

1967/24

IN THE PRIVY COUNCIL

No. 30 of 1966

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN:

TRUSTEES FOR THE PORT OF ADEN Appellants

- and -

HORMUSJI K. HATHADARU and
MINOCHER RAJANSHAW BHAVNAGARI Respondents

- and -

CROSS APPEAL (CONSOLIDATED)

RECORD OF PROCEEDINGS

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CLASS MARK

ACCESSION NUMBER

91420

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
15 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

O N A P P E A L
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N:

TRUSTEES FOR THE PORT OF ADEN

Appellants

- and -

HORMUSJI K. HATHADARU and
MINOCHER RAJANSHAW BHAVNAGARI

Respondents

- and -

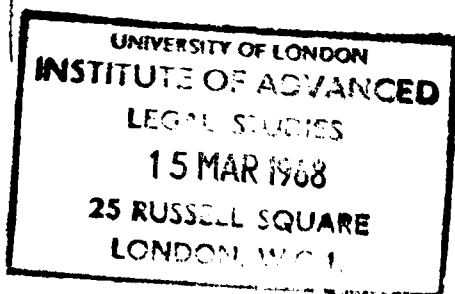
CROSS APPEAL (CONSOLIDATED)

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IN THE PRIVY COUNCIL

No. 30 of 1966

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :-

TRUSTEES FOR THE PORT OF ADEN

Appellants

- and -

HORMUSJI K. HATHADARU and
MINOCHER RATANSHAW BHAVNAGARIRespondents

- and -

CROSS APPEAL (CONSOLIDATED)

R E C O R D O F P R O C E E D I N G S

No. 1
PLAINT AND APPLICATION FOR BRINGING EXECUTORS OF
THE PLAINTIFFS ON RECORD

In the Supreme
Court of AdenShs.544/- Court Fee
15-7-1961No. 1Plaint and
Application
for bringing
Executors of
the Plaintiff
on record

In the Supreme Court of the Colony of Aden
In Its Original Civil Jurisdiction
Civil Suit No. 378 of 1961

15th July 1966

Dinshaw H.C. Dinshaw,
Adult, Indian Resident
Merchant, and Landlord
at Aden.

Hormusji Kaikhasru Hathadaru,
Nariman Munchershaw Hodivala
Minocher Ratanshaw Bhavnagari
Executors and Legal Representa-
tives of the Deceased.

Plaintiffs

Amended by order of Court dated
29-6-62 (Sd.) V.D.Tripathi.

REGISTRAR

VERSUS

Trustees for the Port of
Aden, Aden

Defendant.

The Plaintiffs above-named, state as under:

In the Supreme
Court of Aden

No. 1

Plaint and
Application
for bringing
Executors of
the Plaintiffs
on record

15th July 1961

(Contd.)

1. By an Indenture dated the 9th day of January, 1932, made between the Trustees of the Port of Aden as Lessors and Sir Hormusjee Cowasjee Dinshaw, Kt., Kaikobad Hormusjee Cowasjee Dinshaw, Sorabjee Cowasjee Dinshaw and Rustomjee Dorabjee Dinshaw as Lessees a plot of land admeasuring 10800 Square feet or thereabouts and situated at Hedjuff was leased under the Lease No. 3101 (hereinafter referred to as the said Lease No. 3101) for 99 years commencing from 1st day of April, 1930, on the terms and conditions mentioned therein for the purpose of accommodation of coolies employed in the handling of coal or cargo for ships. 10
2. The said Lessees and their successors carried on business inter-alia of Stevedores in partnership in the name and style of Cowasjee Dinshaw & Bros.
3. By a consent decree dated 22nd April, 1955, passed by The High Court of Judicature at Bombay in Civil Suit No. 1501 of 1949 filed by one the partners against the other partners (of whom the Plaintiff herein was one of them) the said firm of Cowasjee Dinshaw & Bros. was dissolved and was wound up as from 31st December, 1954. The Plaintiff in this suit purchased the business goodwill and properties of the said firm including the properties comprised in the said Lease No. 3101. 20
4. According to the terms of the said lease, buildings were constructed on the land and were used for accommodating coolies employed in the handling of coal for ships. 30
5. The Defendants constructed buildings at Maa'la known as "New Coolie Lines" in or about 1956, and the Defendants compelled the Plaintiff to transfer those coolies then in occupation of the buildings on the plot of land comprised under the said lease No. 3101 to the aforesaid New Coolie Lines. 40
7. Since then the plot and the buildings thereon comprised under the said Lease No. 3101 ceased to be used for accommodating coolies employed in the handling of coal or cargo for ships.

8. The paras 1, 2 and 3 of the said Lease No. 3101 which are relevant to this suit read as under:-

In the Supreme
Court of Aden

No. 1

Plaint and
Application
for bringing
Executors of
the Plaintiffs
on record

15th July 1968

(Contd.)

- 10 (1) The said plot of land shall be used only for purpose of accommodation of coolies employed in the handling of coal or cargo for ships.
- (2) The Lessees in the use of the said plot of land will observe all the Rules for the time being in force relating to the use, occupation and transfer of land relating to the construction and alteration of the buildings and additions to and use of the same in the settlement of Aden so far as they may be applicable in respect of the purpose for which the said plot of land has been granted under the foregoing condition, and the provision of the said rules shall to much extent be deemed to be incorporated in this lease and to the conditions thereof.
- 20 (3) The only buildings to be erected on the said plot shall be coolie quarters in accordance with the plans submitted to and approved by the Trustees and also by the Executive Committee of the Aden Settlement as per their Resolution No. 528 dated 14th November 1930; the buildings of the said Coolie Quarters shall be completed within 1 year from the date of the grant of this lease.
- 30

PROVIDED ALWAYS and it is hereby agreed and declared as follows:-

- 40 (a) That the price of land shall be fixed at Rs. 2-8-0 per Square Yard for the purpose of the grant of indirect contribution towards the housing schemes of coal and cargo coolies mentioned in clause (1).
- (b) That if the said plot of land is not used for the purpose for which it is

In the Supreme
Court of Aden

No. 1

Plaint and
Application
for bringing
Executors of
the Plaintiffs
on record

15th July 1961

(Contd.)

granted within one year from the date of these presents or if at any time during the term for which this lease is granted the said plot of land shall cease to be used for such purpose then the Lessees shall upon being called so to do in writing by the Lessors forthwith purchase the said plot of land at the price of Rs. 5/- per square yard PROVIDED that if the Lessees are unwilling to do this they may refuse but upon such refusal this lease shall be deemed immediately to determine and the land shall be surrendered to the Lessors 10

(c) Subject to sub-clause (3) (b) above, if any of the conditions of this lease not excepting the provisions of the rules deemed to be conditions of this lease as aforesaid shall not be observed then the Lessors may after three months' written notice enter upon the said plot of land freed from all claims and liabilities created by the Lessees or any person claiming through them and this lease shall thereby be determined. 20

9. According to the para 3 (b) (reproduced above) of the said lease No. 3101 the condition precedent was that the plot of land comprised thereunder should be sold to the Plaintiff as it ceased to be used for the purposes mentioned therein; and that the Defendants were bound to call upon the Plaintiff in writing to buy the said plot of land at the price of Rs. 5/- (equivalent to E.A. Shs. 7.50) per square yard being the price agreed in the said lease between the parties thereto. 30

10. The Plaintiff offered to buy the plot of land under the said Lease 3101 at the price of Rs. 5/- per square agreed as provided therein and was and is willing and prepared as yet to do so. 40

11. The Defendants, however, after protracted correspondence ending with their letter No. PWD/3/13778 dated the 27th of March 1961 finally

refused to sell at Rs. 5/- per Square Yard the plot of land comprised in the said lease No. 3101 and ceased to be used for the purpose mentioned in the said lease.

In the Supreme
Court of Aden

No. 1

10 12. The Defendants failed to comply with the terms of the said Lease No. 3101 by their refusal to sell the plot of land thereunder at the price mentioned therein and have thereby committed the Breach thereof.

Plaint and
Application
for bringing
Executors of
the Plaintiffs
on record

13. The Plaintiff has applied to the Defendants specifically to perform the Agreement made in the said Lease No. 3101 (Para 3 (b)) on his part but the Defendants have not done so.

15th July 1961

(Contd.)

20 14. The Plaintiff has been and still is, ready and willing specifically to perform the Agreement made in the said Lease No. 3101 on his part in that to buy the plot of land demised under the said Lease No. 3101 at the agreed price of Rupees Five equivalent to E.A.Shs.7-50 per Square Yard, of which the Defendants have had notice.

15. The cause of action arose at Aden on 27th March, 1961, when the Defendants finally refused to sell at Rs. 5/- per Square Yard.

30 16. The Suit is valued for the purpose of Court Fee and jurisdiction at E.A.Shs.9000/- being the amount of consideration at Shs.7-50 (Rs.5/-) per Square Yard for 1200 Square Yards.

The Plaintiff Claims:-

40 (a) that the Court will be pleased to order the Defendants specifically to perform the Agreement (Para 3 (b)) under the Lease No. 3101 by selling the land demised thereunder at E.A.Shs.7.50 per Square Yard, and to do all sets necessary to complete the sale of the said property.

(b) That costs and incidental charges for this suit.

(c) And such other relief as the Court may allow in the circumstances of the case.

A. BHATT (SD) - Dinshaw H.C.Dinshaw
Advocate for the Plaintiff. Plaintiff.

In the Supreme Court of Aden

No. 1

Plaint and Application for bringing Executors of the Plaintiffs on record

15th July 1961

(Contd.)

I, Dinshaw H.C.Dinshaw, do hereby declare that the contents of the paras 1 to 16 are correct from my own knowledge and belief, verified at Aden this 15th day of July, 1961.

(SD.) --

i.e. Dinshaw H. C. Dinshaw.

List of Documents annexed to the Plaint.

- (a) Copy of the Lease No. 3101 dated 9th January, 1932.
- (b) Letter from the Defendants to the Plaintiff, bearing No. PWD/3/13778 dated 27th March, 1961.

10

LIST OF DOCUMENTS RELIED UPON.

