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11, 1954 Kenya ✓

No. 12 of 1953.

In the Privy Council.

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ON APPEAL  
FROM HER MAJESTY'S COURT OF APPEAL FOR  
EASTERN AFRICA

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BETWEEN

DYAL SINGH . . . . . *Appellant*

AND

KENYAN INSURANCE LIMITED . . . . . *Respondents.*

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RECORD OF PROCEEDINGS

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HERBERT OPPENHEIMER, NATHAN & VANDYK,  
20 COPTHALL AVENUE,  
LONDON WALL,  
LONDON, E.C.2,  
*Solicitors for the Appellant.*

37711

UNIVERSITY OF LONDON  
W.C.1.

24 FEB 1955

No. 12 of 1953.

In the Privy Council.

INSTITUTE OF ADVANCED  
LEGAL STUDIES

## ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN

DYAL SINGH . . . . . *Appellant*

AND

KENYAN INSURANCE LIMITED . . . . . *Respondents.*

## RECORD OF PROCEEDINGS

## INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI</i>		
	<i>(Civil Case No. 806 of 1950)</i>		
1	Particulars of Case Stated . . . . .	22nd August 1950 ..	1
2	Invoice Attached to Particulars of Case Stated .. ..	22nd August 1950 ..	4
3	Court Notes .. .. .	13th April 1951 and 14th June 1951 ..	4
4	Judgment .. .. .	14th June 1951 ..	7
5	Decree .. .. .	4th February 1953 ..	9
	<i>IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA</i>		
6	Memorandum of Appeal .. .. .	14th August 1951 ..	10
7	President's Notes .. .. .	18th March 1952 ..	11
8	Judgment .. .. .	10th April 1952 ..	14
9	Decree .. .. .	10th April 1952 ..	22
10	Motion on Notice for Conditional Leave to Appeal to Privy Council .. .. .	9th May 1952 ..	22

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
11	Affidavit in support of Motion .. .. .	9th May 1952 ..	23
12	Affidavit in Opposition to Motion and Exhibit " A " referred to therein .. .. .	27th June 1952 ..	24
13	Order granting Conditional Leave to Appeal to Her Majesty in Council .. .. .	27th June 1952 ..	25
14	Order granting Final Leave to Appeal to Her Majesty in Council .. .. .	19th January 1953 ..	26

In the Privy Council.

ON APPEAL  
FROM HER MAJESTY'S COURT OF APPEAL FOR  
EASTERN AFRICA

BETWEEN

DYAL SINGH . . . . . *Appellant*

AND

KENYAN INSURANCE LIMITED . . . . . *Respondents.*

10 RECORD OF PROCEEDINGS

No. 1.

PARTICULARS OF CASE STATED.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

Civil Case No. 806 of 1950.

DYAL SINGH . . . . . Plaintiff

*versus*

KENYAN INSURANCE LIMITED . . . . . Defendants.

*In His Majesty's Supreme Court of Kenya at Nairobi.*

No. 1. Particulars of Case Stated, 22nd August 1950.

20 IN CASE STATED under the Provisions of the Civil Procedure (Revised) Rules, 1948, Order 34, Rule 1 (a) and (b), we, the undersigned Plaintiff and Defendants respectively hereby submit the following case stated for the decision of this Honourable Court.

1. The Plaintiff is a taxi-owner, working for gain and residing at Nairobi and his address for the purpose of this suit is care of Maini & Patel, Advocates, Government Road, Nairobi.

2. The Defendants are a limited liability Company having its registered office at Nairobi and their address for service herein is care of Messrs. Daly & Figgis, Advocates, Nairobi.

30 3. On 3rd February, 1948, the Plaintiff purchased for the sum of Shs.2,000/- a passenger body International lorry registered number T. 9348 at a public auction conducted by Ismail, Court Broker, Nairobi in pursuance of an Order made by this Honourable Court in Civil Case No. 212 of 1947 :

*In His  
Majesty's  
Supreme  
Court of  
Kenya at  
Nairobi.*

No. 1.  
Particulars  
of Case  
Stated,  
22nd  
August  
1950,  
*continued.*

Ram Parkash son of Isher Dass Gulabrai Versus Njoroge son of Daudi, and was issued with an Invoice being No. 3146 of 3rd February, 1948, by the said Court Broker in respect of the said purchase of the said lorry. Copy of the said Invoice is attached hereto marked "A."

4. Since the purchase of the said lorry the Plaintiff has spent approximately a sum of Shs.7,000/- thereon with a view to renovating and putting the same in perfect running order and obtained a T.L.B. Passenger Bus Licence in respect thereof—authorising him to carry 32 passengers therein between Nairobi and Limuru, and the Plaintiff continued to operate the said bus between the said route until its seizure by the Defendants as hereinafter stated. 10

5. The Defendants seized the said passenger bus on the morning of 29th April, 1950, while it was in the possession of the Plaintiff on the allegation that they have a right to its seizure by virtue of a Chattels mortgage dated 12th October, 1946, and made by Njoroge son of Daudi (the judgment-debtor in the aforesaid Supreme Court Civil Case No. 212 of 1947) in their favour (and duly registered pursuant to the provisions of Chattels Transfer Ordinance, 1930) to secure a loan of Shs.3,600/- with interest thereon at seven per centum per annum as stated in the said Chattels Mortgage which the Defendants allege still remains unsatisfied. 20

6. The Defendants allege and claim that they are within their rights in so seizing the said bus and retaining the same until their claim in respect of the said Chattels Mortgage is satisfied and state that the Plaintiff must be presumed to have constructive notice of the said Chattels Mortgage by virtue of its registration as required by the Chattels Transfer Ordinance, 1930, and they rely on Section 4 of the said Chattels Transfer Ordinance, 1930, which reads as follows :—

" All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Ordinance." 30

7. The Defendants further allege and claim that the said Court Broker could not give a better title in respect of the said bus to the Plaintiff than the judgment-debtor in the said Supreme Court Civil Case actually had in him.

8. The Plaintiff alleges and claims that since he purchased the said bus and not the right title and interest therein of the judgment-debtor in the said Supreme Court Civil Case No. 212 of 1947, of which he had no knowledge whatever, at a public auction conducted in pursuance of a Court Order, he secured a perfect title in respect thereof free from any encumbrances or equities ; that he could not be presumed to have any constructive notice of the said Chattels Mortgage as the sale in question was conducted by a Court Order after due publication ; that the Defendants could have moved this Honourable Court for a stay of the execution proceedings in the said Civil Case by lodging objection proceedings as provided in the Civil Procedure Rules in order to enforce their rights in respect of the said Chattels Mortgage which they failed to do and thus waived 40

their right to enforce their security as against the said bus and the Plaintiff relies on Section 39 (1) of the said Chattels Transfer Ordinance, 1930, and Order XXI, Rule 53 of the Civil Procedure (Revised) Rules, 1948, which read as follows :—

*In His Majesty's Supreme Court of Kenya at Nairobi.*

*Section 39 (1), Chattels Transfer Ordinance, 1930.*

10 “ Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of any Court, and the said Chattels, or any of them, are comprised in any instrument under this Ordinance, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title and interest of the judgment-debtor in the same.”

