date. Had he been unsatisfactory I would have got someone else in his place.

T.A.R. M. C. NAGEON DE LESTANG.

No. 8.

EVIDENCE OF ALBERT FERNANDES.

No. 8. Albert Fernandes Examination.

ALBERT FERNANDES: Sworn: I am a tanner. I know plaintiff and defendants. This cheque is signed by me (Ex.1). It is dated 1st April 1946. I signed it for plaintiff in payment of rent to defendants. I handed the cheque to defendants. They returned it to me after a few days.

Cross-Examined

Cross-examination.

I took the cheque to house of one of the defendants. When he returned the cheque I thought he was waiving one month's rent. I sent the cheque to plaintiff by post a day or so after it had been returned.

T.A.R. M. C. NAGEON DE LESTANG.

No. 9.

EVIDENCE OF AGNES MIRIDA MORLEY.

No. 9. Agnes Mirida Morley Examination.

AGNES MIRIDA MORLEY, Sworn: I lived with my husband in a house belonging to defendants since 1943. On 1st February 1946 my husband went to Dondora in a job. After eight days I went to join him there. When I went I took with me only most essential things. I was expecting a baby at the time. I intended to return to our house in Nairobi.

I came to examine my belongings after they had been removed by the defendants. I found the following things missing:—

1 dress suit of husband
1 pr. mosquito boots
1 silk suit (husband)
2 cooking pots 25/-
1 sauce pan 15/-
5 cups and saucers and tea pot 25/-

In the Supreme Court.

Plaintiff's Evidence.
Agnes Mirida Morley Examination. *continued.*

4 white duck suits (husband)
2 pr. shoes (husband and self) self 20/- 30/-
Various baby's clothes 150/-
Picture frames glasses broken 150/-
1 stove 20/-
1 box of magic tricks 300/-
1 picture album 70/-

When I examined my trunks they had been shifted about and they had been opened. My bed, dining table and baby's cupboard had been used. War medals were also missing.

Cross-Examined

Cross-examination.

The verandah which we used in common with Mrs. De Silva was used as a sitting room. Over and above we had two rooms. One was used as kitchen and dining room. I was subject to the wishes of my husband in the matter of my return to Nairobi. We never intended to give up possession of the rooms completely. At Dondora we occupy two rooms, kitchen etc. about the same size as Nairobi premises. I had many cups and saucers and I took to Dondora only what I needed. I had enough to share between two houses. I came from T.T. with all my effects. I used to come to Nairobi often for the day only. Husband told me he had been asked to collect the effects we had left behind. I did not make list of things I left behind. I made the list of missing articles myself and submitted to husband. I put the prices as I had purchased them. I knew that my husband had written A16 to his advocate. The appointment for 11 a.m. on 5th October referred to in A27 was not made by me. I went there after I was told by my advocate about my appointment. I went to inspect things at 4 p.m. on a weekday not at 11 a.m. on a Saturday.

After Mrs. De Silva left we were sharing the house with the landlords (defendants). I know nothing about cheque. (Ex.1).

When I went to inspect I was offered my effects. I did not take them because I could not get possession. I could see that my bed, table and wardrobe were being used. My bed and wardrobe was in one of the tenant's room and my table in the landlord's kitchen.

Re-examined

Re-examination.

The table had whitened with use. I had nowhere in Nairobi to place my effects. After the landlord took possession of the premises vacated by Mrs. De Silva the verandah was partitioned off and each one had his separate portion.

T.A.R. M. C. NAGEON DE LESTANG.

Defendant's Evidence.
No. 10.
Devji Hamir Examination.

No. 10.

EVIDENCE OF DEVJI HAMIR.

DEVJI HAMIR, Sworn: I am one of the defendants. My brother is joint defendant. The house in question belongs to my brother and myself

Defendant's Evidence. Devji Hamir Examination. *continued.*

since the last four years. I had let the whole house to Mrs. De Silva who had let part of it to plaintiff. When Mrs. De Silva left her tenancy was terminated and plaintiff became my direct tenant.

In the part vacated by Mrs. De Silva my brother moved. Plaintiff occupied 2 rooms, 1 kitchen and half of the verandah. Bathroom and W.C. were used in common. The verandah is partitioned off completely separating both sides without access from one to the other. I dealt with the matter through Mr. Khanna and instructed him to do everything that has been done. I refused application to sub-let to Rodrigues. My brother left for India $2\frac{1}{2}$ months ago. I receive payments in the business. This is the practice. I also receive rents of the premises. I heard evidence of Fernandes. The cheque was not received by me. I do not remember date our padlock was placed on the premises. It was placed because plaintiff had locked the place up and had gone away. I knew plaintiff wanted to sub-let premises. Rodrigues inspected premises twice and a gentleman from Modern Provision Store also came to visit. I remember when the locks were removed. It was 23rd April 1946. An inventory of the things in the rooms were made. Ex.C is the inventory. I kept all the things in a small room on the premises. They were not used. Rabadi, Hirji Vershi and Chandulal Patel were present at the inventory.

Cross-Examination

Cross-examination.

My brother placed the second lock in my presence. The house stands on its own grounds. When the lock was broken plaintiff or his wife was not present. Ex.C is complete inventory. I was present at the time. There must have been broken picture frames if Mrs. Morley said so. Whatever was there is in Ex.C.

T. A. R. M. C. NAGEON DE LESTANG.

No. 11. Hirji Vershi Examination.

No. 11.

EVIDENCE OF HIRJI VERSHI.

HIRJI VERSHI, Sworn: Trader of Pangani. I know defendants. I know defendants own a house in Fairview Road in which plaintiff lived. On 25th April 1946 I went to the house with defendants. There were two locks on the door. The defendants unlocked one lock and broke the other one. It was 4 p.m. There were some goods lying in a corner of the room. A list was made of the goods in my presence. I signed it. Ex.C is it. The second signature is mine.

Cross-Examined

Cross-examination

It was Devji, defendant 1, who came to call me. After ten minutes I went with him. He came to me alone. I came to know Devji two or three months before. They used to come to my shop often. When I went to the house Rabadi and two others were there. Devji opened one lock and another lock was broken. I did not know whose locks they were. There was plenty of rubbish in the rooms and I could not say if there were picture frames lying about. I do not know if the boxes were full or empty.

T.A.R. M. C. NAGEON DE LASTANG.

In the Supreme Court.

Defendant's Evidence.
No. 12.
Sorab Rabadi Examination.

No. 12.

EVIDENCE OF SORAB RABADI.

SORAB RABADI, Sworn: Clerk to Shapley, Schwartze & Barret for two years. I know defendants own a house in Fairview Road which was partly occupied by plaintiff. Devji invited me to come to the house on 25th April 1946. I went there. It was after 4 p.m. A trader from Pangani and two other persons were there. The premises were broken open in my presence and a list was prepared of the things inside the rooms. I do not remember exactly what was broken. In the room there was one iron bed, a box without a lid, a frame of a scene, a primus stove etc.
I signed the list. This is it. Ex.C.
My signature is first on the list.

Cross-Examined.

Cross-examination.

This was the first time I went to the house. I have known Devji since 1945. We are acquaintances. He came to call me from my house. He had warned me beforehand, in the morning in my office. I do not remember seeing broken picture frames.

By Court:

We examined the closed verandah and two other rooms.

T.A.R. M. C. NAGEON DE LASTANG.

No. 13.
Counsel's Addresses.

No. 13.

COUNSELS' ADDRESSES.

Defendants' Counsel

Khanna addresses Court.

Bathroom and W.C. used in common.
Tenancy not protected.
Neil v Del Sotto (1945) 1 A.E.L.R. 191
(1945) 2 A.E.R. 146
Kitchen in England is living room
(1946) 1 A.E.L.R. 543
If tenancy not protected, it was terminated on 1st April 1946.
Landlord had right to re-enter as he did.
Rent not tendered—claimed—no answer of tender made.
Assuming tenancy protected—statutory tenancy lasts so long as he retains possession. Tenant vacated.
Physical possession abandoned. Skinner v Geary.
Facts show that plaintiff gave up possession of the house. Brown v Draper.
When possession vacated—landlord in re-entering does not exercise a remedy but a proprietory right.
Butcher v Mayor (1942) 2 A.E.R. 572.
Missing articles not proved. Purposely staying away to make a false claim. What is cause of action re missing articles? No evidence of conversion. Not bailees no negligence.

Plaintiff's Counsel.

In the Supreme Court.

No. 13. Counsel's addresses. *continued.*

Gautama addresses Court :—

In spite of sharing of bathroom and W.C. tenancy protected. (1945) 1 A.E.R. at p. 193. Plaintiff never ceased to occupy premises. Left premises locked with effects inside. Rent for March tendered.
Skinner v Geary (1931) 2 K.B.D. at p. 550, 569.
Leslie & Co. v Cumming (1926) 2 K.B.D. 421.
" Intention to return " the test.
Arrangement with Rodrigues.
10 ,, ,, employer.
Health of children—condition of wife.
Left furniture in premises.
Missing articles. Trespass to chattels.
Articles may have been taken be fore inventory made.

No. 14. Judgment, 1st April 1947.

No. 14.

JUDGMENT.

This is a suit by a tenant for ejectment of his landlords from the premises rented by him and for special and general damages against them for trespass.

I find the facts to be as follows :—

20 The defendants are the owners of certain premises situate in Fairview Road, Nairobi, known as Plot No. 1635/2. They leased the whole premises to one Mrs. de Silva. In November, 1943, Mrs. de Silva rented to the plaintiff a portion of the premises comprising two living rooms and a kitchen together with the common use of a closed verandah, which was used as a sitting room, and the common use of bathroom and lavatory. In January, 1945, the defendants terminated Mrs. de Silva's tenancy and they obtained possession of the portion occupied by her when she left for India in November, 1945. From that date the plaintiff became the direct tenant of the defendants who accepted him as such and themselves occupied the portion of the premises 30 vacated by Mrs. de Silva. At that time the verandah was divided in two by means of a partition and the plaintiff had exclusive possession of his portion of it, there being no communication between the two portions. Thus when the plaintiff became the direct tenant of the defendants the only rooms shared in common were the bathroom and lavatory. The plaintiff occupied the rooms in his possession with his wife and children.

On 1st February, 1946, the plaintiff accepted employment on Dondora Estate, about 16 miles from Nairobi.

His employment was on monthly terms, either party to the contract being entitled to terminate it at a month's notice. The plaintiff lived on the 40 Estate and on the 9th February he fetched his wife and children who had remained in Nairobi. He left some of his belongings in the flat and locked it up. On 15th February he requested permission from the defendants to sub-let the flat to one Rodrigues. The plaintiff stated in evidence that he had an arrangement with Rodrigues whereby his wife and children could use the flat when they came to Nairobi and that if plaintiff required the whole of it Rodrigues would vacate the same at any time. I see no reason to disbelieve

In the Supreme Court.

No. 14. Judgment, 1st April 1947. *continued.*

the evidence of the plaintiff on this point as I can see nothing strange in such an arrangement. Be that as it may permission was refused and the plaintiff applied to the Rent Control Board. On 20th February the defendant gave notice to the plaintiff to quit at the end of March. At some uncertain date before the expiry of the notice—probably towards the end of February—the defendants put their own padlock on the entrance to plaintiff's flat. On 6th March the plaintiff complained of this action to his advocate and expressed his intention of not giving up possession of the flat for personal reasons. On 4th April he went again to his advocate stating that in view of the illness of his children he required the flat and did not wish to sub-let it any more. The application to sub-let made to the R.C.B. was accordingly withdrawn.

The defendants, however, refused to give possession of the rooms to the plaintiff and requested him to remove the effects he had left in them. On 25th April, 1946, the defendant took possession of the rooms and again invited the plaintiff to remove his belongings. The plaintiff did not do so but some time in September his wife inspected the articles and found that many of them were missing.

The first question which I have to decide is whether the rooms let to the plaintiff constitute a " dwelling house " as defined in the Rent Restrictions Ordinance, i.e. whether they were " part of a house let as a separate dwelling."

I have been referred to two English decisions on this question :—

Neale v Del Soto (1945) 1 All E.R.191
Cole v Harris (1945) 2 All E.R.146.

In the former the letting of two unfurnished rooms and the joint use of a kitchen and bathroom was held to be a " sharing of the whole house " and not a tenancy of part of the house as a separate dwelling. In the latter, the exclusive use of three rooms together with the use in common of the bathroom and lavatory combined was held to constitute a separate letting. According to the latter case the true test is whether " living rooms " are shared; if they are, then there is no separate letting. In England a kitchen is considered as a " living room " but a bathroom and lavatory not.

In the present case the rooms shared were a bathroom and a lavatory. There is no evidence whether they were in one room or two rooms but that is irrelevant to the issue. Applying the test in Cole v Harris I consider that there was a separate letting in this case and that the rooms came within the Rent Restriction Ordinance.

The second question is whether the tenancy had not ceased to be protected by reason of the fact that the plaintiff had given up physical possession of the flat. It is settled law that a tenant, to be entitled to the protection of the Rent Restriction Ordinance must be in personal occupation or actual possession of the premises in respect of which he seeks that protection.