- 1. Original Lease No. 3101-
- 2. Correspondence.

Name of Plaintiff's address for Service:-

Steamer Point, Aden.

Name of Defendants' address for Service:-

C/o Aden Port Trust,
Steamer Point, ADEN.

20

No. 2
FURTHER AND BETTER PARTICULARS.

In the Supreme
Court of Aden

IN THE SUPREME COURT OF THE COLONY OF ADEN
CIVIL SUIT NO. 378 of 1961

No. 2

Further and
Better Partic-
ulars

Dinshaw H. C. Dinshaw: Plaintiff.

Versus

Undated

Trustees of Aden Port: Defendants.

Further and better particulars:

10

Para 3 of the Plaint: The Defendants had had the inspection of the consent decree at the time transferring the lease No: 3101 to the name of the Plaintiff: The Chairman of the Aden Port Trust then returned the decree with his covering letter No. PWD/3/7807 dated 20th December, 1957, addressed to the Advocate (Mr.A.Bhatt) of the Plaintiff, after due inspection thereof: If further inspection is required, the same will be granted at any time in the chamber of the Plaintiff's advocate:

20

Para 6 of the Plaint: The circular letter No. PWD 108/5931 dated 11th November 1953, to all the shipping Companies in Aden who had had coolie lines of their own, including the Plaintiff explains the nature manner and by whom the same was issued and exercised: The Plaintiff has misplaced a copy thereof: If found, the same will be produced: The Defendants have the copies thereof:

30

Paras 10 & 12 of the Plaint: The date on which the Plaintiff offered to buy the land under the lease No. 3101 on the 14th of September 1956 and thereafter there were, without prejudice, various proposals and counter proposals, in the correspondence that ensued between the parties and subsequently no amicable arrangement could be reached: The Defendants refused to sell the

In the Supreme
Court of Aden

No. 2

Further and
Better
Particulars

Undated

(Contd,)

land to the Plaintiff on the date mentioned in
the para 11 of the Plaintiff:

Para 4 of the Plaintiff: The lease No. 3101 is still
in force. The Plaintiff has paid and the
Defendants have accepted the rent up to 31st
March 1960 and the Plaintiffs sent by a cheque
the rent for the Year 1960/61 to the Defendant:
The Lease is still subsisting.

Para 1 & 5 of the Plaintiff: The lease is explicit
in the matter and the Defendants are well aware
of the queries now made in their advocates
letter dated 10th November 1961. The old coolie
lines were constructed by the Plaintiff's
predecessors in title:

10

General Manager,
of the Plaintiff-Company.

I, the General Manager of the Plaintiff-
company do hereby declare that the contents of
the above paras are believed to be correct from
the information received by me.

20

i.e. H. K. Hathadaru.

This instrument was drawn by
me under instructions:

(A. BHATT)

No. 3
PRELIMINARY OBJECTION AND WRITTEN STATEMENT
OF THE DEFENDANT.

In the Supreme
Court of Aden

IN THE SUPREME COURT OF THE COLONY OF ADEN
CIVIL SUIT NO. 378 of 1961

No. 3

Preliminary
Objection and
Written State-
ment of the
Defendant

Dinshaw H. C. Dinshaw ... Plaintiff

Versus

The Aden Port Trust ... Defendant.

8th December
1961

PRELIMINARY OBJECTIONS AND WRITTEN STATEMENT

10 The Defendant pleads the following Preliminary
 Objections.

1. The Plaintiff has got no cause of action in
 that the Defendant is not obliged under the
 terms of the lease or otherwise to make a call
 upon the Plaintiff as stated in para 9 of the
 plaint.

20 2. The Plaintiff's suit is liable to be
 dismissed with costs as the Plaintiff does not
 contain or plead 'plea of material facts
 sufficient' to entitle the Plaintiff to a judge-
 ment for specific performance. The Defendant's
 powers and duties are laid down by statute, and
 as such the Defendant has no power to effect a
 sale or to give a lease for a period exceeding
 21 years under the terms of Sec. 21 of the Port
 Trust Ordinance.

30 3. The Plaintiff's claim is barred by Limita-
 tion, as the Defendant Corporation repudiated
 the Plaintiff's claim in writing by its letter
 dated 13th January, 1958, and previous thereto
 the Plaintiff was advised verbally to that
 effect.

 Without prejudice to the aforesaid
 Preliminary objections, the Defendant states as
 under:-

WRITTEN STATEMENT

1. Para 1: Save and except that the lease

In the Supreme
Court of Aden

No. 3

Preliminary
Objections and
Written State-
ment of the
Defendant

8th December
1961

(Contd.)

being lease No: 3101 was executed by the Defendant Corporation, the Defendant does not make any admission of the facts alleged, and would refer and rely upon the terms of the said lease for the terms and conditions thereof, including the purpose for which it was granted.

2. (1) The Defendant however pleads that the lease in question was granted in pursuance of a Scheme to provide sanitary housing accommodation for the coal and cargo coolies introduced by the then Political Resident of Aden in about 1928, following an epidemic of plague. The scheme was introduced to effect compulsory segregation and improved living condition for the coolies. To implement the scheme, the Defendant Corporation had called several meetings of the various shipping companies or their agents, and at such meetings the Plaintiff's predecessors-in-title attended. The scheme provided for assistance of up to 50% of the total cost of building and sites to be given jointly by the Aden Settlement and the Defendant Corporation to the shipping companies or their agents, one of whom was the Plaintiff's predecessor in title, in the form of (i) allocating free sites to construct, coolie lines, (ii) abatement of usual house-taxes (iii) construction of latrines and washing places and (iv) a grant-in-aid of the balance, if any, of the 50% contribution.

(ii) In pursuance of the said scheme, the Defendant corporation provided free site at a nominal quit rent. For purpose of contribution, the price of the land was fixed at Rs. 2/8/-, but it was not paid by the lessee.

(iii) The total cost of the coolie lines was Rs. 25,824/5/- and the Defendant Corporation and the Aden Settlement joint contribution amounted to Rs. 12,912/2/6, i.e. 50% of the cost of construction. It is untrue and hence denied what is alleged that the whole of the costs of the coolie lines was borne by the Plaintiff.

3. Para 2: Admitted.

4. Para 3: The Defendant Corporation is not aware of the full and precise terms of the

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Consent Decree referred by the Plaintiff, and does not make any admission of the facts alleged. Further, the Defendant contends that the said decree of the High Court of Bombay in so far as it relates the suit property, was without jurisdiction, and does not affect the title to the suit property.

10 5. Part 4 of the Plaint is not denied but it is denied that costs of construction was fully borne by the Plaintiff or his predecessors-in-title.

6. Para 6 (5?): Save and except that the Defendant constructed buildings at Maalla in about 1956, the Defendant does not admit any of the facts alleged. In particular, the Defendant denies that it 'compelled' the Plaintiff to transfer his coolies to the said new buildings. The Plaintiffs are put to strict proof of the alleged compulsion.

20 7. Para 7 (6?): Except that the plot and buildings comprised in Lease No. 3101 have now ceased to be used for the purpose of the said lease, the Defendant does not admit the rest of facts alleged.

8. Para 8 (?): The extracts of the terms of the lease are admitted.

30 9. Para 9 (?): The Defendant does not agree to and/or accept the construction placed by the Plaintiff on clause 3 (b). There was, and there is, no obligation upon the Defendant to call upon the Plaintiff to 'buy' the land as stated by the Plaintiff.

40 10. Para 10 (?): It is admitted that at an earlier period sometime in 1956, Cowasjee Dinshaw & Bros. (Aden) Ltd., a Company wherein the Plaintiff is a Director offered to 'buy' the land in question at the rate of Shs. 7.50. The Defendant however, did not consider 'soiling' the land in question, (and did not have the statutory sanction u/sec. 21 of the Port Trust Ordinance), and the Defendant declined to accept the offer made. However, in 1959-60, the Plaintiff made a proposal to take a lease of

In the Supreme
Court of Aden

No. 3

Preliminary
Objections and
Written State-
ment of the
Defendant

8th December
1961

(Contd.)

In the Supreme
Court of Aden

No. 3

Preliminary
Objections and
Written State-
ment of the
Defendant

8th December
1961

(Contd.)

parcels of land comprised in the said Lease. On such request, the Defendant made an offer to grant leases of the parcels of land asked for, for the purpose of making a garage and the Plaintiff earlier accepted the said offers and agreed to take such a lease. The Plaintiff has thereby waived and relinquished all his alleged rights or options under the lease. The Defendant will rely in particular, upon the Plaintiff's letters dated 26th October, 1959, 1st December 1959, 4th May, 1960, 16th May, 1960 and 18th July, 1960. The Plaintiff however, later changed his mind and declined to take the leases offered to him, and he has therefore now no more right or claim in law or equity.

10

11. Para 11(?): The Defendant admits having written the letter PWD/3/13778 of the 27th March, 1961 and would refer to it for the full and precise terms thereof.

12. Paras 12, 13 & 14 (?): It is denied that the Defendant failed to comply with the terms of the lease. The Plaintiff had waived and relinquished his alleged right, if any, (and it is denied that the Plaintiff had any such right), and he reverted back to his earlier contentions, after he had backed out from his earlier agreement to take a new lease. The Plaintiff's claim is therefore not bona fide, and has no legal basis and the Plaintiff seeks to obtain unreasonable profits, when to his knowledge the value of the land in the neighbourhood is about 150 to 200 times more than the amount at which he seeks to acquire it.

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13. The Defendant further pleads and contends that the Defendant has provided two dormitories for the accommodation of the coolies of the Company, Cowasjee Dinshaw & Bros. (Aden) Ltd. in which the plaintiff is a Director at a very concessional rate, in the new coolie Lines Buildings constructed on the Defendant's properties at Maalla. The said accommodation was provided in consideration of an understand that the Plaintiff shall move his or his Company's coolies to the said new buildings, and shall surrender the suit lease and yield up its possession. The Plaintiff has however failed

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to yield up possession and the Defendant reserve all its rights to take such legal action as it may deem appropriate to recover possession of the land and buildings under the suit lease.