No. 1.  
Particulars  
of Case  
Stated,  
22nd  
August  
1950,  
*continued.*

*Order XXI, Rule 53, Civil Procedure (Revised) Rules, 1948.*

“ Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of Court of the proceeds of sale of such property give notice in writing to the Court of his objection to the attachment of such property.”

9. It is agreed by the parties hereto that in the event of this Honourable Court finding in favour of the Plaintiff, the Defendants shall—

20 (A) deliver to the Plaintiff the said Passenger bus in a perfect running condition ; and

(B) pay damages to the Plaintiff in such sum and at such rate and for such period as shall be determined by this Honourable Court after hearing both the parties.

10. The questions before this Honourable Court are therefore :—

30 (A) Has the Plaintiff secured a clear title in respect of the said bus by virtue of his having purchased the same at a public auction carried out in pursuance of a Court Order in that behalf, or have the Defendants any enforceable security against the said bus by virtue of the aforesaid Chattels Mortgage, having failed to lodge any objection proceedings before its sale ?

(B) This Honourable Court is also asked to direct as to who should pay the costs of these proceedings.

Dated at Nairobi this 22nd day of August 1950.

Plaintiff.  
Sgd. DYAL SINGH

for KENYAN INSURANCE LTD.  
Sgd. (?)  
Director.

Defendants

40 Filed by : MAINI & PATEL,  
Advocates for the Plaintiff,  
Nairobi.

*In His  
Majesty's  
Supreme  
Court of  
Kenya at  
Nairobi.*

No. 2.  
Invoice  
attached to  
Particulars  
of Case  
Stated,  
22nd  
August  
1950.

No. 2.  
**INVOICE ATTACHED TO PARTICULARS OF CASE STATED.**

" A "

ARMS & AMMUNITION DEALER  
WAREHOUSE KEEPER & REPAIRER.

SALE No. 5 No. 3146.  
Hardinge Street,  
Balfour House,  
Phone 2831,  
P.O. Box 1470,  
Nairobi.

To  
Mr. DAYAL SINGH.

10

Dr. to : ISMAIL,  
Auctioneer & Official Broker,  
Land & Estate Agent.

LOT NO.	DESCRIPTION.	SHS.	CTS.
466	1 Wheel with tyre 475 x 19	15	00
484	1 Passenger body International lorry No. T. 9348.	2,000	00
		<u>2,015/-</u>	<u>—</u>

DELIVERED

20

Note : Under no circumstances may goods be taken away prior to payment and on any purchase not removed within 24 hours from time of sale storage will be charged.

No. 3.  
Court  
Notes,  
13th April  
1951.

No. 3.  
**COURT NOTES.**

NOTES OF ARGUMENTS BEFORE BOURKE, J.

806/50.

Plaintiff—Khanna & Patel.

Defendant—Wilkinson.

*Khanna* : Reads case. We will probably agree on damages if it 30 comes to that.

S. 45 (3) Bankruptcy Ord. we also rely upon and have given notice. The vehicle was attached and seized. S. 45 (3) B. Ord. It does away with effect of Chattels M. Ord. Purchaser at an auction sale under Court execution process acquires a good title against whole world if no claim received by the Court Officer prior to the sale. No claim here before sale or before payment out of the proceedings. S. 45—1930, Bankruptcy and

Deeds of Assignment Act 1913 P. 15. Same wording as our S. 45 (3) and still in force. Prior to 1913 in England Court Officer could not pass in C.L. and better title than was in J. Dr.

*Crane & Sons v. Ormerod* 2 K.B. 1903 P. 37, 38. P. 40 per Channel J.

*In His Majesty's Supreme Court of Kenya at Nairobi.*

Our position same and then we adopted S. 45 (3)=S. 15 Eng. 1913 Act. Chap. 281 Chattels M. Ord. 13.6.1930. S. 39. 3.9.30 Bankruptcy Ord. S. 45. So June to September 1930 a purchaser buying at execution sale got right title and into of J. Debtor and the grantee under instrument could seize the chattels etc.

No. 3.  
Court Notes,  
13th April 1951,  
*continued.*

10 Ss. 39 (3) (4) and (5) of Chap. 281. Then come S. 45 (3) Bankruptcy Ordinance.

In India the C.L. position still holds good. Authorities there no help.

S. 45 (3) Bankruptcy Ordinance whittles down S. 39 Cap. 281 is to protect an innocent bona fide purchaser. G'ee. has remedy against G. or against person procuring sale. S. 45 to give absolute title. If S. 45 *not* there then I could not get a better title than the J. Debtor had. Grantee could come against me at any time. I agree I stand or fall on S. 45 (3) Bankruptcy Ordinance.

20 *Curtis v. Maloney*, 2 A.E.R. 1950 201.

Equivalent England section 45 (3) considered.

Grantee under instrument could go against execution Creditor or Execution debtor. But not purchaser. Affirmed 2 A.E.R. 1950 P. 982. *A fortiori* the defendant's position here is worse than that of the true full owner per Denning J. P. 986. S. 45 proof of notice necessary or proof by reasonable inquiry have ascertained goods not the property.

S. 4 Cap. 281—notice imputed by law—such notice *not* referred to in S. 45 (3) and “proved (S. 45 (3)) does not=“deemed” in S. 4. S. 45 (3) is not extended to such deemed notice by statute.

30 Full effect to be given S. 45 (3).

*If* good title against absolute owner—surely strange if not given against limited “owner” i.e. person holding a charge—why should he be in a better position?

*Joseph v. Lyons*, 15 Q.B. 280, 286, 287.

If disclosure of bill of sale only then is it reasonable to search register. Sale published—*no* charge disclosed—*no* claim. And in fairness—Defendant inactive and I spent 7000/- on property.

(36 I. App. P. 32 P.C. on Court sales.)



*In His Majesty's Supreme Court of Kenya at Nairobi.*

S. 13 (2) Cap. 281. Does not rule out section 45 (3) only affects S. 42 (2) (c).

*Williams* 16th 326.

*In re Singh* (?) 1897 Q.B.D. 461 approved in *Hollinshead & anor. v. Egan*, 1913 A.C. 564.

No. 3.  
Court  
Notes,  
13th April  
1951,  
*continued.*

44 (3) = Our 42. S. 13 (2) protects *such* chattels from effect of reputed ownership under S. 42 (2) (c)—a limited protection as stated in 1897 case above.

Agree no facts in case to enable assessment of damages O. 34 r. (1) (a) but we will agree on amount if possible or ask to submit further statement of facts in damages. Question if ruling in my favour on main legal issue. 10

*Wilkinson*: Plaintiff relies *solely* on S. 45 (3) Bankruptcy Ord. Conceded otherwise S. 39 Chattels T. Ord. in my favour. Under S. 39 could only sell the right of Judgment-debtor i.e. ownership subject to charge—no better title than Judgment-debtor had.

S. 45 (3) Cap. 30. Whole purpose of Ch. Trs. Ord. is to afford protection to lender of money on security of goods.

A true owner in bank case—gave up possession and ran a risk. But can't say *a fortiori* limited owner in a worse position. He is in a better position because of s. 4 of Cap. 281. It is quite explicit and stronger than 20 Bills of S. Act.

S. 4—"all persons" *includes* purchaser from Court broker. S. 45 (3)—not a question of proving notice—"or might etc."

S. 7 Cap. 281—register.

Motor vehicle—very subject to Chattels Mort.