Skinner v Geary (1931) 2 K.B.D.546

Tara Singh & others v Harnam Singh 11 E.A.C.A.24

It is therefore necessary to examine the question whether the plaintiff at the material time ceased to be in actual possession of the flat. The expression " actual possession " must not be understood in too narrow a sense so as, for example, to cover the case of a tenant who leaves his premises

temporarily with the intention of returning. As Talbot J. said in Skinner v Geary at page 550 :—

> " It is obvious that it would be impossible to say that because a man goes away for reasons of either business or pleasure for a day or a week or even a few months, intending to come back, he ceases to reside at the premises."

And Scrutton L. J. at page 558 :—

> " The case is not one of a tenant who spends week-ends in a house, or of a sea captain who is absent for months, it may be, but in fact returns between his voyages to his house, and has his wife and family living there while he is away."

and at page 564 :—

> " the Act does not in my opinion apply to protect a tenant who is not in occupation of a house in the sense that the house is his home and to which, although he may be absent for a time, he intends to return."

and Slesser L. J. at page 569 :—

> " the restriction on the landlord's right to recover possession is confined to the case of persons who are tenants residing on the premises meaning thereby not residing in the narrow sense but tenants of whom it can properly be said that they are in actual occupation."

Applying those principles to the facts of this case I find that the plaintiff had not given up actual possession or personal occupation of the premises. The facts show quite clearly in my view that from the very beginning he had no intention of giving up the premises because he was not sure of his job which was on a monthly basis and in which he was on trial for three months, his wife was expecting a baby and his children enjoyed bad health and he wanted a roof in Nairobi as there were no medical facilities at Dondora and in consequence he left some of his belongings in the premises. For these reasons he sought to sub-let the premises to a friend in order to cut down his expenses. I think that the facts proved establish beyond doubt that although he temporarily left the premises his home was still in them and he intended to return to them.

The plaintiff being a protected tenant the respondents were not entitled to take possession of his premises forcibly as they did and they must give up possession of the premises to the plaintiff as prayed.

I shall now deal with the question of damages. The first point which arises is whether the claim for special damages has been proved. The plaintiff contends that as a result of defendants' action articles to the value of 1495/- as described in a letter attached to the plaint have disappeared from the articles he left behind. Proof of the loss of those articles rests on his evidence and that of his wife. Both witnesses impressed me very favourably. They gave their evidence fairly and in a manner which struck me as being honest and convincing. Consequently I see no reason to disbelieve them. I must, therefore, consider whether the defendants have been able to rebut their evidence. In order to disprove the plaintiff's claim the defendants alleged in effect that they never entered the premises except on 25th April, 1946, when they broke

In the Supreme Court.

No. 14. Judgment, 1st April 1947. *continued.*

into them in the presence of witnesses and there and then made a full inventory of their contents. The missing articles according to the inventory were not found on the premises.

In the first place it must be remembered that it was late in February that the defendants placed their own padlocks on the entrance to the premises and many things could have happened between that date and the 25th April.

Secondly none of the witnesses could say that the second padlock which was broken by the defendants was the plaintiff's padlock. Indeed one witness remembers nothing except that forcible entry was effected. He cannot say whether padlocks were opened or broken or not.

Thirdly the inventory itself is not convincing.

Lastly there is a letter Ex.A15 from the defendants' advocate to the Rent Board dated 20th March and over a month before the premises were broken into which contains in paragraph 2 thereof this curious passage :—

> " All the house contained was a broken and unserviceable bed and one table and two empty wooden boxes."

This passage clearly suggests that between the date of the plaintiff leaving the premises and 20th March someone to the knowledge of the defendants entered the premises and examined the contents, for how otherwise could the defendants have been so sure what was in the premises even as to whether boxes were full or empty?

In my view the defence has failed to rebut the plaintiff's case and I find it proved on the evidence that goods to the value of 1495/- disappeared from the premises as claimed.

I hold that the loss of those articles was the direct result of the defendants' wrongful act in trespassing on the premises of the plaintiff and unlawfully meddling with his belongings, and that the defendants are responsible therefor. The articles could only have disappeared by the defendants themselves removing them or failing to take reasonable care against their removal by someone else.

As regards the general damages there can be no doubt that the plaintiff was greatly inconvenienced by being deprived of the use of his rooms. Up to now—over a year after the wrongful occupation of his premises—he has not been allowed to have them back. He must have been put to a great deal of trouble when his wife and children requiring medical attention had nowhere to stay in Nairobi.

I assess the general damages at 2000/-.

There will therefore be judgment for plaintiff in the sum of 3495/- damages and an order for possession of the premises by him as prayed with costs.

M. C. NAGEON DE LESTANG.

No. 15.

DECREE.

CLAIM for (1) Shs.1495/- as special damages (2) general damages (3) ejectment of the defendants and (4) costs of this action.

THIS SUIT coming on the 27th day of March, 1947, for hearing and on the 1st day of April, 1947, for judgment before Mr. Justice de Lestang in the presence of counsel for the plaintiff and for the defendants IT IS ORDERED (1) that the defendants do quit and deliver vacant possession of the portions of the premises occupied by the defendants situate on Plot No. 1635/2 Fairview Road, Nairobi, and (2) that the defendants do pay to the plaintiff the sum of shillings 4951/- as more particularly set forth hereunder :—

Amount of judgment	Shs.3495.00
Costs as taxed	1456.00
	Shs.4951.00

GIVEN UNDER MY HAND AND THE SEAL OF THE COURT AT NAIROBI THIS 10TH DAY OF MARCH, 1948.

M. C. NAGEON DE LESTANG
JUDGE
SUPREME COURT OF KENYA.

In the Court of Appeal.

No. 16. Memorandum of Appeal, 18th April 1947.

No. 16.

MEMORANDUM OF APPEAL.

1. DEVJI HAMIR — APPELLANTS
2. NARSHI HAMIR — (Original Defendants)

VERSUS

GILBERT SCOTT MORLEY — RESPONDENT (Original Plaintiff)

The appellants above named hereby appeal from the judgment (a certified copy whereof accompanies this Memorandum) delivered on the 1st April, 1947, in Civil Suit No. 284/1946, by Mr. Acting Justice M. C. de Lestang (Supreme Court of Kenya) and sets forth the following grounds among others, of objections to the judgment appealed from namely :—

1. The learned Acting Judge erroneously held that there was a subsisting rent protected tenancy, because he was in error in concluding :—

(i) Firstly, that there was a *separate* letting of a distinct portion and not a sharing of the house ;

(ii) Secondly, that the respondent was *residing* in the premises to which the suit related, and was but temporarily absent therefrom, and in assuming that a person could *properly* be said to *reside* at two places at the same time.

2. The learned Acting Judge was by reason of the premises in error in concluding that the appellants had trespassed into the premises, and not exercised a right of property, namely of re-possessing the premises.

3. The learned Acting Judge was as such in error in awarding any damages at all for alleged dispossession, and even upon an assumption of wrongful dispossession, was in error in awarding anything but nominal damages, there being no circumstances properly justifying an award of substantial damages.

4. The learned Acting Judge was as such in error in assuming that the appellants in order to re-possess themselves of the premises, were not entitled to put the goods out, or were under a duty other than of notifying the respondent that the goods would be put out, and in any case upon an assumption of wrongful dispossession also, was in error in holding that the goods were in fact missing or that whenever missed (even prior to re-possession), the appellants were responsible for their loss, without evidence of trespass and conversion of the goods on the part of the appellants, resulting in their loss and deprivation thereof to the respondent, and in holding that the loss resulted consequent upon the appellants' negligence without there being an obligation to take care of the goods, and generally with regard to the award of special damages for loss of chattels, misdirected himself as to the onus, the requisites of proof, and the shifting of the burden of proof.

WHEREFORE the appellants pray that this appeal be allowed with costs both here and below, or such other order be made as may in the premises be deemed meet.

DATED at Nairobi, this 18th day of April, 1947.

D. N. KHANNA, ADVOCATE FOR THE APPELLANTS.

In the Court of Appeal.

No. 17.
Judge's Notes, 5th August 1947 to 6th August 1947.

No. 17.

JUDGES' NOTES.

5th August, 1947.

Coram—NIHILL P., GRAHAM PAUL & EDWARDS, C.JJ.

KHANNA for Appellants.

S. C. GAUTAMA for Respondent.

Notes by Nihill, P.

KHANNA:

Main point, Can a person claim to be residing in 2 places at same time? If in my favour damages for wrongful possession go by the board: in any case as no trespass should be only nominal. No evidence here of direct taking therefore no trespass.

Skinner v Geary, 1931. 2K.B.546.

Protection of Rent Restriction Acts highly personal. Scrutton J.: "must not deprive others of accommodation."

Last paragraph of his judgment at p. 564.

Actual physical possession as a home.

Possession of a few things left behind not enough.

Possession by a relative will not do. Immaterial whether tenant sub-lets or not. "My position is we did not sub-let."

Reads passage from Skinner v Geary, at p. 550, Talbot J. Respondent had not resided for 14 months. Objective test the correct one. Not a subjective one. Skinner, p. 554, line 24, 26 to 27.

Kenya R. R. Ord. Sec. 11 (1) (h) parallel to paragraph (h) of section 5 (1) of 1920 English Act. Skinner p. 555, "must not seize on isolated passages of the Act" p. 557, lines 1 to 19 Scrutton J. Skinner at p. 558, distinguishes Hoskiss v Lewis. Conflicting decisions in the early days of Rent Restriction. Skinner case cleared them up, at p. 560, at p. 561 26th line. "Parliament never *contemplated tenant living somewhere else.*"

Slesser L. J. at p. 568 4th line from top at p. 569.

Judgment p. 4 and p. 5 full of misdirections.

Evidence, 1st appeal, p. 10 of record, p. 12, p. 25 of record. Ex. 11A, p. 11 see my XX.

Idea of sharing premises with Rodrigues set up for first time during trial as Ex. 11A negatives sharing idea. Also Ex. A16 at p. 29 last 3 lines. Also Ex. 17. Also Ex. 18 at p. 30.

Was Rodrigues a photographer? see plaint. But denied in respondent's evidence, "intention to preserve premises for wife and children, came after notice to quit."

Evidence p. 10 line 16 to 20 clear, p. 14 evidence of respondent's wife "he only wanted the house for currency of the illness." Skinner at p. 553, "Scrutton L. J. did lay down general principles." "A tenant is a personal relationship." Skinner at 552 and 553 at 546. Brown v Draper 1 A.E.L.R. p. 246. Tenant not living in the house when notice given but away from wife and family.

"Possession of a licensee possession of the tenant," at 247 second paragraph. Lord Justice Green, "Can't contract out of protection of the Act," "material date is the date of the hearing," at p. 249.

In the Court of Appeal.

No. 17. Judge's Notes, 5th August 1947. to 6th August 1947. *continued.*

Laurence v Hartwell, 1946, 2 A.E.R. p. 246, L. J. Morton. Tenancy passed to H as executrix. H stepped into shoes of Mrs. C because contractual tenancy had not expired on death of Mrs. C. H was a statutory tenant because she was residing there.

L v H, Morton L. J., at p. 260. Leaving a few possessions behind does not constitute a home. Here left behind to give colour to idea that possession not given up, see p. 10 line—must have regard to facts at date of hearing. At date of hearing R's job had lasted 14 months. When he first wanted to sub-let proposed to sub-let for a year. Respondent's manager's evidence at p. 13. Date of hearing 27th March 1947, "the intention to return is to be taken from the circumstances." P. 11, "I resided at Dondora" that was the true position. Ex. A15 to Rent Control Board really summarizes appellants' case. Also Ex. A20 at p. 31, 1942, 2 A.E.L.R. Butcher v Poole p. 572. We had a right to walk in if tenancy not protected. At date of hearing R was not residing at Nairobi.

Third point. If we were justified in walking in no wrongful dispossession and no trespass. In any event where we thought we had a bona fide right only nominal damages—see 1922 1 K.B. p. 664.

Fourth ground of appeal: Judge in error in thinking not entitled to put the goods out. "One is entitled to remove a trespasser's goods." A landlord owes no duty to a trespasser. Onus on plaintiff to show a direct taking or expropriation. No evidence in this case to show that we had taken away alleged missing goods. Record p. 10. Ex. A28 p. 36. Ex. A29. Judge failed to consider real evidence in case re missing articles. Ex. A18. Up to 15th April there was no sign of interference with his goods, p. 12 of record. Judgment p. 5, mid paragraph re special damages. No evidence of direct taking. Last sentence in p. 5 a mere guess. No reason given for discrediting D.W.4 at p. 17. "Why does Judge say inventory not convincing"? Ex. A7 lines 3 and 4 and Ex. 15. Judge deals with this at p. 6 but he forgot we lived next door and saw what was taken away at the time of moving. We also knew what was left as early as A7 9th February. R went out. Ex. A24 shows that the Morleys were all out to make some sort of claim. Ex. A27—Could defendants have done more? We were not bailees of these goods. How did court come to conclusion that we were negligent. We gave notice before we dispossessed.

To sum up: On his own showing tenant residing at Dondora, not entitled therefore to protection and we were justified in walking with. Judge has not considered evidence re trespass in the light of the onus of proof. No evidence of conversion. Judge not justified in finding us responsible.

6th August, 1947.

GAUTAMA:

Main contentions: We were residing and were only temporarily absent. Trial, Judge after careful consideration came to conclusion that respondent never intended to give up or to cease to make it his home. (This finding of fact by L. T. J. on abundant evidence) conclusion justified and reasonable. Factors which influenced learned trial Judge:—

He finds (a) R not sure of his job.

