

7,1952

No. 11 of 1950.

In the Privy Council.

ON APPEAL

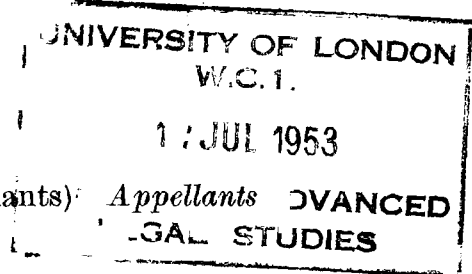
FROM THE COURT OF APPEAL FOR EASTERN AFRICA. **81294**

BETWEEN

1. NAGARA HOTEL LIMITED
2. DHIRAJLAL NARANJI JESSANI
3. MAGANBHAI PRABHUDAS PATEL (Defendants)

AND

- 10 1. RAJABALLY KASSAM SULEMAN and
BAHADURALI KASSAM SULEMAN, the
Administrators of the Estate of Kassam Suleman
Damji deceased (substituted as Respondents in
place of the deceased by order of His Majesty in
Council dated 1st November, 1951) and
2. K. S. DAMJI & SONS (PROPERTIES) LIMITED
(added as Respondents by Order of His Majesty in
Council dated 1st November, 1951) Respondents.



Case for the Respondents.

RECORD.

- 20 1. This appeal is from a judgment of the Court of Appeal for
Eastern Africa dated the 14th day of March, 1949, dismissing an appeal
from a judgment of the Supreme Court of Kenya at Mombasa, dated
the 27th and 29th July, 1948, whereby judgment was given for the
deceased Kassam Suleman Damji, formerly Respondent hereto (hereinafter
referred to as "the deceased") (1) for possession of the premises known
as Nagara Hotel, Salim Road, Mombasa, (2) against the second and third
Appellants for rent in respect of the said premises at Shs.500/- per month
from 1st January, 1947, to the 30th September, 1947, and for mesne
profits from 1st October, 1947, at Shs.500/- per month until possession
30 is given and (3) for costs against all three Appellants. (By the said
judgment of the Supreme Court the deceased's suit against certain
defendants other than the Appellants was dismissed with costs but no
question arises on this appeal with regard to that part of the said judgment.)

2. The deceased was the owner of the said premises (which he transferred to Respondent No. 2 by Deed of Transfer dated 16th May, 1949). The first Appellants, Nagara Hotel Limited, a limited company, are in possession of the said premises and claim to be entitled to remain in possession, and all the Appellants deny that there was any rent due to the deceased in respect of the said premises at the date of the filing of the suit.

3. The following facts were found by the learned judge at first instance :—

p. 54.

(A) By an agreement in writing dated 24th April, 1946, the deceased granted a monthly tenancy of the said premises to the second and third Appellants at a rent of Shs.500/- per month subject *inter alia* to (A) a condition that the tenants should not assign underlet or part with the possession of the said premises or any part thereof without the written consent of the deceased and (B) the immediate determination of the said tenancy and a right of re-entry if any monthly rent should remain in arrear and unpaid for the space of fifteen days or if there should be any breach or non-observance of any of the conditions contained in the said agreement. 10 20

p. 23.

(B) On 24th November, 1946, the second and third Appellants sold the Nagara Hotel as a going concern and purported to assign the said tenancy to two other persons, Defendants Nos. 4 and 5 in the suit, without either the consent or the knowledge of the deceased.

p. 23.

(C) On 2nd March, 1949, Defendants Nos. 4 and 5 sold the hotel to three other persons, Defendants Nos. 6, 7 and 8 in the suit, and purported to assign the said tenancy to them, without either the consent or the knowledge of the deceased.

p. 23.

(D) On the 23rd June, 1947, a limited company, the Nagara Hotel Limited (the first Appellants), was formed and took over the hotel as a going concern, and there was a purported assignment of the premises to the company, again without either the consent or knowledge of the deceased. The second and third Appellants had one share each in the said company. 30

pp. 61-71.