It could by reasonable inquiry have been ascertained goods not the property. No negligence by us. We have our registered instrument and for a purchaser to search—deemed to have notice and bound by it.

I stand on S. 4 Cap. 281—the absolute true owner not protected by any such statutory provision but I am as grantee. Object of registration 30—reasonable and easy to find out.

*Khanna*: (by consent). Proviso to s. 45 (3) not limited to one type of title. Mortgage true owner as assigned to him therefore in position of absolute owner for purpose of my argument.

C. A. V.

(Sgd.) P. J. B.

13.4.51.

## ARGUMENTS AS TO COSTS &amp; ORDER.

14.6.51.

Wilkinson.  
M. Patel (for Khanna).  
Judgment delivered.

(Sgd.) P. J. B.

*In His  
Majesty's  
Supreme  
Court of  
Kenya at  
Nairobi.*

No. 3.

*Costs :*

*Wilkinson :* I should have costs as the successful party. A decree will be drawn up under the rules giving effect to the detenuation of the equal question put.

Court  
Notes,  
*continued.*  
14th June  
1951,

*Patel :* Should be no order as to costs. Other side requested case stated.

*Wilkinson :* We are entitled reasonably to costs.

*Order :*

The defendant will have his costs.

(Sgd.) P. J. BOURKE.

14.6.51.

No. 4.

## JUDGMENT.

20 IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

No. 4.  
Judgment,  
14th June  
1951.

S.C. Civil Case No. 806 of 1950.

DYAL SINGH . . . . . Plaintiff

*versus*

KENYAN INSURANCE LIMITED . . . . . Defendant.

## JUDGMENT.

The Plaintiff purchased a motor vehicle for Shs.2,000 in February, 1948, at a public auction conducted by the Court in Civil Case No. 212 of 1947, *Ram Parkash v. Njoroge s/o Daudi*. The Plaintiff spent about Shs.7,000 on the vehicle and ran it as a licensed passenger bus. In April, 1950, the Defendant seized the vehicle pursuant to rights alleged under a duly registered instrument of chattels mortgage of the 12th October, 1946, made by the Defendant and judgment debtor in the civil case aforesaid to secure a loan of Shs.3,600 with interest thereon. The question put is —“ Has the Plaintiff secured a clear title in respect of the said bus by virtue of his having purchased the same at a public auction carried out in pursuance of a Court Order in that behalf, or have the Defendants any enforceable security against the said bus by virtue of the aforesaid Chattels Mortgage, having failed to lodge any objection proceedings before its sale? ”

*In His  
Majesty's  
Supreme  
Court of  
Kenya at  
Nairobi.*

No. 4.  
Judgment,  
14th June  
1951.

In the course of argument Mr. Khanna for the Plaintiff made it clear that he based his case upon section 45 (3) of the Bankruptcy Ordinance ; he concedes that were it not for the effect of that section he could get no better title than that which rested with the judgment debtor who was the grantor under the instrument. The Defendant Company takes its stand upon sections 4 and 39 of the Chattels Transfer Ordinance, Cap. 281, and argues that the Plaintiff must be deemed to have had notice of the instrument of mortgage and could through the sale only obtain a transfer of the right, title and interest of the judgment debtor in the vehicle. On the authority of *Curtis v. Malony*, 2 A.E.R. 1950, 982, in which consideration was given to the section in force in England equivalent to section 45 (3) of the Bankruptcy Ordinance, it is evident that had the Defendant Company been the original true and legal owner of the vehicle it could not succeed in establishing a claim against the Plaintiff as purchaser : as was said by Somervell, L.J., in the case under reference (at p. 948) the " good title " acquired through such a sale can, under the section— " only mean a good title against everybody." It is argued that since section 45 (3) has the effect of giving good title against the true owner, *a fortiori* it must have the same effect against the person holding merely an interest by virtue of a registered instrument of charge under the Chattels Transfer Ordinance. That would undoubtedly be so were there no statutory provision to protect the grantee under such an instrument. The object of section 45 (3) of the Bankruptcy Ordinance is apparently to protect the purchaser for value without notice as against the legal owner—a principle well known in both law and equity. As was said by Denning, L.J., in *Curtis v. Malony* (*sup.* p. 986)—" This is yet another instance of a contest between the common law rule that no man can give a better title than he has got and the statutory exceptions in favour of innocent purchasers." But in the instant case it is not a matter of the protection of an innocent purchaser because by reason of section 4 of the Chattels Transfer Ordinance the Plaintiff must be deemed to have had notice of the instrument charging the vehicle, which was duly registered under the Ordinance. Moreover, by section 39 of Cap. 281 express provision is made for the sale of the grantor's interest in a chattel where process in execution issues against him as a judgment debtor. I uphold the argument put forward on behalf of the Defendant. I decide that the Plaintiff has not secured a clear title and the Defendant retains his interest and rights under the instrument of mortgage. I will hear the parties on the question put as to costs.

PAGET J. BOURKE, J. 40

14.6.1951.

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No. 5.  
DECREE.

*In Her Majesty's Supreme Court of Kenya at Nairobi.*

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.  
Civil Case No. 806 of 1950.

No. 5.  
Decree,  
4th  
February  
1953.

DYAL SINGH . . . . . Plaintiff

*versus*

KENYAN INSURANCE LIMITED . . . . . Defendant.

DECREE.

This Suit coming on for hearing on the 13th day of April 1951 before  
10 the Honourable Mr. Justice Bourke in the presence of Counsel for Plaintiff  
and Counsel for the Defendant IT WAS ORDERED :

1. That the Plaintiff has not secured a clear title in respect of  
a passenger Body International Lorry Registered No. T. 9348  
purchased by him at a public auction in pursuance of an Order  
made by this Court in Civil Case No. 212 of 1947 *Ramprakash s/o*  
*Isherdass Gulabrai versus Njoroge s/o Daudi.*

20 2. That Defendants retain their interest and rights in the said  
vehicle under the Instrument of Mortgage dated the 12th day of  
October 1946 made by Njoroge s/o Daudi (Judgment Debtor in  
Civil Case No. 212 of 1947) and duly registered under the Chattels  
Transfer Ordinance 1930.

3. That the Plaintiff do pay to the Defendants the sum of  
shs.1,944/83, being the taxed costs of this suit.

Given under the hand and the seal of the Court at Nairobi this  
4th day of February 1953.

G. B. RUDD,  
Puisne Judge,  
Supreme Court of Kenya.

MEMORANDUM OF APPEAL.

*In His Majesty's Court of Appeal for Eastern Africa.*

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

Sessions Holden at Nairobi.

Civil Appeal No. 47 of 1951.

No. 6.

Memo-  
randum of  
Appeal,  
14th  
August  
1951.

(Being an Appeal from Original Civil Case No. 806 of 1950 of His Majesty's Supreme Court of Kenya at Nairobi).

DYAL SINGH . . . . . Appellant  
(Original Plaintiff)

*versus*

10

KENYAN INSURANCE LIMITED . . . . . Respondents  
(Original Defendants).

MEMORANDUM OF APPEAL.