(b) wife was expecting a baby.

(c) wanted a roof in Nairobi, child sick.

(d) left some belongings in premises (see p. 14).

(e) only essential things taken to D.

then there is question of sub-letting. Sec. 6 of R. R. Ord. (Ord. 26 of 1943), p. 21, Ex. A5 15th February, 1946. Ex. A6 we applied to Board, shows intention in February. Each case must ultimately depend on its own merits. On 11th April (p. 29) same position as in February (hearing date March, 1947). Cogent reasons why we had to reconsider sub-letting. We were dispossessed when appellants locked us out in March, 1946. They broke the premises open on 25th April, 1946. Material date is therefore March-April, 1946. See p. 13. "We would have come back to Nairobi," L. T. J. at p. 2 of judgment, passage marked "R" "finding of fact." All the time R anxious to cut down expenses, a poor man, unable to run two houses. Only test: Did R have the intention to come back some time and use his N residence as his home, if so, protected. Facts quite different to Skinner v Geary, p. 459, difference between temporary sub-letting and having no intention to return. If it had been found that *we had no intention* to resume residence then S. v G. applied. But I concede we must judge objectively. Padlock put on by landlords "about end of February" certainly before expiration of notice, 1926 2 K.B. at p. 417, Leslie & Co. Ltd. v—— tenant held in possession although not in actual physical possession. I rely Brown v Draper 1 A.E.L.R. 246. Helpful for the respondent, "real tenant had been living elsewhere" his wife a licensee. Appellant should have filed an action for possession under section 11 (d) of the Ord. We were locked out before expiration of notice and could not return after end of Feb. I contend that leaving some of my furniture behind constituted remaining in possession. Landlord had a remedy in bringing an action for possession and might have got it under sec. 11 (1) (d). Can only lose protection of the Act either by giving up possession or a court order depriving him of possession. "Not open to landlords to take possession by force," p. 298, sec. 17 (1) of Ord.

Ref. subsidiary issues: There was evidence on which L.T.J. could infer a taking—p. 5 of judgment. L. T. J. believed respondent and his wife. Even putting their padlock on was an act of trespass. E. A. Court of Appeal Civil Appeal 18 of 1946 on reasonable amount of damages.

KHANNA:

Intention to return— a question of law inference from facts. All the facts alluded to by Judge not relevant to the issue L. T. J. had to determine. Ex. A7 and A10, sec. 11 (2) of R.R. Ord. E.A.C.A. 1944 Vol. XI p. 24, Webb at p. 28. Where is there anything in the circumstances that he would have come back? R now admits that he cannot afford two houses, sec. 17 (1) and 17 (3). We were entitled to put on a lock before expiration of tenancy. We did this to prevent another sub-tenant coming in. No evidence that we barred R's return before notice to quit expired, "anyhow no other consequence would follow except suspension of rent. We take possession at end of April to prevent a sub-tenant getting in, sec. 6 (1) of 1943 Ord. Leslie v Cuming very clear. Test is the object for which you go elsewhere. Brown v Draper an ejectment suit. Only decided that in such a suit the proper person to sue is the tenant not the licensee. In Skinner v Geary held that "possession means possession" at p. 592 in Searsdale case. Sec. 17 (1) held that possession means actual physical possession. 1942 Vol. II A.E.L.R. at p. 572.

In the Court of Appeal.

No. 17. Judge's Notes, 5th August 1947. to 6th August 1947. *continued.*

If you come to conclusion that R was still in possession on 25th April I am out. " Possession " for purposes of section 17 must be actual physical possession except for the exceptional class of cases. 1946 A.E.L.R. p. 257 Laurence v Hartwell. Morton, L. J. at 259. Acts give " a purely personal right of residence." A " Coy." can't reside although it could have possession in wider sense. If possession in 17 (1) had a wider sense a company would be protected. " defendant genuinely occupying and residing." Common Law right to re-enter not ousted except where tenant in actual physical possession. A statutory tenant has no right if he abandons residence. Invasion of Common Law rights must be strictly interpreted.

Alternative argument: 1922 1 K.B. 664 Ct. of Appeal reduced damages from £60 to £10. Re missing articles—no action on the case have they proved we took the articles.

Summing up: Sec. 17 (1) possession must mean . . .
Judgment reserved.

Notes by Graham Paul, C. J.

5th August, 1947.

KHANNA:

Does Skinner v Geary apply to protect person residing in 2 places at the same time?
Damages when no aggravating circumstances and a claim of right damages should be nominal.
When no evidence of direct taking no trespass proved and therefore no damage.
Ground 1 (1) abandoned.
Skinner v Geary 1931 2 K.B. 546.
Scrutton L. J.
1. Resident not to be turned out into street.
2. Can't hold on to a house when living somewhere else.
3. Actual physical possession as a home is necessary.
4. Possession by means of a few chattels is not enough.
5. Possession by others—father, wife or friend not enough.
6. Possession of another " home " bowls him out.
7. Subletting not enough to negative effect of leaving.

Last para of judgment of Scrutton at p. 564.
the house occupied as a home.

Whether:

There was no subletting in present case.
Passages in Skinner v Geary p. 550 Talbot J.
Absence indefinite. Objective test " to be collected from circumstances."
p. 554—lines 24 and subsequently—26-37.
When contractual relationship ends no protection.
para 8 added by 1923 Act to remove doubt.
S. 11 of Rent Restriction, S. 5 (1) (b) of 1920 Act.
If no subletting
p. 555.
Question whether subletting or not unimportant.
p. 557 Scrutton lines 1-19.
558 3rd line re Hoskiss v Lewis.

560 25th line Legislation to protect occupying tenant not just rent paying tenant.
561
568 Slesser.
569 properly be said in actual occupation.

Reads judgment p. 3 at p. 5.
Evidence p. 10 of Record p. 11 p. 25.
Note : See p. 557. Occupation not by wife but by other relatives not ordinary inhabitants of tenants house. Basis of decision in Geary's case was against Judge's finding that the occupation of Geary's and his Wife's relations was not for the purpose of preserving the house for the tenant and that at no time did he contemplate residing in house.
Skinner pp. 552/53. 556.
Brown v Draper 1944 1 A.E.L.R. p. 246. Wife and family left in house and husband goes somewhere else to reside.
247 2nd para.
Lawrence v Hartwell 1946 2 A.E.L.R. 257.
Morton L. J. at 260.
Leaving of few things not enough to constitute living there. They were left to show colourable possession. Evidence p. 10 and 11. Date of hearing is essential date. Job had lasted 14 months by date of hearing. Monthly engagement is not temporary. Never mentioned duration of employment.
Exhibit A 5 at p. 21.
Note : All a question of fact and intention in each case?
Scrutton L. J. :—
Note *Leslie & Co. v Cumming* 1926 2 K.B. 421 p. 24 Ex. A.
10. 1942 2A. E. R. Butcher v Pooll.
At the date of learning where was respondent residing in fact?
Once notice to quit expired and tenant not in possession we had right to take repossession of our property and in that event no wrongful dispossession and no trespass. 1922 1 K.B. 664. Only nominal damages should be given.
4th Ground of Appeal. Right to put out goods. No duty to trespasser. Letters to ask him to attend at opening and taking of goods. No evidence that missing goods taken away by Defendants.
Findings of Court : Misdirection as to onus p. 5 of judgment. Not Bailees. We had right to put out the things.
6th August, 1947.

GAUTAMA REPLIES :

1 (1) abandoned.
1 (2) Now the main issue :—
Judgment. Conclusion of fact that respondent never really intended to give up possession of house in Nairobi and he intended to resume living there. Conclusion of fact justified and reasonable. No argument submitted why we should interfere with that finding of fact.
Judgment at p. 4 and 5.
1. Temporary job.
2. Wife pregnant.
3. Children's health.
4. Some of belongings in premises.
p. 14.

In the Court of Appeal.

No. 17.
Judge's Notes, 5th August 1947. to 6th August 1947. *continued.*

Subletting—Rent Control Ordinance S. 19 Provision *not* in English legislations. See Ordinance 26 of 1943 (re subletting with consent) S. 6 (1).
See p. 21 Exhibit A.5 and seq. No subletting in fact.
But his application shows intention.
Legal possession through subtenant plus personal occupation of another house —allowed by ordinance.
1943 S. 6. (1) No such section in England. p. 29 Exhibit A16.
p. 13 But for respondent taking possession he would have been back to Nairobi. Essential date is date of dispossession by respondent's padlock.
subletting subject to arrangement, believed by Judge.
Question of fact. See p. 2 of judgment.
Notice to quit 20 February 1946.
Padlocking probably at end of February.
If anxious to cut down expenses and if he intended to give up house why should not he clear out altogether and give the rent.
p. 549 Leslie v ——
Padlocking i.e. dispossession—before expiry of provision—wife and children.
Leslie v Cumming 1926 2 K.B.D. 417.
Brown v Draper 1944 1 A.E.L.R. (Green M.R.)
Notice effect of judgment in that case.
Either tenant must give up possession or be ejected by order.
Brown v Draper—Proper course for appellant to take was to sue for ejectment of respondent.
Subsidiary issues :—
Evidence of plaintiff as to goods being there, and then not there. Trespass on premises.
Note : Onus of proof where trespasser takes possession illegally and during time of his illegal possession some things disappear. E. A. Hotel Ltd. v —— Court Appeal 18/46.
Intention to return a question of fact. It is inference from facts and therefore law. Findings of fact. Misdirection as in February 1947 date of trial. Exhibit A7.
Notice to quit. Application for permission to sublet withdrawn and we must consider case as if no application was made.
Singh v Singh 1944 XI E.A.C.A. 24.
Webb at p. 28.
para 3 of Plaint
Statutory tenant all the time. We locked others out not the respondent himself. Wrongful eviction only causes suspension of rent.
Exhibit A20 of 17th April.
Action of locking out was reasonable. Scrutton at p. 559.
Possession means something different in Brown v Draper.
Butcher's case 1942 2 A.E.R. 572.
Right to take brevi manu possession where tenancy enforced and tenant not protected.
Morton L. J. at 259.
Butcher.
Renow's case.
Kong's case.
Damages should be nominal.
1922 1 K.B. 664 ousts damages for dispossession.

C. A. V.

Notes by Edwards, C. J.

5th August, 1947.

KHANNA:

Skinner v Geary protects only a person residing

Can a person be said to be residing at 2 places?

Where no aggrevating circumstances, damages must be nominal. Trespass to goods. If no evidence of direct taking there is no trespass.

I abandon ground 1 (1)

My main ground is 1 (2)

Skinner v Geary (1931) 2 K.B.D. 546 and 550 Talbot J. and p. 555

Protection is highly personal.

Scrutton L. J.

A resident must not be thrown on to the street page 564.

There is *his home* p. 554 line 24, 26, 37.

It must be actual physical possession of premises as a home. Leaving a few sticks is not enough. Possession by another will not do. A person cannot have 2 homes, p. 557, lines 1-19.

Other motives material.

Section 11 (1) (h) Increase of Rent and of Mortgage Interest (Restrictions) Ordinance 1940

1920 English Act.

P. 558 Skinner v Geary, line 3 and p. 560.

Line 25 and p. 561, line 26.

" Possibility of tenant living somewhere else " not contemplated.

Temporary absence e.g. sea captain is an exception.

Slesser L. J. P. 568 line 4 and p. 569.

" actual occupation "

" business or pleasure " p. 558.

A sea captain has only one home—the ship is not his home. " absent for a time "

" properly be said are in actual occupation."

Intending to sublet to cut down expenses is irrelevant. Intention to sublet shows he did not intend to reside in it. In any event his intention was not proved, p. 10 Record. " I wanted to sublet because I could not afford 2 places " and pp. 11 and 12. Foot of p. 11 and top of p. 12 and 25. He intended to sublet to cut down expenses—this does not fit in with his wanting to come back to the place.

P. 26.

He then said he intended to run 2 houses—that is not allowed by the legislation. P. 11 Record and p. 25. The idea of sharing the house with Rodrigues was first thought of in evidence. He says now he is letting for 3 months only. This negatives idea of his wife sharing the house with Rodrigues: afterthought in evidence. In evidence he says he was going to let for 12 months p. 29. The need for subletting does not arise. So, on 4th April, 1946, for the first time he says he wants the house for himself and his family. Till 4th April, 1946, when his family fell ill, he had no idea of having the house for himself. PP. 28 and 30 and 31. There can be no understanding now—tenant no longer wishes to sublet. Plaint page 2 Record. Rodrigues a photographer of Nairobi and p. 26. No mistake as to indentity. P. 11 He denies. All this he says " He is not a photographer."

I suggested he had not left for India. P. 10 lines 16-20.

In the Court of Appeal.