In the Supreme Court of Aden

No. 3

14. The Plaintiff has got no cause of action and denies that it arose on the date stated.

Preliminary Objections and Written Statement of the Defendant

15. The Defendant denies each and every allegation which is not specifically admitted herein, or otherwise contrary to or inconsistent with what is stated herein, as if the same were traversed in seriatim.

8th December 1961

(Contd.)

10

The Plaintiff is not entitled in law or equity to any relief at all, and it is prayed that the suit be dismissed with costs.

(SD.) P.K.Sanghani.

(SD) J.G.Thomson

Advocate for Defendant.

Defendant,
Chairman,

ADEN PORT TRUST.

Verification

20

I, J. G. THOMSON, the Chairman of the Defendant Corporation, do hereby declare that what is stated hereinbefore is true to the best of my knowledge and belief.

Dated this 8th day of December, 1961, at Aden.

(SD.) J.G.THOMSON

Defendant
CHAIRMAN

ADEN PORT TRUST

30

Prepared by
(SD.) P.K.Sanghani
P.K.Sanghani,
Advocate,
ADEN.

In the Supreme Court of Aden

No. 4

Application to substitute the Legal Representatives of deceased Plaintiff

18th June 1962

No. 4
APPLICATION TO SUBSTITUTE THE LEGAL REPRESENTATIVES OF DECEASED PLAINTIFF

IN THE SUPREME COURT OF THE COLONY OF ADEN
ITS Original Civil Jurisdiction
Civil Suit No. 378 of 1961

Dinshaw H.C.Dinshaw - Plaintiff
Versus

Trustees of the Port of Aden Defendants

(1) Mr.Hormusji Kaikhasru Hathadaru)
(2) (Dr.)Nariman Munchershaw Hodivala) Applicants 10
(3) Mr.Minocher Ratanshaw Bhavnagari)

all care of Cowasjee Dinshaw & Bros.
(Aden) Ltd., Steamer Point.

Application for substituting the Legal Representatives of the deceased Plaintiff under Rule 323 of the Rules of Court.

The applicants, above named, state, as under:

1. The Plaintiff in this suit has died on the 24th day of April 1962 at Bombay, leaving a will under which the applicants are the executors. 20

2. The said deceased's right to sue in this suit survives and the applicants are his legal representatives.

3. The applicants pray that the Court may be pleased to substitute the names of the applicants as Plaintiffs in place of the deceased Plaintiff Dinshaw H.C.Dinshaw, and to proceed with the suit.

For self and for applicants No.2 & 3 (SD.)- 30

(A.Bhatt) i.e.Hormusji Kaikhasru
Advocate for Hathadaru
the Applicants.
Aden, 18th June, 1962.

I have no objection. (P.K.Sanghani)
18th June, 1962 Advocate for Defendants.

No. 5
DEFENDANT'S NOTICE TO ADMIT FACTS

In the Supreme
Court of Aden

IN THE SUPREME COURT OF ADEN
CIVIL SUIT NO. 378 OF 1961

No. 5

Dinshaw H.C.Dinshaw

Plaintiff

Defendant's
Notice to Admit
facts

versus

Aden Port Trust

Defendant

15th April 1963

NOTICE TO ADMIT FACTS

10 TAKE NOTICE that the Defendant herein requires the Plaintiff to admit the several of the following facts saving all just exceptions to the admissibility thereof as evidence in the suit.

DATED this 15th day of April 1963 at Aden.

Sd/-

Defendant's advocate

To,

A.Bhatt, Esqr.
Aden.

20 FACT OF WHICH ADMISSIONS ARE SOUGHT

1. That in about 1928-29, there was an outbreak of plague in the Settlement.

2. The then Political Resident of Aden Settlement suggested that a scheme be formulated whereby the various shipping companies may build coolie lines for the housing of their coal and cargo coolies as stated in para (2) (i) of the Written Statement.

30 3. The Defendant Corporation provided free site on the land compromised in A.P.T.Lease No. 3101 to the Plaintiff and paid Rs.5702-13-3 to equalise 50% contribution to Plaintiff's Predecessors-in-Title.

4. The site so provided was valued for purposes of Defendant's indirect contribution at Rs.2.8.0 per square yard.

In the Supreme
Court of Aden

No. 5

Defendant's
Notice to Admit
facts

15th April 1963

(Contd.)

5. The Plaintiff did not pay the said price of Rs.2.8.0 per square yard to the Defendant

6. The Defendant together with the Aden Settlement jointly contributed Rs.12912-2-6 being 50% of what the Plaintiff alleged to be the cost of the coolie lines.

7. The plot and building comprised in A.P.T. Lease No.3101 have ceased to be used for purposes of housing cargo and coal coolies of the Plaintiff since about 1957 and thereafter.

10

8. The Defendant has provided accommodation for the Plaintiff's coolies at the 'C' class Coolie dormitories at Maalla.

9. The Defendant by its letter dated 13th January 1958 informed the Plaintiff that it (Defendant) did not intend to call upon the Plaintiff to buy the said lease-hold plot of land at the rate of Sh.7-50 per square yard, and further did not consider itself bound to do so.

10. The Defendant has not received any sanction from the Governor (High Commissioner) to sell or lease the suit land.

20

11. (a) The total cost of the coolie lines, inclusive of cost of land was Rs.25,822-5-0 as under:-

Cost of Building	...	Rs.21,126- 0-0
Cost of A.P.T.Land	...	Rs. 3,000- 0-0
Cost of latrines	...	Rs. 1,446-14-0
Tax capitalised	...	Rs. 249- 7-0
		<u>Rs.25,822- 5-0</u>

30

(b) Contribution 50% by A.P.T. and Settlement:-

Settlement:

Cost of site for latrines		Rs. 249- 7-0
Cost of latrines	...	Rs. 1,447-14-0
Abatement of Tax	...	Rs. 2,511- 0-3
		<u>Rs. 4,208-05-3</u>

Port Trust:

Land	...	Rs. 3,000- 0-0
Paid Cash to C.D.Bros		Rs. 5,702-13-3
Being 50% Total Cost (A)		<u>Rs.12,911-02-6</u>

40

12. The Aden Municipality/Town Planning Authority directed the removal of the coolies from the site of suit-land and adjoining premises.

Dated this 15th day of April 1963 at Aden

Sd/-

Advocate for Defendant.

No. 6
PLAINTIFF'S REPLY TO NO.5

In the Supreme
Court of Aden

IN THE SUPREME COURT OF ADEN
CIVIL SUIT NO.378 OF 1961

No. 6

Plaintiff's
Reply to No.5

Dinshaw H.C.Dinshaw	...	Plaintiff
	versus	
Aden Port Trust	...	Defendant.

Undated

NOTICE TO ADMIT FACTS

10 With reference to the Notice to Admit Facts dated 15th April, 1963, the Plaintiff states as under:-

Items No.1, 2, 4, 7, and 12: Admitted saving all just exceptions to the admissibility thereof as evidence in suit.

Item No.3. Plaintiffs are not aware of what is stated therein except the payment to the Plaintiffs: Predecessors -in-Title

20 Items Nos.5, 6, & 11: The Plaintiffs are not in possession of the record containing the alleged facts mentioned in these items.

Item 8: It is true that this Defendant has provided accommodation for the Plaintiff's Coolies on the Plaintiffs agreeing to pay rent of Sh.10,000 per year, and all Municipal taxes, Electricity, & water charges etc.

30 Item No.9: The receipt of letter dated 13.1.1958 is admitted but make no admission as to its contents. No: The letter of 13th January 1958 does not constitute a refusal to perform the contract or obligation. It appears to be primarily an attempt to open negotiation.

40 Item No.10: There was no need of such sanction. Under the terms of the lease, which was made with the sanction of the Government, the land was to be sold to the Lessee at Rs.5/- per square yard if it ceased to be used for the purpose for which it was given and if the Lessee were prepared to buy. So the sanction from the Government is there or at least it is so implied. In any case it was a matter of formal procedure and such permission is not withheld and when the Port Trust asks for it.

To: P.K.Sanghani Esq.,
Advocate,
Crater.

(A. BHATT)
Advocate for Plaintiff
Predecessors-in-Title.

In the Supreme
Court of Aden

No. 7
PROCEEDINGS

No. 7
Proceedings

IN THE SUPREME COURT OF ADEN
Civil Suit No.378 of 1961

15th July 1961

Hormusjee Kaikhasru Hathadaru & Others
Plaintiffs
versus

The Trustees for the Port of Aden Defendants

15.7.61 Plaint: presented by Mr.A.Bhatt,
Advocate for the plaintiff.

Summons for W/S issued for 7.10.61

7th October
1961

7.10.61 Bhatt.
Sanghani

10

N/B. 30.10.61

30th October
1961

30.10.61 Bhatt.
Sanghani

W/S on 13.11.61

13th November
1961

13.11.61 Bhatt.
Sanghani

S.O. to 9.12.61

9th December
1961

9.12.61 Bhatt.
Sanghani files W/S.

Reply on 23.12.61

20

23rd December
1961.

23.12.61 Bhatt
Daftari

For hearing.

21st June
1962

21.6.62 Application for substituting the Legal
Representating of the deceased Plaintiff

under rule 323 of the Rules of Court presented by Mr. A. Bhatt for Applicant. Listed for Orders for 29.6.62.

In the Supreme Court of Aden

No. 7

Proceedings

21st June 1962

(Contd.)

29th June 1962

14th March 1963

9th April 1963

10th April 1963

8th May 1963

29.6.62 Bhatt for pltf.
Sanghani for deft.

Sanghani. No objection to application.

Order. Substitute executed of pltf. for pltf. in title of suit and Plaint.

14.3.63 Hearing on: 9.4.63

10 9.4.63 Bhatt for pltf.

Sanghani for Deft.
No time today. 2nd on list. S.O. for fresh date.

10.4.63 Hearing on 8.5.63

8.5.63 Before Goudie, J.

Bhatt for pltf.

Sanghani for deft.

Bhatt. Suit for specific performance of clause 3 (b) of Lease.