(E) In December, 1946, the deceased heard something which put him on inquiry and in consequence, between 21st January, 1947, and 30th September, 1947, the date on which the suit was filed, there was certain correspondence between the deceased's Advocates and other persons, from which it appeared *inter alia* that— 40

pp. 16, 63, 66, 67, 68, 70.

(i) the deceased was endeavouring to ascertain who was in occupation of the said premises and who was carrying on the business of the Nagara Hotel ;

pp. 62, 63, 64.

(ii) cheques for rent for the said premises for January, February and March, 1947, were sent to the deceased by a firm

of Advocates on behalf of "Messrs. The Nagara Hotel," which cheques were accepted as mesne profits only, in a letter dated 3rd May, as follows :—

" Letter from Messrs. Christie & Bryson to U. K. Doshi & Doshi. p. 68.

Ref. 1015/5.

3rd May, 1947.

Messrs. U. K. Doshi & Doshi,
Advocates,
Mombasa.

Dear Sirs,

10 Kassam Suleman Damji—The Nagara Hotel.

Further to our letter of the 30th ultimo we have been instructed by our client to inform you that the reason he desires the names of the present Proprietors of the Hotel is that he wishes to contact them with a view to settling this matter and putting it on a proper footing.

In the meantime and pending such settlement he is willing to accept the three cheques forwarded by yourselves as mesne profits only.

Yours faithfully,"

20 (iii) further cheques were sent for rent for April, 1947, p. 69.
purporting to be on behalf of Defendants Nos. 4, 5, 6 and 7
(described as "the proprietors of the . . . Hotel") and for
May and June, 1947, purporting to be on behalf of Defendant No. 8 p. 71.
(described as "one of the partners of the . . . Hotel").

(iv) by letter dated 30th May, 1947, the deceased's Advocates p. 70.
informed those from whom cheques had been received as
follows :—

30 " In these circumstances, our client can only have dealings
with his proper tenants, Dhirajlal Naranji Jassani and
Maganbhai Prabhudas Patel and without prejudice, accepts
your various cheques as payment of rent for the premises from
these two persons."

(F) The deceased applied to the Rent Control Board, Mombasa, p. 72.
by letter dated 14th July, 1947, for the Board's consent to the
institution of legal proceedings; the said application was made
under Section 4 of the Increase of Rent and Mortgage Interest
(Restrictions) Ordinance, 1940 (which is set out in the Annexure
hereto). The said Rent Control Board, by letter dated 26th August, p. 75.
1947, granted the deceased's said application. The deceased then
40 commenced his suit and by his Complaint, dated 30th September, 1947, pp. 1-2.
claimed possession of the said premises, rent and mesne profits and
costs.

(G) When the suit was filed the second and third Appellants, pp. 23, 24.
the tenants under the said agreement, were no longer in occupation
of the said premises.

p. 24. 4. Judgment was given for possession against the first Appellants ;
and against the second and third Appellants judgment was given for
p. 25. (i) rent from 1st January, 1947, to 30th September, 1947, the date on
which the suit was filed and on which the learned judge found that the
tenancy determined, and (ii) mesne profits from 30th September, 1947,
until possession given. (The suit against the Defendants Nos. 4, 5, 6,
7 and 8 was dismissed, on the ground that they had vacated the premises
before the action was filed and the tenancy determined and had therefore
p. 25. been wrongly joined in the action.) The said judgment was given on
the 27th and 29th July, 1948, and recorded in a Decree dated 29th October, 10
1948.

pp. 26-27. 5. The nature of the Appellants' complaint against the said judgment,
and the questions that arise for consideration on this appeal, appear from
the grounds of appeal set forth in the Appellants' Memorandum of Appeal
to the Court of Appeal for Eastern Africa, dated 23rd October, 1948 :—

“ 1. The learned Judge erred in holding that the tenancy of
Appellants Nos. 2 and 3 (D. N. Jessani and M. P. Patel) had
determined before the filing of this suit as :—

(1) The re-entry relied upon by the learned Judge as
determining the tenancy was not valid in law as the leave of 20
the Court to exercise such right had not been obtained as required
by the Courts (Emergency Powers) Ordinance, 1944, which was
then in force.