No. 17.
Judge's Notes, 5th August 1947. to 6th August 1947. *continued.*

"I wanted my family to stay in Nairobi."
He himself was not intending to come to Nairobi. P. 11.
He wanted the luxury of a second home in Nairobi for his wife p. 12. He wanted a second house for his wife. If he had put his intention to sublet for a year he would have put it out of his power to have his sick child in Nairobi. P. 14. They did not find out whether Rodrigues would return the house to them after 3 months. It was only after the expiry of notice to quit that he thought it would be nice to have the house in Nairobi because the child became ill. The Skinner case precludes these matters being taken into consideration, and p. 553. It is the right of a tenant only—not his relatives who are protected. Definition of the expression "landlord" in section 2—extended by law to the "widow" p. 552 and p. 553.
Skinner v Geary. The wife and family are there with the permission of the tenant. P. 546.
Brown v Draper (1944) I All E.R. 246 and p. 247.
Lawrence v Draper (1944) 1 All E.R. p. 257 and p. 260.
If one leaves a few effects behind, he cannot be said to be living there. Left there merely to lend colour to the idea that possession had not been given up. P. 10 p. 14.
If there was the same accommodation at Dondora there was no excuse for leaving the things behind. P. 34.
He and his family were in actual residence at Juja.
At date of hearing his job had lasted 14 months and looked like lasting indefinitely. The power to terminate the job monthly did not make the job a temporary one. P. 21 Record. If Rodrigues was going to India how could Rodrigues look after his belongings. 25 clearly shows that he expected his job to last beyond 3 months. P. 13 and p. 10 and p. 11 line 5 of 2nd para. Skinner v Geary p. 561 and 562. Sea captain has no house at sea. He resides with his wife and family and p. 24 and 27 and 28. P. 31 Exhibit A20.
Butcher v Poole (1942) 2 All E.R. 572.
We had the right to re-occupy. At the date of hearing when his job had lasted so long.
Where was he residing in point of fact? At Juja. The Judge could not have come to any other conclusion. Next once the notice to quit had expired we had the right to walk in.
Next if we were justified in so doing there was no question of wrongful dispossession and no damages could have been awarded against us.
In any event, only nominal damages could have been awarded.
Cruise v Terrell (1922) 1 K.B. 664.
No aggravating circumstances
Ground 4 of Appeal
Judge erred in thinking we were not entitled to put the goods out. Where a person has placed on your property you are entitled to put the things out. To a trespasser a landlord owes no duty. But we did time and again write and ask him to take his goods. When we were going to break in onus always on plaintiff to prove a direct taking of goods. See Record p. 10. He alleges only that certain articles were missing. P. 36 and p. 37. The evidence as to the alleged missing articles is not convincing. See p. 10. There was a padlock belonging to plaintiff on and defendants merely put another padlock on top.
P. 26. Exhibit A11 is dated 6 March. He does not say that the premises appear to have been interfered with. PP. 30 and 12. When he visited the

place he said lock was there (Exam-in chief). The Judge did not discuss any of those facts. P. 5 Judgment.
None of them could swear to any taking by the defendants.
There must be some *prima facie* of taking of goods.
" Many things could have happened "—this should not appear in a judgment. There is no reason why our inventory is not convincing. P. 38 and p. 17 Record. The Judge gave no reasons for rejecting the evidence of Sorab Rabadi—our independent witness. Same with witness p. 16. Why should this witness know whose locks they were? P. 22. See the Judge's comment on Exhibit A15? Judge might say same of A17 and he might argue on same way. The Judge forgot that one of the defendants moved into a part of these premises. See the evidence at p.15. They were living next door. No cross-examination of Devji Hamir on the Inventory. P. 15.
They could see what was left behind. We made this statement on 20 February. It was not challenged. No counter statement made till A16 i.e. on 4th April. Exhibit A24. Claim of 18th September, 1946. The Morleys were all out to make some sort of a claim. Exh. A27 and 29. Exhibit A27 and Exhibit A29. We were not bailees. No evidence of our negligence, could we have done more than we did? They never intended to take possession of the goods. The Authorities show that a person cannot live in one premises and claim another where he is not living. We were justified in walking in.
No damages could be awarded. Re damages for conversion Judge has not properly considered the evidence. He wrongly put the onus on my clients.
Claim for trespass to goods on conversion was unfounded.
No evidence that the goods were missing 1 p.m.

Adjourned till 6th August, 1947, at 9 a.m.

9 a.m. 6th August, 1947.

GAUTAMA:

Second sub-para of Para 1, i.e. Part 1 (ii) Memo of Appeal. Finding of fact. Factors which influence the Judge in finding that the respondents had never really intended to give up the premises. Page 4 of judgment. Respondent was not sure of a permanent job: monthly basis only. Also found wife expecting a baby. Children in bad health: medical attention only in Nairobi. Left some of his belongings on premises. Only took the most essential things to Dondora.
14 Record.
Another factor—subletting. Particular kind of subletting. Sec. 19.
Kenya's Ordinance. Tenant can sublet for a period of not more than 12 months. Amending Ordinance 1943. Page 21 Exhibit A5—Page 22 Exhibit A7 and Exhibit A6. Ultimately my client withdrew his application. My client never intended to give up his tenancy. In February 1946 he did not intend to abandon possession and it was on 4th April, 1946, that he wanted to have the premises for himself.
Page 29 Exhibit A16 and p. 30 Exhibit A17.

COURT:

What was the position in March, 1947—date of hearing?

In the Court of Appeal.

No. 17.
Judge's Notes, 5th August 1947. to 6th August 1947. *continued.*

GAUTAMA:

He had to have a roof over his head; so he had to live at Dondora—Had he not been dispossessed he would have come to live in Nairobi. He was dispossessed when appellant put his padlock in middle of March and ultimately on 25th April, 1946, the appellants broke in.

Page 13 top—Re-exm. of respondent "Had I not been dispossessed I would have come back to Nairobi."

P. 14 Record.

Facts in Skinner v Geary are entirely distinct from this case. Decision was based on facts of Skinner v Geary

Skinner v Geary p. 549.

In the case of S. v G. the tenant had never any intention of resuming occupancy. In our case my client had no intention of abandoning occupancy. I say that the end of March or beginning of April is the material date—P. 2 of judgment.

Leslie v Cumming (1926) 2 K.B. page 417.

Brown v Draper.

In our cases, appellant should have filed an action for ejectment and asked for an order of possession.

By forcibly putting a padlock (before the expiry of notice to quit) the appellants have put it out of their power etc.

The appellants should have filed a suit.

Subsidiary issues: Evidence of taking necessary?

There was evidence on which the Judge was entitled to find that the respondents had left behind certain chattels.

Page 5 Judgment. The appellants trespassed, on the day they put their own padlock on the premises thereby depriving the respondent of the chance of going there (late in February, before 6 March).

Damages: Respondent had no place at Dondora to put his things in—child also ill.

General Damages: E. A. Hotels Ltd. v Theodore C. A. 18/46.

KHANNA REPLIES: Intention to return is a question of law—it is an inference from proved facts. The findings of fact were not viewed as a whole, and Court viewed the facts as they existed in February and not at date of trial. At date of hearing respondent was permanently at Dondora. The baby had already been delivered at the date of hearing. The application to sublet was withdrawn—See Exhibit A7. Page 22. The case must be treated as if the application had never been made. Exhibit A10 p. 24—we say that Sec. 6/11 of 1943 Ordinance applied to a particular case—e.g. a man on overseas leave—He must apply when he is in personal occupation.

C.A. 20/43 Vol. 11 (1944) Court of Appeal for E. A. Pages 24 and 28.

The evidence refutes the idea that he intended to remain on in the Nairobi house. He never wanted to get back. Page 3 of the Plaint. His case was that he was a stautory tenant. Sec. 17 (1). Term is inconsistent with the statute. Even at common law before tenancy expires we are entitled to put on a lock. A number of persons were coming to see the premises. We put on a lock to prevent other people getting in. (i.e. other sub-tenants.)

The only consequence was that the rent was suspended.

We objected to Rodrigues.

GAUTAMA:

Page 31 and 32 Exhibit A20.

KHANNA:

We said we wanted these goods. We did not bar his personal entry. We did not bar his complete entry for all purposes.
Foot of p. 32 Exhibit A21.
We did not want any sub-tenant whom we did not like.
(Sec. 6 (1) 1943 Ordinance).
So we were entitled to put on the lock.

COURT:

You broke in on 25th April, 1946.
You said he was not under the protection of the Ordinance?

KHANNA:

Question was had respondent taken up residence at Dondora?
Leslie v Cumming is clear. *The object* which induces a man to go elsewhere.
Sec. 11 (1) (d)—strengthens my argument.
" Possession "

JUDGES' NOTES:

Swift J.—Hicks v ——
Scassdele Brewery (1924) W. N. 189 p. 552 and 555.
Scrutton L. J.
Effective possession " actual possession "
Sec. 17 (1)
Butcher v Mayor etc. of Poole (1942) Vol. 2 All E.R. p. 572.
Retaking possession without resort to the Court.
Lawrence v Hartwell—Norton L. J. (1946) 2 All E.R. p. 257 and p. 259.
The Acts give a purely personal right of residence.
" genuinely occupying the premises as a place of residence ".
Butcher v Poole. Difference between temporary absence and abandoning.
The object is the test. Duration of visit is irrelevant.
Re-taking possession of demised property—Common Law right of placable re-entry has not been ousted except where person is in actual possession of the house. A statutory tenant has no estate right in the tenancy. All the Acts say " You must turn out a man who is in actual physical residence." Here there was no outrageous conduct.
Damages should be nominal.
Cruise v Terrell (1922) 1 K.B. p. 664.
Sec. 17 (1) Possess must genuine residence.
Appeal should be allowed with costs here and below.
ORDER: C.A.V.

D. EDWARDS, C. J.

6th August, 1947.

No. 18.

JUDGMENT.

NIHILL, P.:

This appeal which raises important questions under the Kenya Rent Restrictions legislation has been most carefully and strenuously argued before

In the Court of Appeal.

No. 18. Judgment, 20th August 1947 *continued.*

us. In order to understand clearly the issues raised by this appeal and to arrive at their determination it is necessary, I think, first to set out the facts at some length. In November, 1945, the respondent, whom hereafter I shall refer to as " Mr. Morley " or " the tenant," became the tenant of the appellants, who trade as a firm under the style of the African Boot Company, in respect of a portion of certain premises belonging to the Company situated in Fairview Road, Nairobi. Before that Mr. Morley had been a sub-tenant of a Mrs. de Silva who had leased the whole premises but after her departure to India in November, 1945, the appellants recognised Mr. Morley as their direct tenant. The portion of the premises rented by Mr. Morley comprised two living rooms, a kitchen, a portion of the verandah and the common use of a bathroom and lavatory. In their Memorandum of Appeal the appellants took the point that the learned Judge of the Court below erred in finding that there was a separate letting so as to bring the premises within the scope of the Rent Restrictions Ordinance, but this point was abandoned by Mr. Khanna, Counsel for the appellants, at the outset of the hearing and I think rightly so. There is abundant authority for the view adopted by the learned Judge that where the living rooms are not shared in common there is a separate letting so as to bring the portion of the house let within the definition of a " dwelling house " as defined in the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940 (Cole v Harris (1945) 2 A.E.R. 146).

Until the end of January, 1946, Mr. Morley lived in the rooms rented from the appellants with his wife and children. On 1st February, 1946, he accepted employment on an estate at Dondora, some 16 miles from Nairobi. He went to live on the estate and on 9th February his wife and children joined him there. That the Morleys left some of their possessions behind in the flat is evident; precisely what or how much was in dispute between the parties but the learned trial Judge has held that as the result of action subsequently taken by the appellants Mr. Morley lost a quantity of his personal effects, including a suit of dress clothes, and a conjuring outfit. This factor in the case will become material later on when I consider whether Mr. Morley in fact remained in possession of the premises after 9th February or whether he had by then transferred his real home to the estate at Dondora. On 15th February Mr. Morley requested his landlords to allow him to sub-let the flat to one Rodrigues, but permission was refused whereon Mr. Morley applied to the Rent Control Board, a body set up under the provisions of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940. The appellants contend that this action of Mr. Morley's shows clearly that he had removed his real home from Nairobi, but Mr. Morley stated in his evidence, which the learned Judge accepted, that he had come to an arrangement with Rodrigues by which his wife and children could use the flat whenever they came to Nairobi. From Mr. Morley's evidence the position in February, 1946, seems to have been this. His wife was expecting a baby, another of his children was sickly, there were no proper medical facilities at Dondora, he knew that he would have to send his wife and family to Nairobi from time to time, he knew also that he was on trial in his new employment which was terminable on a month's notice. Under these circumstances as a prudent man he needed at least to retain a pied-a-terre in Nairobi to which he could return permanently if things went wrong at Dondora. In the meantime, as he was not a wealthy man, it suited him to put his friend Rodrigues into his flat as a sub-tenant. That on the evidence accepted and the exhibits seems to me a fair summary of the

position in February, 1946. Whether it constitutes circumstances amounting to a relinquishment by Mr. Morley of his possession of the Nairobi flat or not I will discuss later. As soon as the appellants knew that Mr. Morley wanted to move in Rodrigues they began to take action. On 20th February they served notice to quit on Mr. Morley expiring at the end of March. On some date between 20th February and 6th March that is before the expiration of the notice to quit the appellants put their own padlock on the entrance to Mr. Morley's flat. Their explanation of this exceptional action is not that they wished to exclude their tenant from possession but that they were determined to prevent the entry of an unauthorised sub-tenant, Mr. Morley in their view having surrendered his physical possession of his flat although his tenancy had still a few weeks to run. By the time the notice to quit had expired the parties were at arms length and their respective lawyers were in correspondence with each other and with the Rent Control Board. On 6th April, 1947, Mr. Morley wrote a letter to his lawyer (Exhibit A11) in which he stated that he had no intention of giving up the flat and adding " my family will certainly occupy the house within 3 months." At about the same time the application to the Rent Control Board for possession to sub-let was withdrawn. The appellants, however, regarded the tenancy at an end and requested Mr. Morley to remove the effects he had left in them, but this request was ignored. During April Mr. Morley's lawyers were trying to get the Rent Control Board to deal with the matter as a dispute arising between landlord and tenant under section 5 of the Ordinance but the appellants advised by their lawyers refused to be drawn. Their position was that Mr. Morley was no longer their tenant and had therefore no status to bring a dispute before the Board and on 17th April (Ex. A20) the Secretary of the Board was informed that the appellants as landlords were about to proceed to re-possess themselves of their premises by self help, a threat which was put into execution on 25th April. On that day the flat was opened and an inventory (Ex. C) was taken. It may be remarked here in passing that this inventory itemized none of the things that Mr. Morley months later declared to be missing from the flat. Both the Rent Control Board and Mr. Morley's lawyer were notified of this breaking into the flat and the latter was requested to take charge of his effects. This request seems to have been ignored as five months later (18th September) the appellants' lawyer again wrote to Mr. Morley's lawyer (Ex. A23) stating that if the effects were not taken away within a week they would be put out in the yard at Mr. Morley's risk. Still Mr. Morley hesitated for it was not until mid October that an inspection of his effects was made. On 22nd October the appellants' lawyer was informed (Ex. A28) that the Morleys had found a quantity of clothing and other articles missing to the total value of Shs.1495/-.