20 Documents admitted for notice and reply. Exht. A and A1.

Admission of facts. Notice and reply. Exhbt. B & B1.

Photostat copies of original documents 17-34 Exht. C17 - C34. Exhts. 1 - 16 marked Exht. D1 to D16.

Sanghani. Refer Exht. C18.

30 Dividend form taken of firm started in 1896. Ex C17 - 17 - 1. 50% by Aden Port Trust & Aden Settlement (Govt) 50% by employers.

Land given at low rate - Public interest.

In the Supreme
Court of Aden

No. 7

Proceedings

8th May 1963

(Contd.)

5 R's. reduced to 2-8 per sq. yd.

Lease attached to Plaint. Exht. F.

Coolie lines built for 22,000 R's.

Contribution to which plttf. have entitled 5,000 R's. Fact admitted No. 7 No. 11.

Admitted 5,000 R's gained from Port Trust.

Coolies there for 1931 - 54.

In 1954 moved to new lines at Maalla.

New Godown introduced after conference.

10

C.33

C.34 27.2.54.

Work completed in 1956 and moved to Maalla.

D.1.

D.5.

Present rates 500/300 per square yard but only 5 cts. offered.

Letter of 13th January, 1958 is the date from which limitation runs if it does not run from the date the land around to be occupied for coolie labour.

20

Para 3. Preliminary objection. W/S of claim. Repudiation of contract not necessary to be in writing but relying on letter.

Cap. Art. 99 Limitation Ordinance. 3 years from date fixed for (36) performance OR plttf. has noticed that performance refused.

Suit filed 17th July, 1961.

The plttf.'s right does not continue until last day of lease.

30

(2) Port Trust Statutory Corporation incorporated

under Cap. 122 S4.S21. Even if Bd wanted to give lease to plaintiff's it could not do so. Sale or lease must first be approved by the Govt. Plaintiff must establish each condition precedent before he can ask for S.P.

In the Supreme Court of Aden

No. 7

Proceedings

8th May 1963

(Contd.)

Even if not defended Court could not allow S.P. Pltff. must show no Governor's consent to

10 Admission of fact. "Item No.10" offer of 50 cts. inequitable.

Witts. will not go into merits.

Bhatt. 1 Limitation. Refusal to perform must be fixed. Letter 2nd June, 1958 not conclusive.

31st May, 1958)
5th August, 1958) E
12th Sept. 1959)
D.7 26.10.59
D.8
Suit not time barred.

20 2. Port Trust Authority.

C.35. Resolution passed and sent to Governor for approval.

C.26.

Lease. Presumption that sanction of Govt.given to Port Trust Ordinance 1951.

Obligation sanctioned by Governor and pending on successors and it must be taken that the Governor will give his sanction.

30 The 1951 provisions will not apply to Lease of 1932.

Sanghani. Subsequent letter to 13.1.58 was merely dealing with the alternative proposal.

Govt. have ceased giving out freehold properties.

Crown Lands Ordinance Cap. 39 Sq 23/24.

Application necessary to Governor before

In the Supreme
Court of Aden

No. 7

Proceedings

8th May 1963

(Contd.)

Sub division.

NOT conceivable that Governor would agree.

Sale would give right to use for ANY purposes.

C.A.V.

Bhatt. With consent.

Order in Consent that rights of subjects not to be interfered with. Land is Port Trust Land and Not Crown Land.

Sanghani. 3 (C) operates under bar under 3 (b).

C.A.V.

10

W.H.GOULDIE, J.

3rd June 1963

3.6.63

Crown Goudie, J.

Sanghani.

Bhatt.

Ruling read.

W.H.GOULDIE, J.

No. 8
R U L I N G

In the Supreme
Court of Aden

IN THE SUPREME COURT OF ADEN
Civil Suit No. 378 of 1961

No. 8
Ruling

3rd June 1963

HORMUSJI KAIKHASRU HATHADARU & OTHERS PLAINTIFFS

- versus -

THE TRUSTEES FOR THE PORT OF ADEN DEFENDANTS

R U L I N G

10 The Plaintiffs are allegedly the Successors in
title of the lessees and the defendants the
lessors under a lease dated 9th January, 1932
and the plaintiffs are now suing for specific
performance of Clause 3 (b) thereof which reads
as follows:-

20 "That if the said plot of land is not used
for the purpose for which it is granted
within one year from the date of these
presents or if at any time during the terms
for which the lease is granted the said
plot of land shall cease to be used for
such purpose then the lessees shall upon
being called so to do in writing by the
lessors forthwith purchase the said plot
land at the price of Rs. 5/- per square
yard PROVIDED that if the lessees are
unwilling to do this they may refuse but
upon such refusal the lease shall be deemed
immediately to determine and the land shall
be surrendered to lessors."

30 The purpose for which the land was granted
was the erection of quarters and accommodation of
coolies employed in the handling of coal or
cargo for ships.

It is admitted that the plot of land has
ceased to be used for this purpose.

It is undisputed and clear from the Lease
itself that the term for which it was granted
is still running.

The defendants, the original lessors have

In the Supreme
Court of Aden

No. 8

Ruling

3rd June 1963

(Contd.)

not called upon the plaintiffs, the original lessees to purchase the property but the plaintiffs have always been and are still anxious to do so.

Before the suit has proceeded to hearing the following preliminary points have been taken by the defendants:-

- (1) The plaintiffs have no cause of action in that the defendants are not obliged to make a call upon the plaintiffs to purchase and they have made no such call. 10
- (2) The defendants have no power to effect a sale or to give a lease for a period exceeding 21 years under the terms of Section 21 of the Port Trust Ordinance (Cap.122 Laws of Aden) unless such sale or lease shall have first been approved by the Governor.
- (3) The plaintiffs claim is barred by limitation as the defendants corporation repudiated the plaintiffs claim in writing by its letter dated 13th January, 1958 and previous thereto the plaintiffs were advised to that effect. 20

The first ground on which a preliminary objection was taken was not argued and I do not therefore propose to give a ruling thereon at this stage. At the same time I see no harm in remarking that I think it would be difficult to persuade me that this is not a valid objection since the wording of the clause in question does not appear to me to be in any way ambiguous but says clearly, in effect, that it is the lessors, the present defendants, who are empowered to "call upon" the lessees, the present plaintiffs, to purchase the land and unless and until such call is made I think it would be difficult to convince me that any option to purchase arises. However, as I have said, this is not a ruling as I think it would only be proper to give the plaintiffs an opportunity to try to convince me to the contrary before reaching any final conclusion on this objection. 30 40

As regards the third preliminary objection

I rule that the Suit is not time barred. There was no evidence of any verbal notification of repudiation of the option to purchase assuming such an option had arisen. It follows therefore that the defendants must be relying on the letter of 13th January, 1958 as a written repudiation. In my view this letter is neither a final nor an unequivocal repudiation but merely expresses a point of view on which it was anticipated that there would be, and on which there was in fact, subsequent correspondence. This subsequent correspondence at least as far as the letter of 28th November, 1959 continues to be exploratory and not to be a final repudiation of the plaintiffs alleged option.

10

Since Article 99 of the Limitation Ordinance, (Cap.86 Laws of Aden) specifies the limitation period as "Three years from the date fixed for performance or the plaintiff has notice that performance refused" it follows that, since the Suit was filed on 15th July, 1961 it is within the limitation period.

20

I pass on to consider the second ground of objection. That in effect the defendants are saying in this ground is that, quite irrespective of the merits or the equities, this Court could not, even if it wished, grant specific performance because the defendants have no power to sell without the consent of the Governor. Since they have not shown that they have obtained this consent, or that it would be forthcoming, or that it is not necessary a condition precedent implied in every suit for specific performance, namely that the onus lies on the plaintiffs to show that the defendants are in a position to grant specific performance if so ordered, has not been complied with.

30

The Plaintiffs case on this point I understand to be that the Governor's consent was either expressly or impliedly given to the option clause in the original lease and that no further consent is necessary merely on the grounds that the option clause has, as they say, now become operative.

40

I think there is considerable force in the argument that the Governor's, or at least the Government's, consent was at least impliedly given to the entire original lease and, therefore, a fortiori to the specific option clause 3 (b).

In the Supreme
Court of Aden

No. 8

Ruling

3rd June 1963

(Contd.)

In the Supreme
Court of Aden

No. 8

Ruling

3rd June 1963

(Contd.)

It appears to me, however, to be a non sequitur to say that because in 1932 the Governor's consent was expressly or impliedly given to an option to purchase that I must therefore assume that in 1963 the Governor would necessarily, in vastly different circumstances in every way, give his consent to a sale purporting to have arisen out of an option to purchase which the original lessors are disputing has yet arisen.

10

Moreover, there is no power in the Court, in my views to dispense with such consent.

I must therefore consider whether such consent is obligatory.

The defendants are stated to be "The Trustees for the Port of Aden" and these Trustees are constituted under Section 4 of the Port Trust Ordinance (Cap 122 Laws of Aden) as "the Board" responsible for carrying out the provisions of the Ordinance.

20

Now section 21 of the Ordinance given extensive powers to the Board to deal with property but there is an express proviso that "no sale of immoveable property and no lease of any such property for a term exceeding twenty one years shall be valid unless SUCH sale or lease shall have first been approved by the Governor."

I think the use of the word "Such" in itself precludes the argument that it can be sufficient to show that the Governor might express his consent by having sanctioned a provision for an option to purchase in a Lease granted 24 years earlier than the option is said to have arisen in 1956.

30

If that is not sufficient argument then I would add that the Port Trust Ordinance came into effect on 28th February 1951 and in the absence of any specific retrospective provisions I do not see how it can be argued that the Governor can be taken to have signified his assent, as required by the Ordinance, by a provision to which one of his predecessors may have assented in a Lease nearly twenty years before the Ordinance applied.

40

Finally, on this point, the original lessors were the Trustees of the Port of Aden and their successors in office and assigns but the present Trustees can only be new trustees constituted

under the 1951 Ordinance and no devolution of title has been proved to show that the present trustees, differently constituted, are the successors or assigns of the original trustees. I think it is reasonable, therefore, to conclude that in 1957 the Port Trust was completely reconstituted and that by reason of the repeal of a series of earlier Acts made when Aden was under Indian Control (Such repealed Acts being shown in Schedule D to the present Port Trust Ordinance) the trustees named in the 1932 Lease must have been trustees constituted under one of the repealed Acts and must now not only be non-existent but have no "successors in office or assigns" properly so called.