(2) The filing of the suit which was relied upon by the
learned Judge as determining the tenancy of Appellants Nos. 2
and 3 (D. N. Jessani and M. P. Patel) did not operate as :

(A) such suit was not in view of the prayers in the Plaint
a clear act showing an intention to determine the tenancy ;

(B) the act showing an intention to determine the tenancy
should have taken place before the filing of the suit. 30

2. The learned Judge erred in holding that any breaches of
covenants of the tenancy by assignment or otherwise had not been
waived by the Respondent.

3. The learned Judge erred in declining to consider whether
it was reasonable to make an order for possession.

4. The learned Judge erred in giving judgment for the payment
of rent and mesne profits as the rent had been duly tendered before
the suit by cheques which had not been returned or non-acceptance
of which had not been signified.”

6. The Appellants' contention that the tenancy of the second and 40
third Appellants had not determined was based, in the first place, upon

the following provisions of the Courts (Emergency Powers) Ordinance, 1944, Section 3 (2) :—

“ (2) Subject to the provisions of this Ordinance, a person shall not be entitled, except with leave of the appropriate Court—

- (A) to proceed to exercise any remedy which is available to him by way of . . .
- (ii) the taking of possession of any property ;
- (iv) re-entry upon any land.”

10 And they contended that as the deceased did not obtain leave under the said Section there was no lawful re-entry. (The whole of the said sub-section is set out in the Annexure hereto.)

7. The said Court of Appeal rejected the argument based upon the Courts (Emergency Powers) Ordinance (which was first raised on the appeal), Nihill, P., stating :— p. 41.

20 “ The argument is an ingenious one, but I think it must fail. I for one am not prepared to say that Section 3 (2) (a) (iv) of this Ordinance was meant to include an act equivalent to re-entry. If the legislature meant this they should have said so. An examination of the other remedies set out in sub-paragraph (A) of sub-section (2) of the Section show that they belong to the species which may be termed ‘ self help.’ In my view therefore, the correct interpretation to give to the words ‘ re-entry upon any land ’ is the ordinary meaning of an actual physical act. If I am wrong then the extraordinary position is reached that the Respondent before he could take an effective action in face of his tenants breach of covenant had not only to obtain the leave of the Rent Control Board, but of the appropriate Court as well.”

30 8. The Appellants further relied upon the relevant provisions of Section 111 (g) of the (Indian) Transfer of Property Act, 1882, which are as follows :—

“ A lease of immoveable property determines—

- (g) by forfeiture ; that is to say (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease.”

40 They contended that the deceased had not done any act showing his intention to determine the tenancy of Appellants Nos. 2 and 3, and therefore it had not determined. .

9. The argument based upon the Transfer of Property Act (which was put forward at first instance) was rejected by the learned judge on the ground that the filing of the suit was a sufficient act showing an intention to determine the tenancy ; in so deciding the learned judge relied upon *inter* p. 24.

alia Isabali Tayabli v. Mahadu Ekoba (1918) 42 Bombay 193. The said Court of Appeal also rejected the said argument, although apparently divided as to the reasons for so doing :

Nihill, P., stated :—

p. 40.

“ I am not sure that Mr. Nazareth is not right in his submission that the weight of authority in India prior to the passing of the 1929 amending Act is against the view that the filing of a suit is *per se* sufficient. But assuming that the learned judge was wrong, I have no hesitation in finding that the Respondent's application to the Mombasa Rent Control Board for permission to institute 10 proceedings was a sufficient act showing his intention.”

Edwards, C.J., stated :—

p. 43.

“ I agree with the Judgment just delivered by the learned President and have nothing to add.”

Bourke, J., stated :—

pp. 48-49.