Enough has now been said to make it possible to state what is the crucial issue in this case which can be put in the form of a question. Was Mr. Morley on the 25th April, 1946, in possession of a portion of the appellants' premises of which he was formerly a contractual tenant or not? If he was, then in spite of the expiration of the notice to quit, he had become what is loosely called " a statutory tenant " by reason of the provisions of section 17 of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance, 1940. If this was Mr. Morley's status the appellants had no business to exercise self help for without a court order for possession they could do nothing. On the contrary if Mr. Morley had ceased in law to retain possession of the flat then this appeal must succeed. The learned Judge in the Court below addressed

In the Court of Appeal.

No. 18. Judgment, 20th August 1947. *continued.*

his mind to this issue and after reviewing the leading cases came to the conclusion that the facts proved established beyond doubt that although Mr. Morley temporarily left his premises his home was still in them as he intended to return to them. Now, that is a conclusion that this Court will, I think, hesitate to upset unless convinced that the learned Judge has drawn incorrect inferences from the established facts.

Mr. Khanna, Counsel for the appellants, has attacked this conclusion on a broad front. He has urged that the basic reason for the Rent Restriction Ordinance is the shortage of housing accommodation, and that if people can obtain protection for a pied-a-terre in addition to premises in which they are actually residing the whole intention of the legislation is defeated. As a general proposition I am in entire agreement but the matter is not so simple that it can be resolved in general terms. That there may be "possession" without actual physical occupation Mr. Khanna concedes, but his contention is that the present case does not come within those exceptional cases where the courts have held that possession is not lost by reason of temporary non-residence. It is just here that the difficulty arises in the appeal before us for to my mind it is essentially a border line case which needs very little to swing the scale either way. At the date of the hearing of the suit in the Court below Mr. Morley had been fourteen months working and living on the estate at Dondora and there is no evidence that he contemplates giving up his employment there. However, it is urged that by reason of the actions of the appellants he has had no option in matter as he has been deprived of his residence in Nairobi since April, 1946, and has had nowhere else to live. Mr. Morley could at any time have terminated his employment at Dondora by giving a month's notice and no one can say that he might not have done so had he had a home to return to in Nairobi. It is apparent that the learned Judge in the Court below was much influenced in his decision by his finding that Mr. Morley had no real intention to cease to make the Nairobi flat his home. Mr. Khanna contends that the facts do not establish that intention as a reasonable inference but for my part I think on this point the scale is tipped against the appellants. Whatever may be the position to-day I consider all the evidence points to the fact that Mr. Morley between February and the end of April, 1946, had not formed the intention of permanently transferring his home to Dondora. There were many urgent reasons why he should not do so. After a careful consideration of all these factors I have come to the conclusion that I cannot say that the learned Judge was wrong in the conclusion he arrived at and that the answer to the question I have put myself must be that Mr. Morley had not relinquished possession of his flat on 25th April, 1946. In fact, I think, the true position by April, 1946, was that the appellants were anxious to force their tenant out of possession whilst he on his part was just as anxious to retain it. We have been referred many times during the hearing of this appeal to the leading cases of Skinner v Geary (1931) 2 K.B. 546 and Brown v Draper (1944) 1 A.E.L.R. 246. The former case which was a second appeal in England from a County Court judgment is important because therein the Court of Appeal Judges (Scrutton, Greer and Slesser Lord Justices) tried to straighten out what had become in England as early as 1931 a tangled skein of contradictory decisions. From a careful study of the three judgments what does, I think, emerge particularly from the judgments of Scrutton and Slesser L.JJ. is that the majority of the courts held that the Rent Restrictions Act did not apply to a non-occupying tenant who had given up occupation without

any intention to return. Both Their Lordships took pain to stress that they did not apply the term "resident" in a narrow sense. Thus Scrutton L. J. at p. 681 of the report supra said :—

> "I am dealing in this case with that of a man who does not intend to live in the premises, who has not lived in the premises for ten years, and who . . . has shown no evidence of ever intending to return to the premises because he is quite comfortable where he is."

Again at p. 683 :—

> "For the reasons I have stated therefore in my view the Rent Restrictions Acts do not apply to a tenant who is not in occupation in the sense that it is his home in which he lives and to which he intends to return, although he may be absent at the time of the claim for possession."

Finally Slesser L. J. at p. 686 :—

> "I agree with my Lord that in the case of persons who have an intention to return who are away for a limited period for purposes of business convenience it may fairly be found in a particular case that they are still in actual possession and therefore protected."

Before leaving Skinner v Geary I think it is worth while to point out that from the judgment of the learned County Court Judge (upheld by the Court of Appeal) it appears that he made an order for possession because he was of the opinion that the purpose of the occupation of the persons allowed to reside in the premises by the tenant was not to preserve the house as a residence for the tenant. As has been revealed in the facts in the case before us which I have stated above Mr. Morley from the very first expressed his intention to return. In Ex. A5 which was written on 15th February, 1946, the Manager of the African Boot Company was told that Mr. Morley wanted permission to put Rodrigues into the flat "in order to look after his things until he returns," or in other words to preserve the premises for him as a residence.

Brown v Draper (supra) which was decided on a quite different issue to the one now before us is nevertheless helpful in showing that a tenant can only lose the protection of the Acts either by his voluntary surrendering possession at the termination of his contractual tenancy or has an order for recovery of possession made against him by the Court, which order could not of course be made by a court in Kenya unless the court considered it reasonable to make such an order after finding that the landlord's application came within one of the grounds set out in the lettered paragraphs of section 11 (1) of the Increase of Rent and of Mortgage Interest (Restrictions) Ordinance.

Thus to quote the Master of the Rolls at p. 248 :—

> "These propositions (that is the ones I have just sketched) appear to us to be established by the language of the Act itself. If authority is needed for them it is, we think, to be found in the decision of this Court in Barton v Fincham (1921) 2 K.B. 291, and we would refer particularly to the judgment of Scrutton L. J. in that case. The only passages which we find it necessary to quote are there at p. 297 :—
>
> > 'He can leave at his own free will, surrendering his tenancy . . . But if he is in possession and unwilling to give it up, possession can only be obtained by order of a court.'"

In the Court of Appeal.

No. 18. Judgment, 20th August 1947. *continued.*

Returning to Mr. Morley it is clear enough as I have already pointed out that when his contractual tenancy expired he was far from being willing to surrender possession. He had at least some furniture and effects in the premises and on at least two occasions he or his wife and family had tried to occupy them. It was in the full knowledge of these circumstances that the appellants resorted to the procedure of self help instead of bringing the dispute to the notice of the Rent Control Board with a view to obtaining consent under section 4 to their applying for a court order for possession. Whatever advantages a resort to self help may have had under the Common Law it is a dangerous expedient to resort to in these days of Rent Restriction legislation and if the appellants as a result of this legislation have found it so I do not think their plight is deserving of much sympathy. Their counsel has indeed contended that even if they were wrong in the assumption they made that Mr. Morley had relinquished possession of the premises they thought they had a bona fide right to re-enter and that therefore the damages against them for their trespass should be only nominal and he has cited to us in this connection the case of Cruise v Terrell (1922) 1 K.B. 664. In that case when the tenants who only used the premises as a week-end cottage, were out of occupation, the landlord sent the local blacksmith to the cottage who broke into the premises and put a new lock on the door and locked it. The landlord also threatened to remove the furniture and put it into a barn. The tenants brought an action for trespass and were awarded £60. The Court of Appeal reduced the damages to £10 because they found that there were no aggravating circumstances which called for vindictive damages. The tenants had given no evidence of special damage in having been put to expense in finding other cottage accommodation. The Court followed the view expressed by Bowen L. J. in Whitham v Kershaw, 16 Q.B.D. 613, that where there are no aggrevating circumstances the damages awarded should be limited to the actual damages proved.

In the present case special damage was pleaded and on the evidence accepted by the learned Judge it appears that goods to the value of Sh.1495/- belonging to Mr. Morley disappeared from the premises. Believing Mr. Morley's evidence as he did it was a reasonable inference to draw that this loss flowed from the appellants' breaking in and entry of the premises, although as I have already pointed out Mr. Morley showed little intention to protect his effects between April and September. However in view of the very definite finding of fact by the learned Judge I do not think that this Court should interfere with that part of his order.

I have also considered whether the learned Judge's assessments of the general damages calls for our intervention. This Court will not readily interfere with an assessment of damage made by the Judge who heard the suit unless it be demonstrated that he proceeded on some erroneous basis. I have above referred to the case of Cruise v Terrell on the authority of which I have to ask myself whether there are any aggravating circumstances in the case before us. The appellants in breaking into their premises on 25th April believed that they were acting in pursuance of a claim of right and I should not regard that action as per se an aggravating circumstance. It does not, however, stand alone. On 6th March they prevented ingress to the flat by putting on their own padlock. This occurred some three weeks before the termination of the contractual tenancy when the appellants clearly had no shadow of right to do what they did. It is this action that differentiates this case from Cruise

v Terrell (supra) where the padlock was affixed after the termination of the contractual tenancy. There is plenty of evidence that this locking out of Mr. Morley while he was still the contractual tenant of the appellants constituted an aggravating circumstance. On two occasions when Mr. Morley's family had to be in Nairobi they had nowhere to stay and on the day his child was operated on it had to be taken back to Dondora, after the operation. I have accordingly come to the conclusion, therefore, that this Court should not vary the amount of the general damages awarded, as I am not satisfied that the learned Judge made an erroneous estimate. In my view therefore the appellants have failed both on the main issue and on the question of damages and I would dismiss this appeal with costs.

20th August, 1947.

GRAHAM PAUL, C. J.:

I have had an opportunity of reading and considering the judgment which has just been delivered by the learned President and I find myself in respectful agreement. There are only a few special points upon which I should like to express my views.

It is unnecessary for me to narrate the facts of the case as these are so fully and clearly set out in the learned President's judgment. In my opinion this case never presented any real difficulty in regard to the main point of the law which took up such a long time at the hearing of the appeal. The very lengthy argument of the appellants' counsel tended to confuse the main question of law before us because the main theme of his argument was an endeavour to bring this case within the authority of Skinner v Geary. In doing this with tremendous pertinacity counsel in my view completely lost sight of the main essential in considering decided cases on this branch of the law, namely that each case depends upon its own facts and circumstances. Instead of recognising that essential consideration in his argument appellants' counsel persisted in ignoring the facts and circumstances and the real decision in Skinner v Geary, and instead, by taking fragments of the judgments delivered in that case, he endeavoured to piece them together into something to fit the entirely different facts of this case—always a most confusing and dangerous method.

The judgments of Scrutton and Slesser L. JJ. make quite clear what these learned Judges considered to be the material facts upon which their judgments were based.

According to these judgments the most material facts upon which the decision in Skinner v Geary was based were firstly the quite definite fact in that case that the " tenant " had no intention of ever resuming residence in the house in question. Secondly that he had voluntarily and finally given up his residence in the house ten years before. Thirdly that what was founded upon as his possession, namely the occupation by relations other than his wife and children, was not intended to preserve the house for his own residence. Upon every one of these material points the facts of the present case are absolutely the opposite of what they were in Skinner v Geary. It is impossible to read the judgments of Scrutton and Slesser L.JJ without realising that their judgments would have been to the opposite effect if these material facts had been to the opposite effect as they are in the present case. In my view the case of Skinner v Geary which appellants' counsel so laboriously made the foundation of his case does not help him at all, but is in effect against him.

In the Court of Appeal.