10

20

30

It is appreciated that this last argument is somewhat problematical. As I see it, however, it is for the plaintiffs to satisfy me that they have a right to exercise an option which has become a liability exercisable against the present trustees because they are the successors in office or assigns of the original trustee lessors. In the same way it is for the plaintiffs to satisfy me that there is no impediment to granting specific performance and to do so they would have to prove affirmatively that the Governor has given his consent to the present sale for which they are praying, or that the Court has power to dispense with such consent or that no consent is necessary. They have failed to satisfy me on any of these alternatives.

I do not find it necessary to rule on the arguments relating to the provisions of the Crown Lands Ordinance but I think it is at least arguable whether the lands in question are Crown Lands.

40

Whilst I do not wish to enter unnecessarily into the subject of the merits of the case in a ruling on preliminary objections I think it proper to add that I was singularly unimpressed by Mr. Bhatt's eloquent submissions that "the public were entitled to know whether Government intended to honour its obligations" or, as was clearly implied, were going to be guilty of a breach of faith.

On the face of the proceedings it is quite clear that the plaintiffs were heavily assisted financially in the provision of coolie lines originally at HEDJUFF, were heavily further assisted in the provision of what was clearly intended to be alternative accommodation at Maalla

In the Supreme
Court of Aden

No. 8

Ruling

3rd June 1963

(Contd.)

In the Supreme Court of Aden

No. 8

Ruling

3rd June 1963

(Contd.)

and that they are now seeking to exercise an option which, if they have any existing rights under it at all, was granted over thirty years ago under entirely different circumstances. Their object is to buy land at an absurdly low figure by present market rates to extend their garage. If it were ever on appeal held that all the preliminary objections are invalid it might well devolve on the Court at a later stage, when considering the merits, to decide how to apply the doctrine "He who seeks equity must do equity". In all the circumstances it may well not only be justice but also poetic justice that the plaintiffs are technically debarred from using or possibly even abusing the process of the Court.

10

The Suit is dismissed with costs on the second preliminary objection.

In the event of any appeal being lodged and succeeding I direct that the matter be placed before another Judge as I have reached certain conclusions adverse to one party and would find it difficult to approach a substantive hearing with an open mind.

20

(SD.) -

W.H.GOULDIE JUDGE

No. 9

Decree

3rd June 1963

No. 9
DECREE

IN THE SUPREME COURT OF ADEN
CIVIL SUIT NO: 378 of 1963

1. Hormusji Kaikhasru Nathadaru
2. DR.Nariman Manchershaw Hodivala
3. Minocher Ratanshaw Bhavugari
Executors & Legal Representatives
of the Deceased: Dinshaw H.C.Dinshaw
V/S

PLAINTIFFS

Trustees for the Port of Aden

DEFENDANTS

30

DECREE

THIS SUIT coming for hearing on the 3rd day of June 1963 before the Hon'ble.Mr.Justice W.H. GOUDIE, Judge. Supreme Court Aden AND UPON HEARING Mr.A.BHATT, Advocate for the Plaintiffs, and P.K. Sanghani, Advocate for the Defendants on the preliminary objection IT IS HEREBY ORDERED & DECREED that the suit is dismissed with costs amounting to Shs: 315/- (shilling three hundred & Fifteen) only on the second preliminary objection.

40

GIVEN under my hand and the Seal of the Court this 3rd June of 1963. E.G.BLANDFORD

AG: C.J.SUPREME COURT OF A D E N

NO. 10
JUDGMENT OF CRABBE J.A.

IN THE COURT OF APPEAL FOR EASTERN
AFRICA AT ADEN

CIVIL APPEAL NO. 79 OF 1963

BETWEEN

10

HORMUSJI K. HATHADARU & OTHERS
.....APPELLANTS

AND

TRUSTEES FOR THE PORT OF ADEN
.....RESPONDENTS

Appeal from the Ruling and Order of
the Supreme Court, Aden. (Goudie, J.)
of 3rd June, 1963.

in

20

Civil Suit No. 378 of 1961

Between

1. Hormusji Kaikhasru Hathadaru,
2. Nariman Munchershaw Hodiwala,
3. Minocher Ratanshaw Bhavnagri
Executors and Legal Represen-
tatives of the Deceased:
Dinshaw H. C. Dinshaw.

Plaintiffs

and

30

Trustees for the Port of Aden
Defendants

JUDGMENT OF CRABBE, J.A.

This is an appeal from a ruling of
the Supreme Court, Aden, whereby it was
ordered and decreed that the plaintiffs'

In the Court of
Appeal for
Eastern Africa

No. 10

Judgment of
Crabbe J.A.

12th March 1964

In the Court of
Appeal for
Eastern Africa

No. 10

Judgment of
Crabbe J.A.

12th March 1964
(Contd.)

suit be dismissed with costs amounting to Shs: 315/- (Shillings three hundred and fifteen).

On 15th July, 1961 the plaintiffs filed a suit against the defendants for an order of specific performance. In their plaint the plaintiffs claimed to be successors in title of lessees and the defendants the lessors under a lease dated 9th January, 1932. For the purposes of this appeal I think it is necessary to set out in extenso the written statement in the plaint. It reads as follows :

"1. By an Indenture dated the 9th day of January, 1932 made between the Trustees of the Port of Aden as lessors and Sir Hormusjee Cowasjee Dinshaw, Kt., Kaikobad Jormusjee Cowasjee Dinshaw, Sorabjee Cowasjee Dinshaw and Rustomjee Dorabjee Dinshaw as lessees of a plot of land measuring 10800 square feet or thereabouts and situated at Hedjuff was leased under the Lease No. 3101 (hereinafter referred to as the said Lease No. 3101) for 99 years commencing from 1st day of April 1930, on the terms and conditions mentioned therein for the purpose of accommodation of coolies employed in the handling of coal or cargo for ships. 20

2. The said Lessees and their successors carried on business inter alia of Stevedores in partnership in the name and style of Cowasjee Dinshaw & Bros. 30

3. By a Consent Decree dated 22nd April, 1955, passed by the High Court of Judicature at Bombay in Civil Suit No. 1501 of 1949 filed by one of the partners against the other partners (of whom the plaintiff herein was one of them) the said firm of Cowasjee Dinshaw & Bros. was dissolved and was wound up as from 31st December, 1954. The Plaintiff in this suit purchased the 40

business goodwill and properties of the said firm including the properties comprised in the said Lease No. 3101.

In the Court of
Appeal for
Eastern Africa

No. 10

Judgment of
Crabbe J.A.

12th March 1964
(Contd.)

4. According to the terms of the said lease, buildings were constructed on the land and were used for accommodating coolies employed in the handling of coal for ships.

10 5. The Defendants constructed buildings at Maa'lla known as "New Coolie Lines" in or about 1956 and the Defendants compelled the plaintiff to transfer those coolies then in occupation of the buildings on the plot of land comprised under the said Lease 3101 to the aforesaid New Coolie Lines.

7. Since then the plot and the buildings thereon comprised under the said Lease No. 3101 ceased to be used for accommodating coolies employed in the handling of coal or cargo for ships.

20 8. The paras 1, 2 and 3 of the said Lease No. 3101 which are relevant to this suit read as under :-

(1) The said plot of land shall be used only for purpose of accommodation of coolies employed in the handling of coal or cargo for ships.

30 (2) The lessees in the use of the said plot of land will observe all the Rules for the time being in force relating to the use, occupation and transfer of land relating to the construction and alteration of the buildings and additions to and use of the same in the Settlement of Aden so far as they may be applicable in respect of the purpose for which the said plot of land has been granted under the foregoing condition, and the provision of the
40 said rules shall to such extent be deemed to be incorporated in this lease and to the conditions thereof.

In the Court of
Appeal for
Eastern Africa

No. 10

Judgment of
Crabbe J.A.

12th March 1964
(Contd.)

- (3) The only buildings to be erected on the said plot shall be coolies quarters in accordance with the plans submitted to and approved by the Trustees and also by the Executive Committee of the Aden Settlement as per their Resolution No. 528 dated 14th November 1930; the buildings of the said Coolie Quarters shall be completed within 1 year from the date of the grant of this lease -

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PROVIDED ALWAYS and it is hereby agreed and declared as follows :-

- (a) That the price of land shall be fixed at Rs. 2-8-0 per square yard for the purpose of the grant of indirect contribution towards the housing schemes of coal and cargo coolies mentioned in clause (1).
- (b) That if the said plot of land is not used for the purpose for which it is granted within one year from the date of these presents or if at any time during the term for which this lease is granted the said plot of land shall cease to be used for such purpose then the Lessees shall upon being called so to do in writing by the Lessors forthwith purchase the said plot of land at the price of Rs.5/- per square yard PROVIDED that if the Lessees are unwilling to do this they may refuse but upon such refusal this lease shall be deemed immediately to determine and the land shall be surrendered to the Lessors
- (c) Subject to sub-clause (3) (b) above, if any of the conditions of this lease not excepting the provisions of this lease as aforesaid shall not be observed then the Lessors may after three months' written notice

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enter upon the said plot of land freed from all claims and liabilities created by the Lessees or any person claiming through them and this lease shall thereby be determined.

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10 9. According to the para 3(b) (reproduced above) of the said Lease No. 3101 the condition precedent was that the plot of land comprised thereunder should be sold to the Plaintiff as it ceased to be used for the purposes mentioned therein; and that the Defendants were bound to call upon the Plaintiff in writing to buy the said plot of land at the price of Rs. 5/- (equivalent to E.A. Shs.7.50) per square yard being the price agreed in the said lease between the parties thereto.

20 10. The Plaintiff offered to buy the plot of land under the said lease 3101 at the price of Rs. 5/- per square yard agreed as provided therein and was and is willing and prepared as yet to do so.