“ With respect, I am in agreement with the conclusion arrived at by the learned trial judge that the statement of the law given in the case [of *Isabali Tayabali v. Mahadu Ekoba*] is correct and should be adopted. I can see no good and sufficient reason to hold that the bringing of an action in ejectment is not an act showing the lessor's 20 intention to determine the lease within the meaning of the section and I find it unnecessary to deal with the Respondent's alternative argument that any way the letters . . . constitute acts indicating the lessor's intention antecedent to the filing of the plaint.”

10. The Appellants' second ground of appeal was based upon the contention (not pleaded) that the breach of covenant by the second and third Appellants, in purporting to assign the tenancy without the consent or knowledge of the Respondent, had been waived by the deceased's Advocates' letter dated 3rd May, 1947, and the acceptance of the cheques sent for rent. In alleging waiver the Appellants relied upon Section 112 30 of the Transfer of Property Act, 1882, which provides as follows :—

p. 68.

“ 112. A forfeiture under section one hundred and eleven, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such 40 acceptance is not a waiver.”

11. The Appellants' argument as to waiver was rejected both by the learned judge at first instance and by the said Court of Appeal, on the ground that the deceased did not have the knowledge requisite to a valid waiver. In the Court of Appeal, Nihill, P., said :—

pp. 39-40.

“ On the issue of waiver I think that the learned judge came to the right conclusion—leaving out of account the fact that waiver

was not specifically pleaded I consider that the only reasonable inference to be drawn from the evidence and the correspondence is that the Appellant when accepting cheques for rent (which he never cashed) had not full knowledge of the cause of forfeiture and that such acceptance did not therefore amount to an election by him to waive the forfeiture. All the correspondence at the material times shows that although he suspected that there had been a breach he was quite in the dark as to its precise character and extent. He was in fact seeking for information as to the true position which the other side showed quite a singular dexterity in withholding. In addition to this there was a further breach of the covenant by the purported assignment of the 23rd June, 1947, to the limited liability company about which it is certain that the Appellant had no knowledge, at least until after he had applied to the Rent Control Board for leave to institute proceedings (14th July, 1947).”

And Bourke, J., expressed a similar view.

p. 49.

12. The Appellants' third ground of appeal was that the learned judge ought to have considered whether it was reasonable to make an order for possession, by reason of the provisions of the Rent and Mortgage Interest (Restrictions) Ordinance, 1940, Section 11 (1) (which is set out in the Annexure hereto).

13. The said Court of Appeal upheld the learned judge's view that the Rent and Mortgage Interest (Restrictions) Ordinance provided no protection in this case, because the tenants, the second and third Appellants, were no longer in occupation of the said premises when the suit was filed. This view was based upon the decision of the Court of Appeal for Eastern Africa in *Tara Singh and Another v. Harnam Singh* (XI E.A.C: 24) which followed the English case of *Skinner v. Geary* [1931] 2 K.B. 546. Referring to the said cases, Nihill, P., in the present case, said :—

“In both the above cited cases the contractual tenant had abandoned the possession of a dwelling-house and Mr. Nazareth has argued that the principle laid down in *Skinner v. Geary* should not be extended to business premises as in the case of business premises personal occupation is not of the essence. In view, however, of the wording of Section 19 of the Ordinance I am of opinion that the words in Section 17 “so long as he retains possession” must apply to business premises. I can envisage interesting questions arising as to whether there had been abandonment of possession arising in cases where, for example, the owner of a business had moved the headquarters of his business to other premises leaving only a branch manager behind, but in a case like the present where the contractual tenants have sold the business and departed no such question can arise and I think the learned judge was right in applying the principle in *Skinner v. Geary*.”

p. 39.
cf. pp. 49-50.

(Sections 17 and 19 of the said Ordinance are set out in the Annexure hereto.) The said Court of Appeal also rejected the argument put forward by the second and third Appellants that they could claim to be tenants in occupation of the said premises by reason of their each retaining one share in the limited company, the first Appellants.

pp. 42, 50.