The Appellant above-named hereby appeals from the judgment (a certified copy whereof accompanies this Memorandum) dated 14th day of June, 1951, delivered by His Honour Mr. Justice Paget J. Bourke of the Supreme Court of Kenya, in Civil Suit No. 806 of 1950, and sets forth the following grounds of objection, among others, to the judgment appealed from, namely :—

1. The learned judge, while implicitly appreciating that the respondent company was the true and legal owner in juridical comprehension, and its ownership was only defeasible by condition subsequent, erred in confining the application of Section 45 (3), of the Bankruptcy Ordinance, Cap. 30, Laws of Kenya, 1948, without there being anything in its language, or in the tenor and object of the said Ordinance, to so restrict its wide general meaning and application, to the case only of an "original" true and legal owner, of the vehicle, as distinct from "derivative" owners, whether absolute or limited in duration or extent.

2. The learned judge should have held, that Section 45 (3) of the Bankruptcy Ordinance aforesaid, required proof of actual notice express or constructive, and not notice imputed by any statute, before a purchaser at an auction sale in execution, could be said not to acquire a "good title" "against everybody," and in so far as Section 4 of the Chattels Transfer Ordinance Chapter 281, Laws of Kenya, 1948, imputed everybody with notice of a registered instrument charging a vehicle, whether in fact there was actual or no notice at all thereof, there was a conflict between the two provisions aforesaid of the two enactments, and as such the Bankruptcy Ordinance aforesaid (which is a later enactment) prevailed over the said Chattels Transfer Ordinance, so as to preserve the rights of an innocent purchaser (bona fide purchaser for value) short of the notice specified under the said Bankruptcy Ordinance.

WHEREFORE the Appellant prays that this appeal be allowed with costs here and below, and appropriate orders be made.

Dated at Nairobi this 14th day of August, 1951.

for D. N. & R. N. KHANNA.

(Sgd.) D. N. KHANNA,  
Advocates for the Appellant.

Filed by :—

D. N. & R. N. Khanna,  
Advocates,  
Nairobi.

10

To be served upon :—

Kenyan Insurance Limited,  
Nairobi.

*In His  
Majesty's  
Court of  
Appeal  
for  
Eastern  
Africa.*

No. 6.  
Memo-  
randum of  
Appeal,  
14th  
August  
1951,  
*continued.*

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No. 7.

PRESIDENT'S NOTES.

NOTES OF ARGUMENTS BY THE PRESIDENT.

18.3.52.

*Coram :*

Nihill, P.  
Worley, V. P.  
Thacker, J.

20

Khanna with P. L. Maini for Appellant.

Wilkinson for Respondent.

*Khanna opens :—*

Appellant purchased a lorry from the Court Broker for 2000 shillings. Claim made several months later after Appellant had spent a large sum on improving lorry.

3 main points.

(A) legally no distinction between an absolute owner and an owner whose title is defeasible.

30

(B) Chattels Transfer Cap. 281. Section 4 (Ordinance 24 of 1938) not all embracing.

(C) Section 45 (3) of the Bankruptcy Ordinance not in conflict with Section 4 of Cap. 281. "Notice" does not include actual statutory notice arising out of Section 4. If two sections in conflict, Bankruptcy Ordinance must prevail.

No. 7.  
President's  
Notes,  
18th March  
1952.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 7.  
President's Notes,  
18th March 1952,  
*continued.*

The grantee of a Transfer of Instrument is absolute owner so long as instrument lasts.

Authority 4 cases.

25 Q.B.D. 417 (*Fenton versus Blythe*)

1919 1 K.B. 319 (*Lewis versus Thomas*) at 322.

Hire purchaser cannot be absolute owner until last instalment paid.

1892 2 Q.B.D. 591 *Ex parte, Williams* at 593.

1923 1 K.B. *Harrods versus Stanton* at p. 517. at page 520.

(N.B. this not very much in point).

Difference between absolute owner and reputed owner 2 Hailsham 235 10 para. 307.

Section 42 (c) Bankruptcy Ordinance.

Exception in Section 13 Chapter 81.

Which shows that when Bankruptcy Ordinance is affected by Cap. 281, it expressly says so.

Page 239 of 2 Hailsham see last sentence.

Section 4 Cap. 281 cf. with Section 198 (1) of Land & Property Act, 1925. (Indian Law Reporter Statutes at page 713). Here in our Section words "and for all purposes" not used. Section 13. "I did not seize the Chattels".

20

I was purchaser at an auction. Purchases at an auction not covered by Cap. 281 at all.

Ordinance 45 (3) of Cap. 30.

Note words "unless it is proved" supports my view.

13 Hailsham 106.

"reasonable" means as a matter of precedence also p. 104.

Section 39 (1) of Cap. 281 is only permissive here the officer sold the chattels he did not do what he might have done in law.

Section 45 (1) is based on 1913 Bankruptcy Act.

*re Curtis v. Maloney*, 2 A.E.R. 1950, 982 at 202.

30

1936 L.R. (Ch. D.) p. 274 at p. 279.

I say that here the two sections are not materially conclusive.

"No person should be entitled to recover" must be given "full meaning."

re proviso to Section 45 (3).

See *Curtis versus Maloney*, p. 202.

14 Hailsham 69, para. 116.

Proviso does not include the unnoticed creditor.

*By Court* : If the statutory notice must be presumed to be notice to the purchaser it is also notice to Court's bailiff.

23 Hailsham 532 Art. 784.

Adjourned to 2.30 P.M.

J. H. B. NIHILL.

2.30 P.M. Bench & Bar as before.

*Khanna continues* :

If appeal succeeds.

Order of Court should be set aside. Costs.

10 Outstanding question of damages should be remitted to Supreme Court.

Either party should have power to amend on issue of damages.

1951 A.C. 688 at page 706.

*Wilkinson* :

*re Curtis versus Maloney* not applicable.

Judge did not restrict meaning of " true owner " at all.

Concede grantee is the true owner.

I rely on words " all persons ".

Section 198 " Land and Property Act " " for all purposes "

20 5th Hanbury's Modern Equity.

1884 15 Q.B. 280. *Joseph versus Lyons*.

2 Halsbury.

In Bills of Sale Act 1878 no section corresponds to Sec. 4.

Sec. 8 corresponds with our Sec. 13.

See also Sec. 20 1878 Act.

Sec. 42 (c) of Bankruptcy Ordinance 499 (Volume I).

No repugnancy between Sec. 45 (3) and Section 4.

9th Maxwell on Interpretation of Statutes at 173.

Repeals by implication not favoured.

30 Section 45 proof " registered instrument is the proof."

Section 4 Cap. 281 is there and Court must give a meaning to it.  
Land Charges Act.

*By Court* : Is there not a difference between land and chattels ?

Grantee under an instrument in better position than the true owner under a hire purchase agreement.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 7.  
President's Notes,  
18th March 1952,  
*continued.*



*In His Majesty's Court of Appeal for Eastern Africa.*

*Khanna* : Notice in 45 (3) would mean actual or constructive. Would go beyond canons of construction to include statutory notice.

Judgment reserved.

J. H. B. NIHILL,  
*President.*

10.4.52. *Coram* : Nihill, P.

Worley, V.P.

Khanna for appellant.

Salter for Wilkinson for Respondent.

Judgment read. Appeal dismissed with costs.

10

J. H. B. NIHILL,  
*President.*

No. 7.  
President's  
Notes,  
18th March  
1952.  
*continued.*

*In Her Majesty's Court of Appeal for Eastern Africa.*

**No. 8.**  
**JUDGMENT.**

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
AT NAIROBI.