30 11. The Defendants, however, after protracted correspondence ending with their letter No. PWD/3/13778 dated 27th of March 1961 finally refused to sell at Rs.5/- per square yard the plot of land comprised in the said Lease No. 3101 and ceased to be used for the purpose mentioned in the said Lease.

12. The Defendants failed to comply with the terms of the said Lease No. 3101 by their refusal to sell the plot of land thereunder at the price mentioned therein and have thereby committed the Breach thereof.

40 13. The Plaintiff has applied to the Defendants specifically to perform the Agreement made in the said Lease No. 3101 (Para. 3 (b)) on his part but the Defendants have not done so.

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14. The Plaintiff has been and still is, ready and willing specifically to perform the Agreement made in the said Lease No. 3101 on his part, in that to buy the plot of land demised under the said Lease No. 3101 at the agreed price of Rupees Five equivalent to Shs. E.A. 7.50 per Square Yard, of which the Defendants have had notice.

15. The cause of action arose at Aden on 27th March, 1961 when the Defendants finally refused to sell at Rs. 5/- per Square Yard. 10

16. The suit is valued for the purpose of Court Fee and Jurisdiction at E.A. Shs. 9,000/- being the amount of consideration at Shs.7.50 (Rs.5/-) per square yard for 1200 Square Yards.

The Plaintiff claims:

- (a) that the Court will be pleased to order the Defendants specifically to perform the Agreement (Para 3(b)) under the Lease No. 3101 by selling the land demised thereunder at Shs. 7.50 per Square Yard, and to do all acts necessary to complete the sale of the said property. 20
- (b) that costs and incidental charges for this suit.
- (c) and such other relief as the Court may allow in the circumstances of the case.

(SD) DINSHW H.C. DINSHAW

Plaintiff"

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After service of the plaint on the defendants they filed certain preliminary Objections together with their written statement of defence. The Objections were:

"1. The Plaintiff has got no cause of action in that the Defendant is not obliged

under the terms of the lease of otherwise to make a call upon the Plaintiff as stated in para 9 of the plaint.

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10 2. The Plaintiff's suit is liable to be dismissed with costs as the Plaintiff does not contain or plead 'plea of material facts sufficient' to entitle the Plaintiff to a judgment for specific performance. The Defendant's powers and duties are laid down by statute, and as such the Defendant has no power to effect a sale or to give a lease for a period exceeding 21 years under the terms of Sec. 21 of the Port Trust Ordinance.

3. The Plaintiff's claim is barred by Limitation, as the Defendant Corporation repudiated the Plaintiff's claim in writing by its letter dated 13th January, 1958, and previous thereto the Plaintiff was advised verbally to that effect."

20 These objections were taken before the suit had proceeded to hearing. It would appear, however, that the first ground was not argued, and in this appeal we ruled that it was not open to counsel for the respondents to argue it here since he must be deemed to have abandoned that ground as a preliminary objection at the court below.

30 The learned trial judge after hearing arguments upheld the second ground of objection, but he overruled the third. The defendants have cross-appealed against the judge's ruling on the third ground and I shall deal with that aspect of the appeal later in this judgment.

The argument put forward by the defendants in support of the second ground of objection, was summarised by the learned judge thus:

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"That in effect the defendants are saying in this ground is that, quite irrespective of the merits or the equities, this Court could not, even if it wished, grant specific performance because the defendants have no power to sell without the consent of the Governor. Since they have not shown that they have obtained this consent, or that it would be forthcoming, or that it is not necessary a condition precedent implied in every suit for specific performance, namely that the onus lies on the plaintiffs to show that the defendants are in a position to grant specific performance if so ordered has not been complied with."

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The core of the defendant's second objection, it seems to me, was that the Governors consent which was a condition precedent to the enforceability of the agreement of 9th January, 1932 had not been pleaded by the plaintiff. According to the defendants consent was a material averment which was of the essence of the plaintiffs' cause of action, and it must be specifically pleaded and that non-averment by the plaintiffs in their written statement that the defendants had approval to sell the land, the subject-matter of the suit, rendered the plaint had on the face of it and liable to be dismissed.

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The two grounds on which the learned trial judge dismissed the suit are found in the following passage from his ruling:

"As I see it, however, it is for the plaintiffs to satisfy me that they have a right to exercise an option which has become a liability exercisable against the present trustees because they are the successors in office or assigns of the original trustee lessors. In the same way it is for the plaintiffs to

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satisfy me that there is no impediment to granting specific performance and to do so they would have to prove affirmatively that the Governor has given his consent to the present sale for which they are praying, or that the Court has power to dispense with such consent or that no consent is necessary. They have failed to satisfy me on any of these alternatives."

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With all due respect to the learned judge I think he fell into error by his approach to the question that was raised by the second ground of the preliminary objection. The objection was to the pleadings only, and there was no need for the learned judge to embark upon an investigation at that stage of the proceedings into whether the plaintiff had evidence to prove that the necessary consent had been obtained or would be granted. It is a fundamental rule in pleading that evidence shall never be pleaded. As Lord Denman, C.J. pointed out in Williams v Wilcox (1938), 8 A & E at p. 331.

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"it is an elementary rule in pleading that, when a state of facts is relied on it is enough to allege it simply without setting out the subordinate facts which are the means of producing it, or the evidence sustaining the allegation."

Upon an application to strike out a suit on the ground that it discloses no cause of action the judge can look only at the pleadings and particulars, and not even at affidavits. The principle upon which the Court acts in such a case was stated by Lindley, M.R. in Eubock & Sons v Wilkinson, Heywood and Clark (1899) I.Q.B. 86. In his judgment the Master of the Rolls pointed out that there were two methods of raising points

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of law, one by raising the question under Order 25, rule 2, and the other by applying to strike out the statement of claim under Order 25 rule 4. He then made the following observations (at page 91):

"The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks." 10

In Worthington and Co. Ltd. v. Belton & Ors. (1902). 18 T. L. R. 438 the principle stated by Lindley, M.R. was applied, and there Romer L.J. Said:

"Having regard to the terms of Order 25, rule 4, and to the decisions on it, I think that this rule is more favourable to the pleading objected to than the old procedure by demurrer. Under the new rule the pleading will not be struck out unless it is demurrable and something worse than demurrable. If notwithstanding defects in the pleading, which would have been fatal on a demurrer, the Court sees that a substantial case is presented, the Court should, I think decline to strike out that pleading." 20 30

Looking at the Plaintiffs' plaint as it stands it contains an allegation that the plaintiffs are the successors in title of lessees of a lease which gave them the option to purchase the demised land, when it ceased to be used for the purpose for which it was demised. It is alleged that the plot of 40

land has ceased to be used for the purpose contemplated by the parties, and that the defendants failed to perform their obligation under the lease by their refusal to sell the land to the plaintiffs at the price agreed upon. It is further alleged that the plaintiffs have been and still are, ready and willing to buy the plot of land demised at the agreed price. There was annexed to the

10 plaintiff a copy of the lease No. 3101 dated 9th January, 1932, and a letter dated 27th March, 1961 written by the defendants and addressed to the Plaintiffs. In this letter the Chairman of the Defendants Authority discussed the price at which the land should be sold to the plaintiffs.

In my opinion the plaint discloses at least some question fit to be determined by the judge, and it ought not to have been

20 struck out merely on the ground that the plaintiff was not likely to succeed on it: see Boaler - Holder (1886), 54 L.T. 298.

Despite the material facts averred by the plaintiffs which in my view are sufficient to formulate a cause of action, the defendants contend that the omission to plead the consent of the Governor which in their reckoning is a condition precedent renders the pleadings bad.

30 Rule 57 of the Rules of Court (Cap. 25 of Aden) reads as follows :-

"Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading."

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It is plain on consideration of this section that the plaintiffs in this case need not have specifically pleaded the Governor's consent, because being a condition precedent it would be implied in their pleadings. It would then be for the defendants to raise the point in their own pleadings if they thought that the plaintiffs had not complied with all the conditions in section 21 of the Port Trust Ordinance, 1957 (Cap. 112, Laws of Aden). It is only when the defendants had raised non-compliance with section 21 that the burden would then be thrown on the plaintiffs to prove due compliance. The performance of any condition precedent need not be specifically pleaded, except when a party desires to put the performance or occurrence of any condition precedent in issue. 10

In my view of the decision in Gates v W.A. and R.J. Jacobs Ltd. (1920) 1 Ch. D. 567 sufficiently disposes of the defendants' second preliminary objection. In that case the plaintiffs issued a writ against the defendants to recover possession of certain premises for breaches of covenant and for damages. The statement of claim gave particulars of material breaches of covenant, but there was an omission to allege that the statutory notice of breaches required by section 14 of the Conveyancing Act 1881, had been served on the defendants and had not been complied with. The defendants moved that the statement of claim should be struck out as disclosing no reasonable cause of action. 20 30

It therefore became necessary for the Court to construe rule 14 of Order XIX of the English Rules which is identical with Rule 57 of the Rules of Court (Cap. 25, Laws of Aden). In his judgment P.O. Lawrence, J., said at pages 569, 570 :- 40

"This is an application which raises a question of practice of some importance. The action is by landlords to recover possession of demised premises by reason of the breaches of covenant alleged to have been committed by the lessees. Under s. 14 of the Conveyancing Act, 1881, a notice has to be served on the lessee specifying the particular breaches of covenant complained of, and unless and until such a notice is served and the lessee fails within a reasonable time to remedy the breaches and to make reasonable compensation, the lessor cannot enforce his right of re-entry. Therefore there is under s. 14 a condition precedent to be performed before an action for recovery of possession will lie. Mr. Liversidge has argued that under r. 14 of Order XIX an averment of the performance of that condition is implied in his statement of claim and need not be specifically alleged. On the other hand Mr. Beaumont has urged that the non-averment in the statement of claim of the performance of the condition renders the pleading demurrable, and for that he relies on a passage in the speech of Lord Buckmaster in Fox v Jolly (1916) 1 A.C.1, 8 where after quoting s. 14 he says 'If such condition were not satisfied and entry were attempted at proceedings were instituted to obtain possession they would be instantly demurrable.' I do not think that Lord Buckmaster had r.14 of Order XIX in his mind; what he meant in making that ~~that~~ statement was that if no such notice had been given the action would not be maintainable. That is a different thing from saying that the notice must be specifically pleaded. In my judgment the concluding words of r.14 of Order XIX

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mean that an averment that the notice was given, although not specifically pleaded, must be implied. In other words the statement of claim must be read as if it contained an allegation that the plaintiffs had given the necessary notice under s. 14 of the Act before the commencement of the action. It is said that the absence of the plea is embarrassing, but I fail to see how that can be so because the defendants can obtain particulars of the notice by discovery in the action. I cannot therefore say that the plaintiffs' pleading discloses no reasonable cause of action or that it is frivolous or vexatious or even embarrassing."