No. 18. Judgment, 20th August 1947. *continued.*

There has been at the hearing of this case a good deal of loose reference—as if it were established law—to the proposition that if a person occupies more than one dwelling house that alone is sufficient to deprive him of the protection of Rent Restrictions legislation. I cannot find that there is any provision in the Regulations that that effect, nor can I find any case which so decides. Indeed Scrutton L.J., whose collected judgments on the subject might well be regarded as the Bible of Rent Restriction law—in his careful judgment in Skinner v Geary chose two specific cases which he distinguished from the facts of Skinner v Geary namely the case of a ship captain periodically absent for long periods and the " week-end cottage." A " week-end cottage " is quite definitely an instance of one person occupying two houses—one during the week and the other at the week-ends and Lord Justice Scrutton deliberately chose it is an example where protection might be given. It is in my view of the authorities by no means fatal to the respondent's case that at the material date he had his work and a house at Dondora as well as a house to meet the requirements of himself, his wife and children at Nairobi on occasions. The principles of the Rent Restrictions legislation—important as they may be —do not over-ride the right and the duty of a husband to provide to the best of his ability for his wife and children the accommodation they may reasonably require. Each case I repeat must be decided upon its own facts and circumstances and in the facts and circumstances of the present case I find myself in no difficulty at all as to the law to be applied. It is certainly not the decision in Skinner v Geary.

In my view the real position in this case was that while the respondent was a contractual tenant in possession but temporarily absent the appellants wrongfully and illegally interfered with the tenant's rights by locking him out. The appellants' next wrongful and illegal act was to take possession by forcible entry while the respondent was a statutory tenant in possession. If that sort of thing were to be encouraged or permitted there would of course be an end to the protection afforded by the Rent Restrictions Regulations and indeed to peace and good order. It cannot be to clearly emphasised that once a person has come under the protection of the Regulations as a " statutory tenant " the only proper way he can be put out is by an order of court made in proceedings the taking of which has been sanctioned by the Board. If of his own free will the statutory tenant relinquishes his possession of course no question arises but it is nonsense to suggest that there was voluntary relinquishment of possession by the statutory tenant in this case and it was sheer impudence on the part of the landlord to ignore the Board and the Court and proceed to take the law into his own hands as he did.

It is I think sometimes forgotten that in the policy and the scheme of these Regulations it is not enough for a landlord seeking to eject a tenant merely to bring his case within one of the lettered clauses of Regulation 11 (1). In addition he must satisfy the Court that it is reasonable to make an order for possession in the circumstances of the case. Reasonableness must always be a question of fact in the particular case, and in considering whether it is reasonable to make an order for possession in suit inter partes the Court must look at the circumstances not only of the plaintiff or of the defendant but of both parties. I do not consider that this is a case where the Court would have deemed it reasonable to make an order for possession if the landlord had condescended to go to the Court instead of taking the course he did. The

Court would not have given him possession and in my view the Court below was right not to let him retain the possession he forcibly took.

As to the amount of general damages my view is that the assessment of general damages by the learned trial Judge was not excessive to a degree which would justify this Court in interfering with it on appeal. To my mind this is a particularly glaring case of manifest and impudent illegal action by the appellants. I feel not the slightest sympathy for the appellants who without any shadow of right locked the respondent out of the house even before the notice to quit expired. I attach no weight at all to the specious excuse put forward that they were only trying to keep out strangers and not the respondent. They had no shadow of right even to do that when they locked up the house. I find nothing whatever on the evidence to justify that excuse. If a landlord effectively and illegally in the temporary absence of the tenant and during the period of a contractual tenancy locks the premises let, the tenant must assume that he does so to keep him out unless the landlord informs him to the contrary and there was never the slightest hint from the landlord or his solicitor that the padlock was not intended to prevent the tenant using the house legitimately as a contractual tenant to begin with, and as a statutory tenant later. As a result of this illegal locking up, the respondent's child, according to the respondent's evidence which was accepted by the learned trial Judge, was stranded in Nairobi immediately after the surgical operation without any accommodation and had to be taken out to Dondora. For that sort of thing in my view general and not special damages is the proper remedy.

In my view conduct such as the appellants' in this case should be very strongly discouraged. Indeed it is difficult to see how the conduct of the appellants in breaking into the house in April would not amount to a criminal offence under section 87 of the Penal Code. Citizens—and their legal advisers—must be made to realise that high-handed illegal action like this will not pay. At least, such is my opinion. For these reasons I respectfully agree that the appeal should be dismissed with costs.

Mombasa, 20th August, 1947.

EDWARDS, C. J.:

I respectfully agree with the judgments delivered on the main point that the learned trial Judge was on the evidence, entitled to find that the plaintiff at the material time had not ceased to be in "actual possession" of the flat in question. Like the learned President, I too think that this is a border line case and I trust that tenants as well as landlords and their legal advisers will heed the warning of the learned Chief Justice of Tanganyika that decided cases are, as a rule, to be relied upon only in so far as their particular facts and circumstances are in general accord with those of the case actually being argued. Keeping this in view, I would add that I might not be prepared to hold that a tenant who, on transfer say, from employment in Nairobi to a post in Naivasha, taking his wife and family with him, leaves only a few sticks of furniture in his house in Nairobi, should, in the absence of special circumstances showing a definite intention to retain possession of a house rented by him in Nairobi, be regarded as still in actual possession of that house. In the instant case it must be remembered that the learned trial Judge held that the facts established beyond doubt that, although the plaintiff temporarily "left the premises, his home was still in them and he intended to return to them."

In the Court of Appeal.

No. 18. Judgment, 20th August 1947. *continued.*

With regard to damages—special damages of Shs.1495/- and general damages of Sh.2000/- I do not feel that we, as an appellate court, are entitled to interfere with the estimate of the Court below. I have some doubt as to whether the figure of 2000/- is not excessive; but as Lord Goddard, Lord Chief Justice, said in the case of Chesterton Rural District Council v Ralph Thompson Ltd. 1 All E.R. (1947) page 274, "unless an appellate court is satisfied that the court below is wrong it should not interfere." As I am not so satisfied I would dismiss this appeal with costs.

20th August, 1947.

No. 19. Decree, 21st April 1948.

No. 19.

DECREE.

THIS APPEAL coming on 20th August, 1947, for hearing before His Majesty's Court of Appeal for Eastern Africa in the presence of D. N. KHANNA ESQR on the part of the Appellant and of S. C. GAUTAMA ESQR on the part of the Respondent IT IS ORDERED that the appeal be dismissed with costs and that the Appellant pay to the Respondent his taxed costs of the appeal.

DATED this 21st day of April, 1948. at Nairobi.

D. F. SHAYLOR,

REGISTRAR,

COURT OF APPEAL FOR EASTERN AFRICA.

I hereby certify that the Bill of Costs of the Respondent in the above appeal has been taxed and allowed at Shillings Two thousand One hundred and Twenty three only (Shs. 2123/-).

DATED this 21st day of April, 1948

D. F. SHAYLOR,

REGISTRAR,

COURT OF APPEAL FOR EASTERN AFRICA.

EXHIBITS.

Exhibits

A (1) Letter D. N. Khanna to Mrs. D'Silva, 13th January 1945.

EXHIBIT A (1)

Letter D. N. Khanna to Mrs. D'Silva.

Mrs. D'Silva
Fairview Road,
NAIROBI.

13th January, 1945.

Dear Madam,

I am informed by your landlords, the Africa Boot Co. of Nairobi, that you are about to leave for India with your children.

If and when you do leave, you are requested to deliver the vacant possession of the two rooms in your occupation, as they are required by the landlords for themselves.

Any Sub-letting without the consent of the landlords, (which consent can under the circumstances not be given), would render the said " sub-tenant " a trespasser, and on your ceasing to reside in the premises, you yourself would not be afforded any protection whatever under the existing legislation.

You are accordingly hereby given notice to quit and deliver up the vacant possession of the premises held by you of my clients as a monthly tenant on the 1st day of February, 1945, or at the end of your complete month of the tenancy for January.

Yours faithfully,
D. N. KHANNA

Copy to:

Mr. Morley,
Fairview Road,
NAIROBI.

For information.

Exhibits

A (2) Letter G. R. Mandavia to D. N. Khanna, 29th January 1945.

EXHIBIT A (2)

Letter G. R. Mandavia to D. N. Khanna.

G. R. MANDAVIA
ADVOCATE
Telephone 3640

P.O. Box 759,
Nairobi,
Kenya Colony.
29th January, 1945.

D. N. Khanna Esqr
Advocate,
Nairobi.

Dear Sir,

The African Boot Co., Mrs. d'Silva and Mr. G. S. Morley

With reference to the copy, sent to my client Mr. Morley, of your letter of the 13th instant, addressed to Mrs. d'Silva, I am instructed to point out that my client has been a sub-tenant of Mrs. d'Silva, in respect of two rooms and outhouses, at the above address for a very long time now.

In the circumstances, my client will resist the giving or taking of vacant possession of the portion of the premises in his occupation.

My client feels that the rent now collected for the portion sub-let to him is much higher than what could be the ' standard rent ' thereof, and accordingly my client objects to the payment thereof.

An application is being made to the Rent Control Board for determination of the standard rent of the portion in his occupation.

Yours faithfully,
G. R. MANDAVIA.

Copy to:

1. Mrs. d'Silva, Fairview Road, Nairobi.
2. The Secretary, Rent Control Board, Nairobi.

A (3) Letter D. N. Khanna to G. S. Morley, 25th October 1945.

EXHIBIT A (3)

Letter D. N. Khanna to G. S. Morley.

Mr. G. S. Morley,
Fairview Road,
NAIROBI.

25th October, 1945.

Dear Sir,

PLOT NO. 1635/2—FAIRVIEW ROAD.

Mrs. d'Silva is leaving for India to-day, and is arranging to hand over vacant possession of the portion of the premises in her occupation to my clients, Messrs African Boot Co., this afternoon.

She has also terminated her tenancy of the whole house with the result that you become a direct tenant of my clients, in respect of the portion in your occupation, which consists of two rooms.

This is therefore to direct you to pay all future rent to Messrs African Boot Company, which is Sh.60/- per month. The rent for September, which becomes due in arrear is also payable to my clients.

Kindly confirm that you would pay the said rent to my clients.

Yours faithfully,
D. N. KHANNA

COPY TO:

The Secretary, Rent Control Board, NAIROBI.
Ref: File No. 826, for information and to guard against any one breaking into the vacated rooms and setting up a pretended tenancy.

A (3) Letter D. N. Khanna to G. S. Morley, 25th October 1945. *continued.*

EXHIBIT A (4)

Letter Mrs. D'Silva to African Boot Company.

To
The African Boot Company,
NAIROBI.

25th October, 1945.

A(4) Letter Mrs. D'Silva to African Boot Company, 25th October 1945.

PLOT NO. 1635/2—FAIRVIEW ROAD.

I am handing over to you vacant possession of two rooms, one kitchen and verandah in the above premises, and terminating my tenancy of the whole house, and Mr. G. S. Morley, who is my sub-tenant in respect of two rooms, will become your direct tenant.

I have instructed him to pay over the rent from September onwards to you, which he has agreed to do.

Yours faithfully,
D'SILVA.

EXHIBIT A (5)

Letter R. C. Gautama to African Boot Company.

The Manager,
African Boot Company,
Delamere Avenue, NAIROBI.

15th February, 1946.

A (5) Letter R. C. Gautama to African Boot Company. 15th February 1946.

Dear Sirs,

I am instructed by my client Mr. G. S. Morley of this town who occupies a portion of your premises situate in Fairview Road Nairobi, to ask for your formal consent, as I hereby do, to sub-let the said portion to Mr. Rodrigues during my client's temporary absence from Nairobi in the following circumstances:—

My client Mr. Morley is going temporarily for a job to Dandora Estate leaving his things in the premises at present occupied by him in charge of Mr. Rodrigues who will live in the premises and look after my client's things until he returns.

Exhibits

A (5) Letter R. C. Gautama to African Boot Company, 15th February 1946. *continued.*

It is needless to say that my client will be responsible for payment of the rent.

I shall therefore be glad if you will please give your consent to sub-let by or before Monday the 18th instant failing which necessary application will be made to the Rent Control Board in that behalf without further notice.

Yours faithfully,
R. C. GAUTAMA.

COPY TO:
The Secretary,
Rent Control Board, Central Province,
NAIROBI.

A (6) Letter R. C. Gautama to Rent Control Board, 20th February 1946.

EXHIBIT A (6)

Letter R. C. Gautama to Rent Control Board.

The Secretary,
Rent Control Board, Central Province,
Town Hall, NAIROBI.

20th February, 1946.

Dear Sir,

Re: G. S. Morley & The African Boot Company.

Pursuant to my letter herein dated 15th instant addressed to the African Boot Company, a copy whereof was forwarded to you and a reply thereto from Mr. D. N. Khanna, Advocate, dated 20th instant, I hereby apply for the Board's consent under section 6 (1) (b) of Ordinance XXVI of 1943 to sub-let during my client's temporary absence from Nairobi on a job to Dandora Estate, P.O. 1023, Nairobi.

Yours faithfully,
R. C. GAUTAMA

COPY TO:
D. N. Khanna Esqr
Advocate, NAIROBI.
Ref: Your letter of 20.2.46.

A (7) Letter D. N. Khanna to R. C. Gautama, 20th February 1946.

EXHIBIT A (7)

Letter D. N. Khanna to R. C. Gautama.

C.F. 61
R. C. Gautama Esqr
Advocate,
NAIROBI.

20th February, 1946.