Civil Appeal No. 47 of 1951.

(From Original Judgment in Civil Case No. 806 of 1950 of H.M. Supreme Court of Kenya at Nairobi.)

DYAL SINGH . . . (Original Plaintiff) Appellant 20

*versus*

KENYAN INSURANCE LIMITED  
(Original Defendant) Respondent.

**JUDGMENT.**

*Worley—Vice-President :*

This appeal from the Supreme Court of Kenya raises a difficult question on the construction of two apparently incompatible enactments, namely, Section 4 of the Chattels Transfer Ordinance (Chapter 281 of the Laws of Kenya 1948) and Section 45 (3) of the Bankruptcy Ordinance (Chapter 30 *ibid.*). The former Ordinance provides for the registration of instruments as defined in Section 2, including bills of sale and any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, absolutely or conditionally; and Section 4 of that Ordinance provides :—

“ All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Ordinance.”

There is a proviso to the section which is not relevant to this appeal.

No. 8.  
Judgment,  
10th April  
1952.

Subsection (3) of Section 45 of the Bankruptcy Ordinance provides as follows :—

10 “ (3) Where any goods in the possession of an execution-debtor at the time of seizure by a bailiff are sold by such bailiff without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to such goods, and no person shall be entitled to recover against such bailiff or any other person lawfully acting under his authority, for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to such goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained that such goods were not the property of the execution-debtor :

Provided that nothing in this subsection contained shall affect the right of any claimant, who may prove that at the time of sale he had a title to such goods, to any remedy to which he may be entitled against any person other than such bailiff.”

20 The point of construction debated in this appeal is whether the statutory notice imputed to “ all persons ” by virtue of Section 4 of the Chattels Transfer Ordinance is notice for the purposes of Section 45 (3) of the Bankruptcy Ordinance ; or, alternatively, whether this statutory notice puts a purchaser of goods at a sale by a bailiff, without any claim having been made to the same, upon his inquiry as to the existence of a registered instrument relating to the goods purchased.

30 The matter came before the Supreme Court by way of case stated and the relevant facts, which I take from the judgment appealed from, are that in February 1948 the Appellant purchased a motor vehicle for Sh.2,000 at a public auction conducted by a Court broker in pursuance of an order for sale made by the Supreme Court of Kenya in Civil Case No. 212 of 1947 : Ram Parkash (Plaintiff) v. Njoroge s/o Daudi (Defendant) (herein-after referred to as the execution-debtor). The Appellant spent about Sh.7,000 on the vehicle and ran it as a licensed passenger bus until April, 1950, when the Respondent Company seized the vehicle pursuant to rights alleged to arise under a duly registered instrument dated 12th October, 1946, and made between the Respondent Company and the execution-debtor to secure a loan of Shs.3,600 with interest thereon at 7 per cent. per annum. No claim to the vehicle was made by the Respondent Company or anyone else before the sale and the bailiff sold or purported to sell the absolute property in the vehicle.

40 The case does not specifically state that the vehicle was in the possession of the execution-debtor at the time of seizure by the bailiff but it has been assumed throughout that this was so. Nor does the case give the form of the instrument registered but I assume that it followed the form permitted by Section 22 and numbered (4) in the First Schedule to the Chattels Mortgage Ordinance : in that form the chattel is assigned and transferred by way of mortgage to secure the payment of money.

The question put in the case was, therefore, “ Has the Plaintiff (Appellant) secured a clear title in respect of the said bus by virtue of his having purchased the same at a public auction carried out in pursuance of

*In Her Majesty's Court of Appeal for Eastern Africa.*

No. 8  
Judgment,  
10th April  
1952,  
*continued.*

*In Her Majesty's Court of Appeal for Eastern Africa.*

No. 8.  
Judgment,  
10th April  
1952,  
*continued.*

a Court order in that behalf, or have the Defendants (Respondents) any enforceable security against the said bus by virtue of the aforesaid Chattels Mortgage Ordinance, having failed to lodge any objection proceedings before its sale? ”

The learned Judge of the Supreme Court declared that the Appellant had not secured a clear title and that the Respondents retained their interest and rights under the instrument of mortgage. Costs were awarded to the Respondents. His reasons for so holding were—

(A) had the Respondents been the original, true and legal owner of the vehicle they could not succeed in establishing a claim against the purchaser: the object of Section 45 (3) is apparently to protect the purchaser for value without notice as against the legal owner; 10

(B) Section 45 (3) would have the same effect as against a person holding merely an interest by virtue of a registered instrument, were there no other statutory provision to protect the grantee under such an instrument;

(C) but in the instant case it is not a matter of the protection of an innocent purchaser because by reason of Section 4 of the Chattels Transfer Ordinance the purchaser must be deemed to have had notice of the registered instrument; 20

(D) moreover, Section 39 of the Chattels Transfer Ordinance expressly provides for the sale of the right, title and interest of a grantor in lieu of seizure and sale of the chattels comprised in a registered instrument.

The grounds of appeal are in substance—

(I) the learned Judge erred in confining the application of Section 45 (3) of the Bankruptcy Ordinance to the case only of an original, true and legal owner as distinct from “ derivative owners ” whether absolute or limited in duration or extent;

(II) he should have held that Section 45 (3) aforesaid required 30 proof of actual notice, express or constructive, and not notice imputed by any statute;

(III) in so far as Section 4 aforesaid imputes everybody with notice of a registered instrument (whether in fact there was actual or no notice at all thereof) there is a conflict between the two enactments and the Bankruptcy Ordinance, being the later enactment, prevails over the Chattels Transfer Ordinance so as to preserve the rights of an innocent purchaser short of the notice prescribed under the Bankruptcy Ordinance.

I will deal first with this last ground which appears to have been put 40 forward without adequate research into the history of the relevant legislation.

The Bills of Sale Ordinance 1909 (No. 3 of 1909) applied to the East African Protectorate the Bills of Sale Acts, 1878 and 1882: but these Acts do not contain any provision equivalent to Section 4 of the Chattels Transfer Ordinance. That section was originally enacted in Kenya by Section 4 of the Chattels Ordinance, 1930 (Ordinance No. 24 of 1930), which came into force on 13th June, 1930. Section 30 of that Ordinance

repealed the Bills of Sale Ordinance, 1909, and the application to the Colony of the Bills of Sale Acts. The current citation of the 1930 Ordinance with all subsequent amendments is Chapter 281.

*In Her Majesty's Court of Appeal for Eastern Africa.*

For bankruptcy legislation it is sufficient for my present purpose to go back to the Bankruptcy Ordinance, 1925 (Ordinance No. 1 of 1926), which was a consolidating and amending Ordinance and which repealed the application to the Colony of the Indian Provincial Insolvency Act, 1907. The Bankruptcy Ordinance, 1925, was in turn replaced by the Bankruptcy Ordinance, 1930 (Ordinance No. 32 of 1930), which came into  
 10 force on 3rd September, 1930, and which, with its subsequent amendments, is now cited as Chapter 30.