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See also Lane v Glenny (1887), 7 A. & E. 83

In my judgment the learned trial judge erred in upholding the secondary preliminary objection and consequently he was wrong in dismissing the plaintiffs' suit on that ground.

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I will now deal with the cross-appeal. The notice filed on behalf of the respondents contains two grounds as follows :-

- "1. The learned Judge ought to have held that the claim was barred by limitation, and ought to have held that the Respondents' letter dated 13th January, 1958 was an unequivocal denial of the Appellants' claims.
2. The Learned trial Judge ought to have further held that the Plaintiff did not disclose any cause of action."

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The Rules of Court (Cap. 25) contain rules under which a plaint may be rejected. Rules 80 states inter alia as follows :-

"The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court fails to do so;
- (c) where the suit appears from the statement in the plaint to be barred by any law."

Article 99 of the Limitation Ordinance (Cap. 86 Laws of Aden) specifies the limitation period as "three years from the date fixed for performance or the plaintiff has notice that performance refused".

It seems clear to me that in deciding whether a suit is barred by statute or by any law the Court can only look at the plaint. The Court cannot look behind the plaint if it discloses ex facie a good cause of action.

There are two paragraphs in the plaintiffs' plaint which in my view, are material to the determination of the first ground of the cross-appeal. These are paragraphs 11 and 15.

In paragraph 11 it is averred as follows:-

"The Defendants, however, after protracted correspondence ending with their letter No. FWD/3/13778 dated the

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27th of March, 1961 finally refused to sell at Rs. 5/- per square yard the plot of land comprised in the said lease No. 3101 and ceased to be used for the purpose mentioned in the said lease".

And in paragraph 15 it is also averred:

"The cause of action arose at Aden on 27th March, 1961 when the Defendants finally refused to sell at Rs. 5/- per square yard."

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It was contended by Mr. Sanghani, Counsel for Respondent, that notice of refusal to sell the plot of land was communicated to the plaintiffs in a letter dated 13th January, 1958 and therefore time began to run as from that date. He submitted therefore that the suit was barred by statute when it was filed on 15th July, 1961.

20

I think that Mr. Sanghani's argument that time began to run against the plaintiff from 13th January, 1958 was an invitation to the Court to look behind the statement in the plaint, and in my view this must be declined. The plaint in itself contains a good prima facie case, and it is impossible to see any objection to it as regards the accrual of the cause of action.

Since I take the view that by rule 80(d) of the Rules of Court the objection on the third ground can be considered by reference only to the plaint itself I do not consider it necessary to examine further in this appeal the learned judge's reasons for dismissing the defendant's third preliminary objection. I venture to say, however, that he arrived at the right conclusion.

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On the whole I think the cross-appeal is clearly mis-conceived.

Accordingly I would allow the appeal with costs and dismiss the cross-appeal also with costs, and would order that the decree be set aside and the suit be remitted to the Supreme Court, Aden, to be heard and decided by a judge. The costs of and relating to the hearing of the preliminary objections in the court below I would order to be paid by the appellants in any event, and that the costs of the hearing in the Supreme Court following the remission be in the discretion of the judge hearing the case.

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Dated at ADEN this 12th day of March 1964

S. A. CRABBE
JUSTICE OF APPEAL

NO. 11

JUDGMENT OF CRAWSHAW, J. A.

No. 11

Judgment of
Crawshaw J.A.

12th March 1964

20 I have had the advantage of reading the judgment of Crabbe, J.A. with which, I understand, Newbold J.A. agrees, in which they would allow the plaintiffs' appeal with costs, and would disallow the defendants' cross-appeal. I also agree, but whilst associating myself with the reasons of Crabbe J.A. in allowing the appeal, I would dismiss the cross-appeal on its merits.

30 It did not appear on the face of the plaintiff that the suit was barred by limitation, but this was put in issue by the defendants in their written statement of defence. It was then argued as a preliminary objection on the pleadings as a whole. The evidence relied on by both parties was contained in admitted documents and the matter adjudicated on. It has again been

In the Court of
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No. 11

Judgment of
Crawshaw J.A.

12th March 1964

(Contd.)

argued before us on its merits, and to me it therefore seems that we are required and entitled finally to dispose of the issue.

The Preliminary objection was worded as follows :-

"3. The Plaintiff's claim is barred by limitation, as the Defendant Corporation repudiated the Plaintiff's claim in writing by its letter dated 13th January, 1958, and previous thereto the Plaintiff was advised verbally to that effect." 10

No evidence was led as to any verbal advice. By a letter dated 14th September, 1956 addressed to the chairman of the Port Trust, the plaintiff's predecessors in title purported to exercise an option, under their lease from the defendants, to purchase the demised land at a fixed price. In his letter in reply of the 13th January, 1958, the Chairman said he had been advised that no such option exercisable on the part of the plaintiffs was contained in the lease, and that he proposed to recommend to the trustees a new lease in favour of the plaintiffs in other terms if the plaintiffs agreed. In a letter from the plaintiffs of the 26th October, 1959, to the Chairman, the plaintiffs maintained their legal right to an option, but suggested that the matter be referred to an independent person for a proper construction of the controversial clause in the lease, and that the parties abide by such construction, and that if the plaintiffs were held wrong, they would agree to a new lease on other terms. In his reply of the 28th November, 1959 the Chairman said he had placed the plaintiff's letter before the trustees, and that they had not agreed to such a reference and considered their interpretation of the lease was the correct one, which was presumably that the plaintiffs had no option to exercise. 20 30

The learned judge, in considering this ground of objection said: 40

10 "As regards the third preliminary objection I rule that the suit is not time barred. There was no evidence of any verbal notification of repudiation of the option to purchase assuming such an option had arisen. It follows therefore that the defendants must be relying on the letter of 13th January, 1958 as a written repudiation. In my view this letter is neither a final nor an unequivocal repudiation but merely expresses a point of view on which it was anticipated that there would be, and on which there was in fact, subsequent correspondence. This subsequent correspondence at least as far as the letter of the 28th November, 1959 continues to be exploratory and not to be a final repudiation of the plaintiffs alleged option."

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Judgment of
Crawshaw J.A.

12th March 1964

(Contd.)

20 I am inclined to the view that the learned judge was correct in his reasons for coming to the conclusion he did. Before us, Mr. Bhatt for the plaintiffs submitted further that even if the letter of the 28th January, 1958 could be taken as a refusal to grant an option (which of course he argued it was not) it was the refusal of the Chairman only and not of the trustees.

30 Notice should I think have been given contending that the decision of the court should be affirmed on this ground also, under Rule 65 of the Eastern African Court of Appeal Rules, 1954 but no objection was taken by Mr. Sanghani for the defendants, whose reply was that the trustees act through the Chairman. Whether in fact the Chairman could on his own give a binding decision in such matters affecting the

40 disposal of land is not in evidence. There must be a presumption that the Chairman has authority to do acts of many kinds without consulting the trustees, but it has not been argued that such a presumption arises in a manner relating to the disposal of land and we have been referred to no authority thereon.

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12th March 1964

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Article 99 of the Limitation Ordinance (Cap.86) provides a period of three years for the institution of a suit for specific performance of a contract, and time begins to run when the plaintiff has notice that performance is refused. If the 13th January 1958 is taken as the date of refusal, then the suit, which was filed in July 1961, would be barred. Mr. Sanghani has conceded that the onus is on the defendants to prove that the refusal was outside the period of three years, and that the Ordinance must be construed strictly. I am of opinion that the letter of the 13th January 1958 does not in terms amount to a refusal, quite apart from the question of the Chairman's authority which I do not find it necessary to decide, and a positive refusal could not be inferred until the letter of the 28th November, 1959 which would bring the suit within time.

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For the above reasons it will be necessary to remit the suit for trial, should the appellants, in spite of the views which the learned judge appeared to take on the first of the preliminary objections, decide to continue the suit. There will be an order in the terms proposed by Crabbe J.A.

Dated at Aden this 12th day of March, 1964.

E.D.W. CRAWSHAW
Justice of Appeal

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No. 12.

Judgment of
Newbold J.A.

12th March 1964

NO. 12

JUDGMENT OF NEWBOLD J.A.

I agree with the orders proposed by Crabbe J.A. and with his reasons therefor. The result will be that the suit will be remitted to a judge of the Supreme Court for hearing

and determination. This is one more example of the dangers of trying to take a short cut. The points taken by way of preliminary objection were, save possibly in the case of the first part of the second objection, such as should properly be taken and decided after all the evidence has been heard. I should like to emphasize that our ruling that the first ground had been abandoned related only abandon-
10 ment as a preliminary objection.

Dated at ADEN this 12th day of March 1964

C. D. NEWBOLD
JUSTICE OF APPEAL

NO. 13

PROCEEDINGS.

IN THE SUPREME COURT OF ADEN
Civil Suit No. 378 of 1961

Hormusji Kaikhashru Hathadaru & Others.
20 Plaintiffs.

Versus

The Trustees for the Port of Aden.
Defendants.

24.1.65 Bhatt for Plaintiffs
P.K.Sanghani for Defendants.

Hearing 17.2.65.

17.2.65 Bhatt for Plaintiff
Sanghani for Defendants

30 Bhatt Plaintiff admits statements 3, 5,
6 and 11 in Defendants' notice to
admit dated 15th April, 1963.

In the Court of
Appeal for
Eastern Africa

No. 12

Judgment of
Newbold J.A.