Dear Sir,

Your letter of the 15th instant written on behalf of your client Mr. G. S. Morley and addressed to my clients Messrs The African Boot Company has been passed on to me.

Exhibits

A (7) Letter D. N. Khanna to R. C. Gautama, 20th February 1946. *continued.*

Your client I understand left Nairobi for the Dandora Estate on the 9th instant locking the rooms and leaving therein one broken bed, one table and 2 empty wooden boxes. He has gone away for good and not temporarily with a view to returning. His sole idea is to make money by putting in some one else against the wishes and consent of the landlord.

My clients have a large family and require the premises for themselves, their wives and children and would not consent to any sub-letting. Your client has ceased to reside in the premises he is therefore not entitled to any protection under the existing legislation, and any one he puts in there would be a mere trespasser.

Your client is accordingly hereby given notice to quit and deliver up vacant possession of the premises held by him of my clients on the first day of April, 1946, or at the end of his complete month of tenancy for March, 1946.

Yours faithfully,
for D. N. KHANNA

Copy to:
The Secretary,
Rent Control Board,
NAIROBI.

EXHIBIT A (8)

Letter Rent Control Board to D. N. Khanna.

A (8) Letter Rent Control Board to D. N. Khanna, 23rd February 1946.

RENT CONTROL BOARD (CENTRAL PROVINCE)
TOWN HALL,
NAIROBI.

No. 1124/4.

23rd February, 1946.

Mr. D. N. Khanna
P.O. Box 1197,
NAIROBI.

Sir,

Mr. G. S. Morley—The African Boot Co.

With reference to your letter C.F. 61 of the 20th February, 1946, to Mr. R. C. Gautama, with a copy to this office I shall be glad if you will submit any further objections you may wish to make to the sub-letting of the rooms in question within 10 days from the date hereof.

A copy of the application to this Board is attached for your information.

Yours faithfully,
Asst. Secretary.

Exhibits

A (9) Letter Rent Control Board to D. N. Khanna, 28th February 1946.

EXHIBIT A (9)

Letter Rent Control Board to D. N. Khanna.

RENT CONTROL BOARD (CENTRAL PROVINCE)
TOWN HALL,
NAIROBI.

No. 1124/5

28th February, 1946.

Mr. D. N. Khanna
P.O. Box 1197,
NAIROBI.

Sir,

Mr. G. S. Morley—The African Boot Co.

Further to my letter of the 23rd February, 1946. ref: 1124/4, in addition to any objections you may wish to make to the proposed sub-letting, would you please state:—

(a) The number of persons in your clients' family who wish to occupy the room, and the number of the plot concerned.

(b) Any grounds under Sec. 11 of the Ordinance by which your client has a right to apply for recovery of the room.

(c) Specific reasons why your client objects to the proposed sub-tenant, if any.

A copy of the tenant's application was sent you with my letter of the 23rd February, 1946.

Failing a reply to the above question within ten (10) days from the date hereof, it will be assumed that you do not wish to contest the case, which will then be considered by the Board without further reference to you.

Yours faithfully,

Asst. Secretary.

A (10) Letter D. N. Khanna to Rent Control Board, 4th March 1946.

EXHIBIT A (10)

Letter D. N. Khanna to Rent Control Board.

The Secretary,
Rent Control Board,
NAIROBI.

4th March, 1946.

Sir,

Mr. G. S. Morley—The African Boot Co.
Yours No. 1124/5 *of* 28.2.46.

On behalf of the landlords I have to state that section 6 (1) of the 1943 Ordinance does not come into play at all. The tenant must apply for and effect a sub-letting " while he is in personal occupation ". Here the tenant is no longer so. Accordingly the case falls under the principle of Tara Singh Jwala Singh v Harnam Singh, the tenant himself not being protected as he has gone to reside elsewhere, and as a necessary corollary has no rights under

A (10) Letter D. N. Khanna to Rent Control Board, 4th March 1946.

the Ordinance, and any sub-letting would be outside his powers, and the proposed "sub-tenant" would be a mere trespasser. The object of section 6 (1) is to enable sub-letting when a person takes overseas leave, in which case, the agreement to sub-let is invariably brought about by the tenant "while he is in personal occupation," and the word "is" means what it says.

Moreover, there is nothing to show that the tenant has been seconded to special work at Dandora for a short duration, while still employed at Nairobi. A vague general intention to return in case he loses his job is not enough.

I append below the answers to your enquiries:—

(1) The Plot No. is 1635/2 Fairview Road.

(2) The family of the person wishing to occupy consists of 6 persons, man, wife and four children in one room and 3 persons, man, wife and a child in one room, in all 9.

(3) Section 11 has no application, as the landlords are entitled to possession under the principle of Tara Singh Jwala Singh v. Harnam Singh, although section 11 (1) (h) in the alternative may be said to apply.

(4) The tenant has furnished no information regarding the proposed sub-tenant, and the landlord, like the Board, are quite unable to say if any personal or financial grounds of objection in fact exist, nor is there any information as to occupation or calling of the proposed sub-tenant, or on the point whether the proposed sub-tenant is accustomed to pursuing his calling after working hours at his residence and if so putting the premises to a user other than that of pure residence.

Yours faithfully,

D. N. KHANNA.

EXHIBIT A (11)

Letter G. S. Morley to R. C. Gautama.

A (11) Letter G. S. Morley to R. C. Gautama, 6th March 1946.

G. S. MORLEY
P.O. Box 1023,
NAIROBI, 6.3.46.

R. C. Gautama,
Advocate, Post Box 1765,
NAIROBI.

Dear Sir,

As requested I am enclosing Sh20/-. I do not intend to give up the place, my family will certainly occupy the house within 3 months, due to the fact that I have 2 small children, one aged 4 months and the other 2 years and 2 months, I am only letting the house for that time so as not to be out of pocket.

I may mention that I came into Nairobi on 2 week-ends but could not get into the house as the landlord had put a lock on my door, without my authority. You may point this out to the Rent Control as well. I have witnesses to prove this.

Yours faithfully,

G. S. MORLEY,

Exhibits

A (12) Letter R. C. Gautama to Rent Control Board, 15th March 1946.

EXHIBIT A (12)

Letter R. C. Gautama to Rent Control Board.

15th March, 1946.

The Secretary,
Rent Control Board, Central Province,
Nairobi.

Dear Sir,

RE: G. S. MORLEY & THE AFRICAN BOOT COMPANY
Plot No. 1635/2, *Fairview Road, Nairobi.*
Ref: Your No. 826/35 of 7.3.46.

I have your above mentioned letter enclosing a copy of Mr. D. N. Khanna's letter addressed to the Board dated 4th March, 1946 on behalf of his clients the African Boot Company in connection with the above matter to which my comments are as follows:—

My client still retains possession of the premises and so long as he continues to do so and so far as no actual sub-letting takes place, the principle involved in the case cited by my learned friend does not apply in this case and my client is accordingly in personal occupation of the premises.

The proposed sub-tenant Mr. Rodrigues is a photographer and will use the premises for residential purposes only.

I do not agree with my learned friend's contention that the object of giving power to a tenant to sub-let was in case of " overseas leave ". The Bill as published described the object of giving such power to be exercised " during temporary absence ".

I enclose herewith my client's original letter addressed to me with a copy thereof for Mr. Khanna's file. From this letter the Board will notice that the landlord has taken unlawful action by putting a lock in addition to that of my client's and thus preventing him from getting access to his room. I request the Board to ask the landlord to refrain from such unlawful action. In the meantime my client is suffering considerable inconvenience and damage for which my client reserves his right to claim damages from the landlord.

I also enclose Sh.20/- in payment of the necessary fee payable on lodging the application for the Board's consent to sub-let.

I shall be glad if the Board will expedite granting its consent.

Yours faithfully,

R. C. GAUTAMA.

Exhibits

EXHIBIT A (13)

A (13) Letter Rent Control Board to D. N. Khanna, 18th March 1946.

Letter Rent Control Board to D. N. Khanna.

RENT CONTROL BOARD,
TOWN HALL,
NAIROBI.
18th March, 1946.

Registered.

No. 826/38.

Mr. D. N. Khanna,
P.O. Box 1197,
NAIROBI.

Sir,

Plot 1635/2, Fairview Road.
G. S. Morley v. African Boot Co.

I enclose a copy of a letter from Mr. Gautama dated 15th March, 1946.

Any further comment or objections you wish to make should be submitted within ten days.

Yours faithfully,
ASST. SECRETARY.

EXHIBIT A (14)

A (14) Letter Rent Control Board to D. N. Khanna, 19th March 1946.

Letter Rent Control Board to D. N. Khanna.

RENT CONTROL BOARD (CENTRAL PROVINCE)
TOWN HALL,
NAIROBI.

826/39 19th March, 1946.

Mr. D. N. Khanna,
P.O. Box 1197,
NAIROBI.

Sir,

Plot 1635/2, Fairview Road.
G. S. Morley v. African Boot Co.

The attached letter should have been enclosed with my letter of the 18th instant. The omission is regretted.

Yours faithfully,
ASST. SECRETARY.

Exhibits

A (15) Letter D. N. Khanna to Rent Control Board. 20th March 1946.

EXHIBIT A (15)

Letter D. N. Khanna to Rent Control Board.

C.F. 61. 20th March, 1946.

The Secretary,
Rent Control Board,
NAIROBI.

Dear Sir,

Plot 1635/2—Fairview Road.
G. S. Morley v. African Boot Co.

Nothing has been shown by the tenant suggesting that his absence from his home is temporary. A sea captain between voyages is temporarily absent, but his home continues to be a real home with his furniture and belongings still there, and his family. Similarly, a person going on " overseas leave " is temporarily absent, because he intends to come back to his job and his home. There is nothing to show that the tenant is on temporary transfer, and intends to come back to his job and his home. Everything indicates that he has a permanent job and a permanent residence at Dandora, and the fact that he may lose his job, or may find one with better prospects at Nairobi, does not alter the fact he has given up residence here and gone to reside permanently elsewhere. The tenant must satisfy the Board that his absence is temporary.

" Possession " means physical occupation, and the tenant is not in actual possession or " personal occupation". He was at one time but has left to reside elsewhere. All the house contained was a broken and unserviceable bed and one table and 2 empty wooden boxes, apparently left there to give colour to the contention that the tenant had not given up residence. But the fact that he wishes someone else to reside there negatives any idea of using the place on week-ends, nor could it be used as there is no one to tidy up the place. What is more, he has found a job which necessitated his giving up residence at Nairobi and taking up residence at Dandora.

The tenant's family has no rights under the Ordinance if the tenant goes away to reside elsewhere. Moreover, why should his family wish to come to Nairobi after three months.

The tenant should be asked to produce a confirmatory letter from the employer, that he has been employed temporarily for 3 months. Although that would also be a permanent absence for a short duration, as distinct from the case of a person on overseas leave, or transfer on relief duty, intending to return to his home and job in Nairobi.

Yours faithfully,
D. N. KHANNA.

Exhibits

A (16) Letter G. S. Morley to R. C. Gautama, 4th April 1946.

EXHIBIT A (16)

Letter G. S. Morley to R. C. Gautama.

G. S. MORLEY
P.O. Box 1023,
NAIROBI

4.4.1946.

R. C. GAUTAMA Esqr
P.O. Box 1765,
NAIROBI.

Dear Sir,

I am in receipt of your letter d/2/4/46 and have to state that I have 2 very young children one aged 2 years and the other 5 months. There is no medical facilities here and the accommodation is also insufficient.

My wife and children are in Nairobi every week 2 days or even three days and have to stay with someone and pay for lodging due to the place being locked up by the landlord without authority.

For the last two weeks my both children were ill in Nairobi, one had to be operated and after the operation they had no place to go to, till kind friends gave them shelter. Certificates could be obtained by me from Dr. Sorabjee & Dr. Gregory, as to their healths and operation; they have both advised that they stay in Nairobi. Now the question of sub-letting does not arise, I need the house for my family who will reside there in future.

I am sure the locking of my house by the landlord who is taking rent regularly, is illegal. Kindly press him to remove the lock and my family will go straight in.

Yours faithfully,
G. S. MORLEY.

P.S. The statement that a broken bed is left is quite untrue. There is a bed in perfectly good order and also a wardrobe tables, and boxes are good not junk as alleged.

A (17) Letter R. C. Gautama to Rent Control Board, 11th April 1946.

EXHIBIT A (17)

Letter R. C. Gautama to Rent Control Board.

The Secretary,
Rent Control Board,
NAIROBI.

11th April, 1946.

Dear Sir,

Re: G. S. Morley & African Boot Co.

Plot 1635/2—Fairview Road.

Ref: Your No. 826/40 *of 22nd March,* 1946.

I enclose herewith the original letter dated 4th instant addressed to me with a copy thereof for passing to Mr. Khanna, Advocate for the African Boot Company, if desired.

Exhibits

A (17) Letter R. C. Gautama to Rent Control Board, 11th April 1946. *continued.*

I also enclose medical certificate from Dr. E. Sorabjee dated 2nd instant. The landlord's action in putting a lock on my client's premises is illegal and it is a fit case for the Board to take cognizance of my client's complaint of wilful subjection of my client's family to annnoyance by the landlord and take necessary action against him.

My client does not now wish to sub-let the premises in view of his own unfortunate circumstances.

I should be glad if the Board would do the needful to have the lock put on my client's premises by the landlord, removed as early as possible.