No. 8.  
 Judgment,  
 10th April  
 1952,  
*continued.*

Both these Bankruptcy Ordinances contained a section, numbered 43 (3), which is identical with what is now cited as Section 45 (3) of Chapter 30. Section 45 (3) therefore was in terms a mere re-enactment of a section which was first enacted prior to the enactment of Section 4 of the Chattels Transfer Ordinance; it cannot therefore be considered as the later and overriding enactment: "where a section in a statute is merely a re-enactment of a section in a previous statute, it cannot operate as a repeal of an intermediate enactment": Maxwell's Interpretation of  
 20 Statutes, 9th edition, p. 165, and see *Morisse v. Royal British Bank* (1856), 26 L.J.C.P. 62; 140 E.R., p. 36.

There is accordingly no substance in this third ground of appeal which is misconceived, but before leaving this point I wish to observe that it is the duty of advocates to make research into the validity of the grounds adduced in the memorandum of appeal which they intend to support or oppose and their failure to do so does, as in this case, throw an unfair burden on the Judges of this Court.

Before I pass on to consider the other grounds of appeal, it will be convenient to point out one serious and perhaps unexpected consequence  
 30 of the decision appealed from, namely, that it will affect the court bailiff or other person conducting a sale pursuant to an order of Court exactly as it affects the purchaser at such a sale. If a bailiff has notice or could by reasonable inquiry have ascertained that the goods he is selling are not the goods of the execution-debtor he is no more protected from an action at the suit of the true owner than a purchaser with similar knowledge or means of knowledge would be. If the statutory notice created by Section 4 of the Chattels Transfer Ordinance is to be imputed to the purchaser it must likewise be imputed to the bailiff or person conducting the sale.

"Before adopting any proposed construction of a passage susceptible  
 40 of more than one meaning, it is important to consider the effects or consequences which would result from it for they often point out the real meaning of the words" (Maxwell, *op. cit.*, p. 85). There is a presumption that the Legislature did not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or in other words, beyond the immediate scope and object of the statute. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act (*ibid.*, pp. 85 and 86). There can be no doubt that if the decision appealed from is

*In Her Majesty's Court of Appeal for Eastern Africa.*

No. 8.  
Judgment,  
10th April  
1952,  
*continued.*

correct, a heavy and exceptional burden is cast on any bailiff conducting a sale in pursuance of an order of Court. An interpretation which leads to such a consequence will require very close and careful consideration, though we must not shrink from adopting it if it appears to be in harmony with the immediate scope and object of the Ordinance.

It might be thought on a first reading that the proviso to Section 45 (3) protects the bailiff, even if he has notice, but that this is not so is clear from the judgments in *Curtis v. Moloney* [1950] 2 All E.R. 201 (K.B.D.) and 982 (C.A.), in which the corresponding English Section 15 of the Bankruptcy and Deeds of Arrangement Act, 1913, was considered. Finnemore, J., 10 at p. 203, cites with approval the following passage on the effect of the section from the judgment of McCardie, J., in *Jones Bros. (Holloway) Ltd. v. Woodhouse* (1923), L.R. 2 K.B. 117, at p. 126 :—

“ By the Bankruptcy and Deeds of Arrangement Act, 1913, s. 15, where goods in the possession of an execution debtor at the time of seizure by the sheriff are sold by the sheriff without any claim having been made to them, the purchaser of the goods so sold is protected, and the sheriff is protected also, unless in either case he had notice or might have found that the goods were not the property of the execution debtor. It is reasonably clear from the section that it is not intended to interfere with the right of the true owner of the goods to recover their value from the execution creditor at whose instance they have been seized.” 20

I pass on now to consider the first ground of appeal, which I think reveals some misunderstanding of the judgment. The relevant passage in the judgment is itself not very clear, perhaps because the learned Judge did not fully appreciate the legal position of a grantee under a chattels mortgage. While accepting that the object of Section 45 (3) is to protect the purchaser for value without notice against the claim of the legal or true owner, he appears to have thought that the expression “ true owner ” is 30 limited to the original owner. With respect, in my view that is not correct, for, to my mind, the grantee under a chattels mortgage is the true owner for the purposes of Section 45 (3) just as he is for the purposes of Section 42 (b) of the Bankruptcy Ordinance : see *Hollinshead v. Egan Ltd.* (1913), A.C. H.L. 564, in which the House expressly approved *In re Ginger ; ex p. The London and the Universal Bank* [1897] 2 Q.B. 461 (a decision on the English section equivalent to Section 42 (b)).

An interesting contrast is afforded in the legal position of a mortgagee of a ship, who, as the result of special statutory enactments, is not deemed the owner of the ship, nor is the mortgagor deemed to have ceased to be the owner thereof : see Halsbury—Laws of England, 2nd ed., Vol. XXX, p. 188. 40

But I do not think that this misapprehension affected the learned Judge's decision, for it is clear that the real *ratio decidendi* is that he regarded Section 4 of the Chattels Transfer Ordinance as an overriding provision fixing the purchaser with notice whatever might be the legal position of the grantee.

This brings me to the second ground of appeal and the real issue in this matter.

Mr. Khanna has contended that Section 4 is only intended to affect the operation of the Ordinance of which it forms a part : the section does not say that registration shall be notice for all purposes and therefore, he says, it only operates when any question arises under that Ordinance. He further argued that the rights of a purchaser of the goods of an execution debtor are specifically protected by Section 45 (3) of the Bankruptcy Ordinance and that the expression " no person " in that section must include the grantee under an instrument, who can give notice of his claim before sale and whose rights against the execution-creditor and the proceeds of sale are preserved. This interpretation he says will avoid any repugnancy between the two Ordinances.

*In Her Majesty's Court of Appeal for Eastern Africa.*  
 No. 8.  
 Judgment, 10th April 1952,  
*continued.*

He also prayed in aid the provisions of Section 39 of the Chattels Transfer Ordinance which provides that where goods are comprised in a registered instrument the bailiff may in lieu of seizing and selling such goods sell the right, title and interest of the grantor therein. That section, however, appears only to cover the case when the bailiff has actual notice of the existence of the registered instrument, and it is of little assistance in such a case as that which we have to consider here.

Further, it is said that where the Legislature intended the Bankruptcy Ordinance should be overridden by the Chattels Transfer Ordinance it has specially so provided, as in Section 13 (2) of the latter, and that the absence of any such provision in Section 4 shows that the Bankruptcy Ordinance was intended in the case of conflict to prevail. I think, however, that when the substance of the respective sections is examined, this argument is seen to be fallacious. Section 42 (b) of the Bankruptcy Ordinance enacts a general rule that when goods are left in the prescribed circumstances in the possession of the reputed owner with the consent of the true owner they shall be deemed to be goods of the reputed owner available to his creditors on his bankruptcy. So that when it was desired to make an exception to this rule in favour of the grantee for goods comprised in a registered instrument, the exception had to be specially enacted. Conversely, section 4 of the Chattels Transfer Ordinance enacts a general rule that registration shall be constructive notice to " all persons " and, by parity of reasoning, one would have expected that, if the Legislature intended to make an exception in favour of purchasers at a Court sale, this would have been specially enacted either as a proviso to Section 4 or as an amendment to 45 (3) of the Bankruptcy Ordinance.

Mr. Wilkinson on the other hand has contended that the expression " all persons " in Section 4 must be given its ordinary natural meaning, that nothing substantial would have been gained by the introduction of the words " for all purposes " and that there is no warrant for the suggested restriction on the operation of the section. There is no repugnance, he says, between the two sections and no difficulty in reconciling them, because, by proving the existence of a registered instrument, you prove the notice for the Court itself must take cognizance of all legal consequences following from registration.