14. The said Court of Appeal also rejected the Appellants' final contention, viz., that rent had been duly tendered before the suit by cheques which had not been returned or non-acceptance of which had not been signified, by reason of the facts, appearing from the correspondence, that the rent was not tendered on behalf of the tenants, the second and third Appellants, but by the persons unlawfully in possession of the said premises, and (apparently) by reason of the fact that the Respondent never cashed the cheques.

pp. 42, 50.

p. 39.

p. 51.

15. The said Court of Appeal therefore rejected all the said grounds of appeal and dismissed the Appellants' appeal with costs. 10

16. It is humbly submitted that this Appeal should be dismissed for the following among other

REASONS.

- (1) BECAUSE the Judgment of the Court of Appeal for Eastern Africa is, for the reasons stated in the Judgments of Nihill, P., and Bourke, J., and for other good and sufficient reasons, correct.
- (2) BECAUSE the tenancy of the second and third Appellants was duly determined, either by the filing of the suit or by the deceased's application to the Mombasa Rent Control Board and, alternatively or, the steps taken by him in connection with his said application. 20
- (3) BECAUSE it was not requisite for the deceased to obtain the leave of any Court under the Courts (Emergency Powers) Ordinance, 1944, and he took all necessary and proper steps to entitle him to the remedies and relief which he sought from the Supreme Court.
- (4) BECAUSE there was no waiver by the deceased of the breach of the tenancy agreement by the second and third Appellants. 30
- (5) BECAUSE on the facts proved none of the Appellants was entitled to claim any protection by reason of the Rent and Mortgage Interest (Restrictions) Ordinance, 1940, and it was therefore unnecessary for the learned judge to apply the provisions of Section 11 (1) of the said Ordinance.
- (6) BECAUSE the learned judge's finding that the rent, for which Judgment was given, was due and owing was correct.
- (7) BECAUSE on the facts proved the deceased was entitled to the remedies and relief which he was given by the Judgment of the Supreme Court and the said Judgment was in all respects right and proper. 40

RALPH MILLNER.

ANNEXURE.

THE COURTS (EMERGENCY POWERS) ORDINANCE, 1944.

“ 3. (2) Subject to the provisions of this Ordinance, a person shall not be entitled, except with the leave of the appropriate court—

(a) to proceed to exercise any remedy which is available to him by way of—

(i) the levying of distress ;

(ii) the taking of possession of any property ;

(iii) the appointment of a receiver of any property ;

10 (iv) re-entry upon any land ;

(v) the realization of any security ;

(vi) the forfeiture of any deposit ; or

(vii) the serving of a demand under paragraph (a) of section 168 of the Companies Ordinance, 1933 ; or

(b) to institute any proceedings for foreclosure or for sale in lieu of foreclosure, or take any step in any such proceedings instituted before the 1st day of December, 1940, or institute any proceedings for the recovery of possession of mortgaged property :

Provided that nothing in this sub-section shall affect—

20 (a) any right or power to pawnbrokers to deal with pledges ; or

(b) the institution or prosecution of any proceedings for the appointment by the court of a receiver of any property.”

ANNEXURE.

THE INCREASE OF RENT AND OF MORTGAGE INTEREST (RESTRICTIONS)
ORDINANCE 1940.

“ 4. Where any dispute arises between any landlord and his tenant relating to a tenancy to which this Ordinance applies, no proceedings arising out of such dispute shall be instituted in any court of law except with the written consent of the Board.”

* * * * *

“ 11.—(1) No order for the recovery of possession of any dwelling-house to which this Ordinance applies, or for the ejection of a tenant therefrom, shall be made unless—

10

- (a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Ordinance) so far as the same is consistent with the provisions of this Ordinance has been broken or not performed ; or
- (b) the tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the Court, deteriorated owing to acts of waste by or the neglect or default of the tenant of any such person ; or 20
- (c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession ; or
- (d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for his wife or minor children, or for any person bona fide residing, or to reside, with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this sub-section) the Court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ; or 30
- (e) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the Court, is in the public interest ; or
- (f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the Court as reasonably sufficient in the circumstances ; or 40