Yours faithfully,
R. C. GAUTAMA.

A (18) Letter R. C. Gautama to D. N. Khanna, 15th April 1946.

EXHIBIT A (18)

Letter R. C. Gautama to D. N. Khanna.

D. N. Khanna Esqr
Advocate,
NAIROBI.

15th April, 1946.

Dear Sir,

Re: G. S. MORLEY & AFRICAN BOOT COMPANY.

My client has now withdrawn his original application for sub-letting the premises and he now needs the same for his personal use.
An extra lock was put on the door by the landlord and this act by the landlord is illegal as my client is still the legal tenant of the premises.

This is to give a final notice to your client through you that unless the said lock is removed by 12 noon tomorrow, the 16th instant, my client will break the lock in the presence of 2 independent witnesses and take possession of the premises. Your client may, if he so desires, be present, when the same is done.

Yours faithfully
R. C. GAUTAMA.

Copies to:

1. The Secretary,
   Rent Control Board, NAIROBI.
2. The Officer i/c,
   Eastleigh Police Station, NAIROBI.

Exhibits

EXHIBIT A (19)

A (19) Letter Rent Control Board to D. N. Khanna, 15th April 1946.

Letter to Rent Control Board to D. N. Khanna.

RENT CONTROL BOARD (CENTRAL PROVINCE)
TOWN HALL, NAIROBI.
15th April, 1946.

Ref. No. 826/43.

Mr. D. N. Khanna.
P.O. Box 1197,
NAIROBI.

Sir,

Plot 1635/2, Fairview Road.

G. S. MORLEY v. AFRICAN BOOT COMPANY.

I enclose a copy of a letter from Mr. Gautama in which he states that the tenant no longer wishes to sub-let the premises but requires them for use of himself and family.

I understand the premises are still locked. If this is so, it would appear that this case now comes under Section 5 (1) of the Rent Restriction Ordinance. In these circumstances, I shall be glad to receive your objections to this application within 10 days of the date hereof, failing which it will be assumed that you do not wish to contest the case, which will then be considered by the Board without further reference to you.

Yours faithfully,
ASST. SECRETARY.

EXHIBIT A (20)

A (20) Letter D. N. Khanna to Rent Control Board, 17th April 1946.

Letter D. N. Khanna to Rent Control Board.

G. F. 61.

17 April, 1946.

The Secretary,
Rent Control Board,
NAIROBI.

Sir,

Plot 1635/2, Fairview Road,

G. S. MORLEY V. AFRICAN BOOT COMPANY.

Yours 826/43 *of* 15.4.46.

The following are the landlords' objections herein.

(i) Section 5 (1) cannot be invoked in favour of the tenant, since he is no longer a tenant retaining possession, within the meaning of section 17 (1) and the latter kind of tenant alone can avail himself of the provisions of the Ordinance.

Exhibits.

A (20) D. N. Khanna to Rent Control Board, 17th April 1946. *continued.*

(ii) A tenant's family merely resides with the permission of the tenant. It has no legal interest in the tenancy.

(iii) The tenant ceased to reside when he went to Dandora, and his case is not analogous to that of a sea captain absent between voyages. He has permanently abandoned residence, though it might turn out to be of a short duration.

(iv) The tenant cannot be said to re-occupy, vicariously through his family. The protection under the Ordinance is highly personal. Occupation through a licensee (whether family relations or friends) will not do, nor occupation through an agent (see Skinner v Geary 1931, 2 K.B. 546).

(v) The tenant's application is not bona fide, for he has been bringing other people with a view to putting them in possession (even yesterday he brought people to view the premises). Moreover, it is doubtful if the tenant can afford to (or if he could) would permanently run two homes. The idea behind personal residence is that a tenant should not be able to run two homes, for otherwise the needs of other persons hard pressed for accommodation would be further restricted. Sympathy for the tenant cannot override fundaments of the legislation.

(vi) The remedy of re-possessing premises by self-help has been suspended only as against a tenant protected under the Ordinance, and not against one not protected. My clients are accordingly proceeding to do this.

Yours faithfully,
D. N. KHANNA.

A (21) Letter D. N. Khanna to Rent Control Board, 25th April 1946.

EXHIBIT A (21)

Letter D. N. Khanna to Rent Control Board.

G.F. 61. 25th April, 1946.

The Secretary,
Rent Control Board,
NAIROBI.

Sir,

Plot No. 1635/2 Fairview Road.

G. S. MORLEY V. AFRICAN BOOT COMPANY.

Yours 826/43 *of* 15.4.46.

With further reference to my letter of the 17th instant I have to inform you the landlords took possession of the room as they were entitled to, to prevent any unauthorised person getting into the same.

Exhibits

A (21) Letter D. N. Khanna to Rent Control Board, 25th April 1946. *continued.*

A number of people called to view the room, and one was actually preparing to get in, apparently by arrangement with Mr. Morley.

An inventory of things found was made in the presence of three witnesses, and Mr. Morley should arrange at an early date to take charge of the things.

Yours faithfully,

D. N. KHANNA.

COPY TO:

R C. Gautama Esqr
Advocate, NAIROBI.

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10 EXHIBIT A (22)

A (22) Letter Rent Control Board to R. C. Gautama and D. N. Khanna, 8th May 1946.

Letter Rent Control Board to R. C. Gautama.

RENT CONTROL BOARD (CENTRAL PROVINCE)
TOWN HALL, NAIROBI.

Registered.

No. 826/50.

Mr. R. C. Gautama,
P.O. Box 1765,
NAIROBI.

Mr. D. N. Khanna
20 P.O. Box 1197
NAIROBI.

Plot 1635/2—Fairview Road.

G. S. MORLEY V. AFRICAN BOOT COMPANY.

Sir,

The Board hereby sanction court action against the African Boot Co., under section 4 of the Rent Restriction Ordinance.

Yours faithfully,

ASST. SECRETARY.

Refund Voucher encd.

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30 EXHIBIT A (23)

A (23) Letter D. N. Khanna to R. C. Gautama, 13th September 1946.

Letter D. N. Khanna to R. C. Gautama.

R C. Gautama Esqr
Advocate, Nairobi.

13th September, 1946.

Dear Sir,

Plot 1635/2—Fairview Road.
Africa Boot Co. & G. S. Morley.

Referring to my letter herein to you of the 25th of April last, I have to request your client to arrange to receive the things which were left behind by him in the room after his departu re to Dandora, within a week from date

Exhibits

A (23) Letter D. N. Khanna to R. C. Gautama, 13th September 1946. *continued.*

hereof, as after that my clients would not be responsible for their safe keeping, or deterioration by exposure to the weather, as they would be put out in the yard at the risk of your client.

Your client should also at an early date arrange to square off the outstanding rent account.

I am sending you this letter in duplicate to enable you to forward a copy to your client.

Yours faithfully,
D. N. KHANNA.

A (24) Letter R. C. Gautama to D. N. Khanna, 18th September 1946.

EXHIBIT A (24)

Letter R. C. Gautama to D. N. Khanna.

18th September, 1946.

D .N. Khanna Esqr
Advocate,
Victoria Street,
NAIROBI.

Dear Sir,

Plot No. 1635/2—Fairview Road.
African Boot Co., & G. S. Morley.

I have your letter of 13th instant with reference to the above matter.

A plaint is drawn and ready for filing awaiting my client's signature thereto as soon as he comes to Nairobi.

With regard to the removal of things which were lying in my client's room my client states that he is very anxious to get his things back but cannot do so owing to the fact that he cannot find a place to keep the same.

In order to ascertain the nature of the damages suffered by my client by way of deterioration by exposure to the weather by loss or otherwise while in your client's possession I shall be glad to hear from you if your client is prepared to allow mine an inspeetion of the things.

In the meantime, of course, your client is liable for any loss that may be suffered by my client owing to unlawful action of yours in the matter.

Yours faithfully,
R. C. GAUTAMA.

EXHIBIT A (25)

A (25) Letter D. N. Khanna to R. C. Gautama, 26th September 1946.

Letter D. N. Khanna to R. C. Gautama.

26th September, 1946.

R. C. Gautama Esqr
Advocate, NAIROBI.

Dear Sir,

Plot 1635/2—Fairview Road.
Africa Boot Co. v. G. S. Morley

Your client is given final notice to collect his things. My clients cannot be expected to look after them indefinitely, nor indeed to do so at all. Your client should arrange to put them where he can or to dispose of them. So far, the things have not been exposed to weather and are intact. But 3 days after receipt of this notice responsibility will be disclaimed. The existence of any circumstances rendering my client in any way liable for damages is denied.

Your client should arrange to pay his outstanding account for rent and/or mesne profits without further delay.

Yours faithfully,
D. N. KHANNA.

EXHIBIT A (26)

A (26) Letter D. N. Khanna to African Boot Company, 3rd October 1946.

Letter D. N. Khanna to African Boot Company.

3rd October, 1946.

The African Boot Co.,
NAIROBI.

Dear Sirs,

Will you please let me know at your earliest convenience as to the rents due to you from Mr. G. S. Morley.

Yours faithfully,
D. N. KHANNA.

Exhibits

EXHIBIT A (27)

Letter D. N. Khanna to R. C. Gautama.

A (27) Letter D. N. Khanna to R. C. Gautama, 9th October 1946.

R. C. Gautama Esqr 9th October, 1946.
Advocate,
NAIROBI.

Dear Sir,

Plot No. 1635/2—Fairview Road.
AFRICA BOOT CO. v. G. S. MORLEY.

With reference to the appointment made over the telephone by our offices (the request for which came from your side) for Mr. Morley to call on my clients at 11 o'clock on Saturday, the 5th instant, to collect his belongings I am informed Mrs. Morley called on my clients accompanied by an Indian gentleman and had a look at the goods, but failed to receive them or to carry them away.

The risk is entirely your clients now, my clients having done everything reasonably expected of them in the matter.

Yours faithfully,
D. N. KHANNA.

EXHIBIT A (28)

Letter R. C. Gautama to D. N. Khanna.

A (28) Letter R. C. Gautama to D. N. Khanna, 22nd October 1946.

D. N. Khanna Esqr 22nd October, 1946.
Advocate,
NAIROBI.

Dear Sir,

Plot No. 1635/2—Fairview Road.
Africa Boot Co. v. G. S. Morley.
Reference your letter of 9th instant.

My client has inspected his articles in possession of your clients and the following things were found missing:—

1 Dress suit—estimated value shillings	300.00
1 pair mosquito boots ,, ,,	40.00
1 Silk suit ,, ,,	150.00
2 cooking pots (aluminium) ,, ,,	35.00
1 sauce pan	15.00
Crockery—5 pairs cups & saucers and tea pot	25.00
4 white duck suits, estimated value Shs	180.00
2 pairs shoes ,, ,,	60.00
Babies clothes	150.00
Picture frames & glasses (broken)	150.00
1 pressure stove (incomplete)	20.00
1 box magic instruments	300.00
1 picture album (torn)	70.00
TOTAL Shs	1495.00

A (28) Letter R. C. Gautama to D. N. Khanna 22nd October 1946. *continued.*

Trunks were found unlocked and some of my client's goods such as bed, mattress and cupboard and table are being used by your clients ; and in addition to this there were some Great War medals including Boer War medals to which my client attaches considerable sentimental value which have been found also missing.

I shall be glad to hear from you by return whether your clients are prepared to settle this claim so that I may advise my client to remove his remaining goods and file suit for re-possession of the premises and general damages.

Failing to hear from you herein by or before 4.00 p.m. on 25th instant a suit will be filed including the above claim and other special and general damages without further notice.

Yours faithfully,
R. C. GAUTAMA.

EXHIBIT A (29)

A (29) Letter D. N. Khanna to R. C. Gautama, 24th October 1946.

Letter D. N. Khanna to R. C. Gautama.

24th October, 1946.

R. C. Gautama Esqr
Advocate, NAIROBI.

Plot 1635/2—Fairview Road.
Africa Boot Co. v. G. S. Morley.

To guard against the type of unfounded claims set up in your letter of the 2nd instant by your client, my clients were advised to and did make out an inventory in the presence of witnesses who endorsed the same, and as such it will suffice to say the things as they were found on taking possession of the room are still intact, and there is no substance in the claim made, and in any case the things are lying at your client's risk, he having had ample opportunity to remove them.

The foundation for any claim for re-possession and any supposed damages, general or special, does not exist.

Your client may file such proceedings as he may be advised. Unless the outstanding claim for rent is met forthwith, steps to recover the same by distraint or action would be taken without further notice.

Yours faithfully,
D. N. KHANNA.

Exhibits

C
An Inventory, 23rd April 1946.

EXHIBIT C

AN INVENTORY.

THE AFRICAN BOOT COMPANY
Next to WHITEAWAYS,
P.O. Box 839,
NAIROBI.

ORIGINAL AS UNDER IN GUJARATI LANGUAGE	TRANSLATION AS UNDER IN ENGLISH LANGUAGE.
	1 Curtain stand.
	1 Bed.
	1 Window curtain.
	1 Cloth bag containing sundry papers.
	1 Table.
	1 Old trunk.
	1 Primus.
	1 Small stand.
	1 Old umbrella.

The above mentioned articles were found on inspection on Tuesday evening 4 o'clock on 23.4.46.

S. A. RABADI.
HIRJI VERSHI.
CHANDULAL.