After careful consideration and with some reluctance I have come to the conclusion that this point of view must prevail. It certainly seems unjust that the Respondents, who omitted to make a claim before the sale,

*In Her  
Majesty's  
Court of  
Appeal  
for  
Eastern  
Africa.*

No. 8.  
Judgment,  
10th April  
1952,  
*continued.*

and who have slept on their rights for two years, should now have the right to seize the vehicle, but in the form in which this matter came before the Supreme Court equitable considerations and laches are irrelevant.

Before so deciding, I have taken into account the purpose of the Chattels Transfer Ordinance as revealed in its provisions. I have ascertained that it was modelled upon the New Zealand Chattels Transfer Act, 1924 (No. 49 of 1924), which contains a section identical with Section 4 of the Kenya Ordinance, and it is interesting and not without significance to observe some similarities in the conditions obtaining in the two countries. Both are young communities, mainly agricultural and rapidly developing. In such communities it is common to find classes of settlers, farmers, traders and others who are short of working capital and from time to time need to obtain loans to tide them over till the next harvest is in and the cash crops sold, but they have little security to offer except their stock, their machinery, or their growing crops. Lenders, however, are reluctant to advance money at reasonable rates on chattels, and I think it is clear that one of the main purposes of the Ordinance was to facilitate loans on the security of chattels by giving a lender, who registers his instrument, a very high degree of protection. Section 13 (2) provides that his right is to prevail against the trustee in bankruptcy: section 4 provides that his right is to prevail against all subsequent purchasers who are to be deemed to have had notice of the registered instrument. I can see no justification for reading into Section 4 the suggested limitation that it shall apply only to matters arising under the Ordinance: indeed, such a limitation would leave little scope for its operation and tend to defeat the purpose of the section. The general rule of the common law is that no man can give a better title than he has got and, even without such a provision as we have in Section 4, an auctioneer who sells or a purchaser who buys goods comprised in a registered instrument without notice of the instrument may find himself liable to an action for conversion at the suit of the grantee. Section 4 certainly does not in any way weaken that rule but strengthens it. It must, of course, be conceded that Section 45 (3) of the Bankruptcy Ordinance created an exception to the common law rule: but, as I have shown above, the Chattels Transfer Ordinance is of later date than the section which is now Section 45 (3) of the Bankruptcy Ordinance. The Legislature must be presumed to have had that section in mind when the Chattels Transfer Ordinance was enacted, and if they intended to restrict the generality of Section 4 by an exception in favour of a purchaser of goods of an execution-debtor, I should have expected them so to enact specially.

In my opinion, therefore, the declaration appealed from is correct in law and this appeal must be dismissed with costs. Whether as a consequence of this decision any further legislation is advisable to protect the court bailiff or a purchaser at a court auction sale is a matter which will no doubt receive consideration by the proper authorities.

N. A. WORLEY,  
Vice-President.

Nairobi.

10th April, 1952.

*Nihill—President :*

I have had the advantage of reading the judgment just delivered by the learned Vice-President. Like him, I have come with reluctance to the same conclusion and for similar reasons. I have nothing, therefore, which I can usefully add. The appeal is dismissed with costs.

*In Her  
Majesty's  
Court of  
Appeal  
for  
Eastern  
Africa.*

J. H. B. NIHILL,  
President.

Nairobi.

10th April, 1952.

No. 8.  
Judgment,  
10th April  
1952,  
*continued.*

10 *Thacker—Judge :*

I also have had the advantage of reading the judgment of the learned Vice-President, and I agree that, for the reasons stated therein this appeal should be dismissed. This is not without some hesitation, and certainly it is with reluctance, seeing that the Respondents, as the learned Vice-President has pointed out, seem very much to have slept on their rights. There is nothing which I think I can usefully add.

R. S. THACKER,  
Judge.

Nairobi.

20 10th April, 1952.

I certify that this is a true copy of the original.

H. D. DEVLIN,  
for Registrar,  
H.M. Court of Appeal for Eastern Africa.

15th April, 1952.



*In Her Majesty's Court of Appeal for Eastern Africa.*

**No. 9.  
DECREE.**

**IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.**

Civil Appeal No. 47 of 1951.

No. 9.  
Decree,  
10th April  
1952.

(From Original Judgment in Civil Case No. 806 of 1950 of H.M. Supreme Court of Kenya at Nairobi.)

DYAL SINGH . . . . . *Appellant*  
(Original Plaintiff)

v.

10

KENYAN INSURANCE LTD. . . . . *Respondent*  
(Original Defendant)

This Appeal coming on 10th day of April, 1952, for hearing before Her Majesty's Court of Appeal for Eastern Africa in the presence of D. N. Khanna Esquire on the part of the Appellant and of J. H. Wilkinson Esquire on the part of the Respondent It is ordered that this appeal be and is hereby dismissed with costs.

D. F. SHAYLOR,

*Ag. Registrar*

*H.M. Court of Appeal for E.A. 20*

Dated this 10th day of April, 1952.

Issued this 21st day of July, 1952.

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**No. 10.**

**MOTION on Notice for Conditional Leave to Appeal to Privy Council.**

No. 10.  
Motion on  
Notice for  
Conditional  
Leave to  
Appeal to  
Privy  
Council,  
9th May  
1952.

TAKE NOTICE that this Honourable Court will be moved at Nairobi on Friday the 27th day of June, 1952, at 10.30 o'clock in the forenoon, or so soon thereafter as the Appellant can be heard by Counsel for the Appellant, above-named,

FOR ORDERS that :—

(A) The Appellant, upon such conditions as may be deemed fit to impose, may be given leave to appeal to Her Majesty in Council, from the final judgment of This Honourable Court dated the 10th day of April, 1952, dismissing the appellant's appeal from the judgment of Her Majesty's Supreme Court of Kenya, with costs.

(B) That the costs of this application be costs in the Privy Council Appeal, and be awarded to the respondents in case the appeal is dismissed for want of prosecution.

This application is supported by an affidavit of Dyal Singh, the appellant above-named annexed hereto and will further be supported on other grounds and reasons to be offered at the hearing.

Dated at Nairobi this 9th day of May, 1952.

D. F. SHAYLOR,  
*Ag. Registrar*  
*Her Majesty's Court of Appeal for E.A.*

This Notice of Motion was taken out by :—

10 for D. N. & R. N. Khanna,  
 (Sgd.) D. N. KHANNA,  
 Advocates for the Appellant.

To be served upon :—

Messrs. Daly & Figgis,  
 Advocates for the Respondents,  
 Nairobi.

*In Her Majesty's Court of Appeal for Eastern Africa.*

No. 10.  
 Motion on Notice for Conditional Leave to Appeal to Privy Council, .  
 9th May 1952,  
*continued.*

No. 11.

**AFFIDAVIT in support of Motion.**

**AFFIDAVIT OF DYAL SINGH.**

No. 11.  
 Affidavit in support of Motion, 9th May 1952.