- (g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war ; or
- (h) the tenant without the consent of the landlord has at any time after the 1st day of December, 1941, or the prescribed date, whichever is the later, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let ; or
- 10 (i) the landlord is the owner of a dwelling-house which he has previously occupied as a residence for himself and reasonably requires such house for occupation as a residence for himself or for his wife or minor children, and has complied with the terms relating to the giving of notice contained in any lease into which he has entered with the intent in respect of such house, or, in the absence of any such lease, has given the tenant one month's notice to quit :
- 20 Provided that if, within twelve months next after the date upon which the landlord was, under the provisions of this paragraph, entitled to vacant possession of such dwelling-house, he wishes again to let such house (whether for a consideration or without consideration), he shall give to the tenant who, under the provisions of this paragraph, was required to give up possession of such house, the first option to let and take possession of the said house. If any landlord fails to give such option, or to give up possession to the tenant accepting such option, he shall be liable to a fine of £100 or to six months' imprisonment or to both such fine and such imprisonment ; or
- 30 (j) the dwelling-house is the property of the Kenya and Uganda Railways and Harbours Administration (hereinafter called " the Administration ") and is reasonably required for the occupation of an employee of the Administration ;

and, in any such case as aforesaid, the Court considers it reasonable to make such an order.

The existence of alternative accommodation shall not be a condition of an order on any of the grounds specified in paragraph (d) of this subsection—

- (i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment ; or
- 40 (ii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war ; or
- (iii) where the landlord gave up the occupation of the dwelling-house for the purpose of taking leave outside the Colony and specifically entered into a contract with the tenant to lease such dwelling-house to him for a fixed period not exceeding one year and the landlord wishes himself to re-occupy such dwelling-house immediately upon the termination of the contract."

* * * * *

“ 17.—(1) A tenant who, under the provisions of this Ordinance, retains possession of any dwelling-house shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Ordinance, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, then notwithstanding the provisions to the contrary of any law in force in the Colony, on giving not less than three months' notice :

Provided that, notwithstanding anything in the contract of tenancy, 10
a landlord who obtains an order for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not, as a condition of giving up possession, ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord and any person acting in contravention of this subsection shall be liable on conviction by a subordinate court of the first class to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration 20
to be paid to the person by whom the same was given, but any such order shall be in lieu of any other method of recovery prescribed by this Ordinance.

(3) Where the interest of a tenant of a dwelling-house is determined, either as the result of an order for possession or ejectment or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Ordinance, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.”

* * * * *

“ 19. The Governor in Council may, by Proclamation, declare that the 30
provisions of this Ordinance shall apply to any area, district or place in the Colony in respect of premises used for business, trade or professional purposes, or for the public service, as it applies to a dwelling-house in that area, district or place, and with effect from the date of such Proclamation, or from a date specified therein, this Ordinance shall be read as though references to ‘ dwelling-house,’ ‘ house ’ and ‘ dwelling ’ included references to any such premises, provided that the Ordinance in its application to such premises shall have effect subject to the following modifications :—

(a) The following paragraph shall be substituted for paragraph (d) 40
of subsection (1) of section 11 of this Ordinance :—

‘ (d) The premises are reasonably required by the landlord for business, trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the Court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ’ ;

(b) The following paragraph shall be added after paragraph (j) of the same sub-section :—

‘ (k) The premises are bona fide required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest ’ ;

(c) Paragraph (i) of the same subsection shall not apply ;

(d) Subsection (2) of Section 11 and Section 14 of this Ordinance shall not apply.

10 (e) The following definition shall be substituted for the definition of ‘ prescribed date ’ contained in section 2 of this Ordinance :—

‘ prescribed date ’ means such date as the Governor in Council may by Proclamation under section 19 of this Ordinance appoint.”

In the Privy Council.

ON APPEAL

from the Court of Appeal for Eastern Africa.

BETWEEN

NAGARA HOTEL LIMITED

and Others - - - Appellants

AND

RAJABALLY KASSAM

SULEMAN and Others - Respondents.

Case for the Respondents

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