20 I, DYAL SINGH, the Appellant above-named, hereby make oath and say as follows :—

1. The matters in dispute on this appeal, involve a claim by me to the title to and the right to the possession of a motor vehicle purchased by me for Shs.2,000/- in February, 1948, at a public auction conducted by a Court Broker in pursuance of an order of Court in execution, and on which I spent a sum of Shs.7,000/- and which I ran as a Passenger bus, and a claim to profits estimated at Shs.150/- per day lost, by reason of the seizure thereof by the Respondents, on the 29th of April, 1950, to the date of its ultimate return.

30 2. I feel myself aggrieved by the decision of this Honourable Court and am desirous of appealing to the Queen's Most Excellent Majesty in Council, and make this affidavit in support of my application for conditional leave as of right pending final leave.

3. The question involved, moreover, on the appeal, I submit is of great general importance, quite apart from being also of some public importance, which ought to be submitted to Her Majesty in Council for decision.

4. The question referred to in paragraph 3 is, can a good title acquired under section 45 (3) of the Bankruptcy Ordinance, Chapter 30,

*In Her Majesty's Court of Appeal for Eastern Africa.*

No. 11.  
Affidavit in support of Motion, 9th May 1952, continued.

Laws of Kenya, 1948, in the absence of (A) actual notice or (B) constructive notice, envisaged by the said section, that the goods were not the property of the execution debtor, be nevertheless not be a good title, by reason of statutory notice arising from registration under section 4 of the Chattels Transfer Ordinance, Chapter 281 of Laws of Kenya, 1948, despite not being incorporated, in the said section of the Bankruptcy Ordinance as a notice sufficient to defeat a good title, and render the said section nugatory, merely because section 4 of the said Chattels Transfer Ordinance, imputes notice to "All persons," although it does not purport to say "for all purposes connected with the Chattels affected," whereby it could be said 10 reasonably or properly to govern and control, provisions in Ordinances other than of which it forms part.

5. Leave may be given, it is submitted, and the Registrar of this Court be directed to prepare the record in readiness for despatch, after final leave is given.

Sworn at Nairobi this 9th day of May } (Sgd.) DYAL SINGH.  
1952.

Before me :  
(Sgd.) S. M. AKRAM,  
A Commissioner for Oaths.

20

No. 12.  
Affidavit in opposition to Motion and Exhibit "A" referred to therein, 27th June 1952.

No. 12.

**AFFIDAVIT in Opposition to Motion and Exhibit "A" referred to therein.**

**AFFIDAVIT IN REPLY.**

I, NIMJI JAVER KASSAM, a director of the Respondent Company, hereby make oath and say as follows :—

1. I crave leave to refer to the Affidavit of Dyal Singh, the Appellant, dated the 9th day of May, 1952, made in support of the application for leave to appeal to Her Majesty in Council.

2. In regard to paragraph 1 of the said Affidavit, I aver that the value of the motor vehicle on the 29th day of April, 1950, the date of seizure, was Shs.4,000/- only. A valuation by Jamal Pirbhai is annexed hereto and marked "A." I deny that the Appellant is entitled to damages as claimed by him. I am advised and verily believe that the value of the subject matter in this suit is less than £500. 30

Sworn by the above-named Mimji } (Sgd.) NIMJI JAVER  
Javer Kassam at Nairobi this 27th }  
day of June, 1952. KASSAM.

Before me :  
(Sgd.) N. J. DAVE,  
Commissioner for Oaths.

40

Jamal Pirbhai,  
Auctioneer,  
Official Broker,  
Nairobi.

26th June, 1952.

Messrs. Kenyan Insurance Limited,  
Government Road,  
Nairobi.

*In Her  
Majesty's  
Court of  
Appeal  
for  
Eastern  
Africa.*

No. 12.  
Affidavit in  
opposition  
to Motion  
and  
Exhibit  
" A "  
referred to  
therein,  
27th June  
1952,  
*continued.*

Dear Sirs,

10 Your Ref: Chattels Instrument No. 5750 " International "  
Passenger Bus No. T 9348 Njoroge s/o Daudi.

As requested, I hereby certify that in my opinion, value of the above bus, which was seized by you and sent to me for sale by auction on the 29th day of April, 1950 and sale of which was subsequently indefinitely deferred, was Shs.4,000/-, as at the day in question.

Yours faithfully,

for JAMAL PIRBHAI,  
(SD)

?  
Auctioneer & Bailiff.

20

No. 13.

ORDER granting Conditional Leave to Appeal to Her Majesty in Council.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
AT NAIROBI.

Civil Appeal No. 47 of 1951.

DYAL SINGH (Original Appellant) . . . Applicant

*versus*

KENYAN INSURANCE LIMITED  
(Original Respondent) Respondent.

No. 13.  
Order  
granting  
Conditional  
Leave to  
Appeal to  
Her  
Majesty in  
Council,  
27th June  
1952.

ORDER

30 We are not satisfied that an appeal to the Privy Council lies as of right in this case, but we are prepared to exercise discretion in the applicant's favour under paragraph (b) of Section 3 of the Eastern African (Appeal to Privy Council) Order-in-Council 1951, since we think that the question involved in the appeal is one which by reason of its public importance ought to be submitted to Her Majesty in Council for decision.

Conditional leave to appeal to the Privy Council is therefore granted, the applicant to furnish security in the sum of £500 within three months from to-day for the due prosecution of the appeal and for any costs payable by the applicant in the event of the applicant not obtaining an order for

*In Her Majesty's Court of Appeal for Eastern Africa.*

final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty-in-Council ordering the applicant to pay the costs of the appeal. The applicant shall take the necessary steps for preparation of the Record and despatch thereof to England within three months from to-day. Costs will follow the event.

J. H. B. NIHILL,  
President.

N. A. WORLEY,  
Vice-President.

R. WINDHAM, 10  
Judge.

No. 13.  
Order granting Conditional Leave to Appeal to Her Majesty in Council, 27th June 1952, continued.

Nairobi.

27th June, 1952.

I certify that this is a true copy of the original.

H. D. DELVIN,  
for Acting Registrar.

No. 14.  
Order granting Final Leave to Appeal to Her Majesty in Council, 19th January 1953.

No. 14.

**ORDER granting Final Leave to Appeal to Her Majesty in Council.**

**IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI.** 20

Civil Appeal No. 47 of 1951.

DYAL SINGH . . . . . Appellant/Applicant.

*versus*

KENYAN INSURANCE LIMITED . Respondent/Respondent.

**ORDER.**

The conditions set out in the Conditional Order giving leave to appeal have been complied with (see Registrar's Certificate).

In the event of the Applicant not proceeding with the appeal the Respondent will have the cost of and incidental to the application for leave to appeal. 30

Final leave to appeal granted.

(Sgd.) J. H. B. NIHILL,  
President.

(Sgd.) N. A. WORLEY,  
Vice-President.

(Sgd.) G. N. MAHON,  
Judge.

Nairobi.

19th January, 1953.

**In the Privy Council.**

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**ON APPEAL**  
**FROM HER MAJESTY'S COURT OF APPEAL FOR**  
**EASTERN AFRICA**

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**BETWEEN**

**DYAL SINGH . . . . .** *Appellant*

**AND**

**KENYAN INSURANCE LIMITED . . . . .** *Respondents.*

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**RECORD OF PROCEEDINGS**

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**HERBERT OPPENHEIMER, NATHAN & VANDYK,**  
**20 COPTHALL AVENUE,**  
**LONDON WALL,**  
**LONDON, E.C.2,**  
*Solicitors for the Appellant.*