12th March 1964

(Contd.)

*IN THE SUPREME
COURT OF ADEN*

No. 13

Proceedings

24th January
1965

to
22nd April 1965

24th January
1965

17th February
1965

SUPREMG
 In the Court of Aden
 Appeal for
 Eastern Africa

No. 13
 Proceedings.

17th February
 1965

(Contd.)

Issues Both Counsel submit draft issues. Filed and marked "X" and "Y" respectively.

By consent The following issues are selected :-

1. No. 1. from Plaintiffs list (X)
2. No.5. from Defendants list (Y)
3. "If the answer to Issue No. 2 is in the negative do the plaintiffs prove that it is for the defendants to obtain the approval of the High Commissioner as aforesaid?" 10
4. No. 7. from Defendants List (Y)
5. No. 6. from Plaintiff's List (X)

By consent Defendants tender copies of application for Government consent to the lease and the Government Approval which appear on pages 214 and 252 in Aden Port Trust Records Vol. 599 of 1931. 20

Bhatt. I admit that these two letters relate to the lease the subject of this suit.

Court: For the purpose of marking these Exhibits I think that they should be marked in the same series as those marked in the previous hearing. I must remark that I do not regard this as a retrial: it is a continuation of the previous hearing, the preliminary objections having been disposed of. 30

In this connection I point out that if I continue this trial, as would seem desirable in view of the comments of Goudie, J. at the end of his ruling, I ought to obtain the consent of the parties. 40

Both Advocates: We consent.

Court I therefore direct that the new Exhibits. be marked as follows :

(Exhit.
G1 &
G2)

Page 214 = Exht. G1
Page 252 = Exht. G2

10

Bhatt

Plaintiffs claim specific performance of lease No. 3101 para 3(b) by sale and all other acts necessary to complete.

What does clause 3(b) mean. What were the circumstances of the grant of the lease (See P.25,26 Appeal Record) p.27 Appeal Record, P.28 Appeal Record (This is the "note attached" referred to in opening para. on p.)

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N.B. Para. 5, p. and last sentence on P. , P. , para 4. and last sentence. P. . p.124 This is the enclosure referred to in the new Exht. G.1. Resolution No. "160" inserted at commencement of extract. See Resolution 1(c) cont. This refers to Clause 3(a) Pages and Appeal Record. and " "

30

Up to P.C.17 to C.32 and C.35. The record relates to correspondence and transaction before lease granted.

Refers to Lease Exht.F. (Record P.141

Document dated 9th January, 1932.

The Govt. approval was given 22nd July, 1930.

SUPREME
In the Court of Aden
~~Appeal for~~
~~Eastern Africa~~

No.13

Proceedings.

17th February
1965.

(Contd.)

G.1. 126
G.2. 127

P. 125
P. 142

SUPREME
In the Court of ADEN
~~Appeal for~~
~~Eastern Africa~~

No. 13

Proceedings.

17th February
1965.

(Contd.)

Term commenced 1st April, 1930.

(Back dated beyond date of Govt. consent).

Page 141 Lessees Covenants. Both Counsel agree that strictly speaking it is a misnomer to refer to provisoes (a) (b) etc. as (3)(a)(b) etc. In particular construction of these provisoes is not to be limited to the objects of Lessees Covenant (3).

Sanghani Paragraph (f) on page of the record is clearly a lessors covenant.

10

Court I think account must be taken of the words in the capital letters and the sense of the various parts following such words in ascertaining the relationship of the various parts of this document.

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Adjourned to a date to be fixed by the Registrar (1 day required).

E. G. BLANDFORD, J.

22nd February
1965

22.2.65 Bhatt for Plaintiff
P.K. Sanghani for Defendant.
Hearing 17.3.65.

4th March 1965

4.3.65 On 17.3.65, Mr. Justice Blandford will be occupied with Cr.Sessions Case No.1 of 1965, hence hearing adjourned - 23.3.65.

23rd March 1965

23.3.65 Bhatt
P.K. Sanghani

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Sanghani I now tender photostat copies of the pages marked Exhts. G1, G2 and for convenience request that these records be released and that the photostat copies be marked as Exhts. to correspond.

Bhatt

No objection.

Order

Record books containing exhts. G1 and G2 released. Photo copies accepted in substitution and similarly marked.

Bhatt

I have explained history prior to lease 9th Jan. 1932. In 1953 Port Trust wrote circular saying they wanted to construct coolie lines in Maalla and shift all coolies there. See P.149 see para 3 "will have to". By 1956 this plan was carried through. They had been moved by 14th September, 1956 when Exht. D.1 was written (See p.151).

Plaintiff then demanded sale of land. See para 8 of plaint. Crux of case in "upon being called upon" in Proviso (b). Necessary to consider history.

Court

Before I can hear your argument about history should you not first satisfy me that this is relevant?

Sanghani

See Sect. 100(1)(f) Evidence Ordinance. Also Sects. 101, 102, 103. On reflection I withdraw reference to all those sections. I submit that there is no ambiguity in the document and that Sect. 99(1) is applicable.

Bhatt

Refers Sect. 103. "upon being called upon".

The existing facts must be known before it can be decided that it is unanimity with reference.

Court

I am not persuaded that section 103 applies but I do not propose to rule on this point at the

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p.127

(P.3-4)

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moment. This case has already been to the Court of Appeal once on a ruling which plaintiffs developed their argument fully. I think it best not to risk the same thing occurring a second time and I will therefore hear the argument - it being clearly understood that I have not ruled that this argument is relevant.

10

Bhatt

Refers to Proviso (b) in lease. The land has ceased to be used for coolies - the later part of clause comes into operation. Why was this clause inserted.

Committee recommended in 1929 that the quarters should be built at Govt. expense. The Resident opposed that he considered shipping, etc. companies should build the quarters but should be relieved from taxes provided with free land and given a grant in aid. For the purpose of calculating the grant in aid the land was to be valued at Rs. 5/- per sq. yard. On Plaintiffs' representation the rate was reduced to Rs. 2/8/-. It was intended that when this land ceased to be used for coolies the lease should cease and the land should be sold. P.119 Line 31. December, 1929. Such clauses are not found in ordinary leases. As soon as the land ceases to be used for proper purpose it must be sold.

30

Court

The original resolution was "paid for" - this may be a sale or a lease at a rack rent. That resolution was in very broad terms. What happened in the meantime?

40

Bhatt See pp.124-125. Resolution of Defendants' predecessors on 19th June, 1930.

Court This resolution 1(c) relates to the grant in aid.

Bhatt I can give no reference to the negotiations between December, 1929 and the execution of the lease to show how the figure of Rs.5/- came to be inserted in Proviso (b) viz. Rs.5/- is the same as the original figure which was to be put in Proviso (a) following the resolution at the foot of p. . . Later the figure in proviso (a) was halved but that in proviso (b) was not altered.

Re construction "upon" is not synonymous with "if". "upon" is used with reference to "time" or "in consequence of". Refers Strouds Judicial Dictionary 3rd Ed. Vol.4. "Upon" (1) (3) In this case it must be used in the sense "after" Refers Vol. 3. p. 1982 definition of "on" (4)(b).

Re issue 2 Lease was granted with approval of Govt. under Sect. 23(2) Port Trust (Aden) Act. V of 1888 - See Exht. G(2) Adjourned to 27th March, 1965. not before 11 am.

E.G. BLANDFORD, J.

7.4.65 Saghani
Bhatt

Bhatt Re Issue No. 2 Lease contains proviso that for offer to sell. This implies the consent of the then Government to the sale. The sanction to the Lease included sanction of the proviso.

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(P.127)

Lease dated Jan. 1932 - came into effect in 1930. Exht. C26, p.130 Exht. G2 is the sanction. It refers to Port Trust Act, 1888, sect. 23(2) (Bombay Acts 1827 - 1933, p. 1094).

Aden Colony Order 1936 Gazette 26th Sept. 1936.

Sect. 6 & 7

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1888 Act continued in operation amended by Ordinance No. 16 1938 in respect of Sect. 6B only.

Laws of Aden 1945 Vol. 1 page 44 shows 1888 Act still in force in 1945.

The Cap. 122 Order No. 3 of 1951 Sect. 23 p. 2346. Sec. Item 31 in Sched. A.p. 2369 submits.

"The Port Trust approved the transfer of the lease to Dinshaw H.C. Dinshaw as is shown by the memorandum endorsed on the lease 10th Dec. 1957 (see p.147 of Record). 20

Sanghani

The Defendants admit that the lease was transferred to the original plaintiff. They have accepted since then that the original plaintiff was lessee.

Bhatt

See also p. of Record. The present Government is the successor of the Government existing before 1937. 30

General Clauses Act (Adaptation) Ordinary 1937 (Gazette Extraordinary 1st Feb. 1937) Govt. of India. to be construed as "the Governor".

No need to take fresh permission under Sect. 21 Cap. 122.

Proviso merely renders invalid unless sale, etc. first approved by Governor.

Sanction has to be obtained by the Port Trust (See p. of Record).

It is the duty of the lessor or seller to perfect his title.

Decree could be made "subject to sanction of Government."

Sanghani Plaintiff has to show that there is no impediment.

Bhatt No one can take advantage of a state of affairs which he has produced.

New Zealand Shipping Co. v. Society des Ateliers 1899 AC 6.

Port Trust required the coolies to be moved.

Sanghani Defendants do not admit. They already offered new lines.

Bhatt See p. of Record. Par. Milner v. Staffordshire Congregational Union 1956 Ch.275.

Re Issue No. 3. See above.

Re Issue No. 4. There was no conclusive agreement between the parties for purchase at a higher price. Parties were never ad idem as to price of user. Correspondence was between Plaintiff and Chairman. The Board of Trustees had authority not the Chairman.

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Sanghani

Plaintiff seeks equitable relief for specific performance of an alleged contract, included in lease. History of letting came to light after this suit instituted. Evidence was contained in correspondence - admissions, etc.

Rule 57 of Rules of Court. Not necessary to plead satisfaction of condition precedent. But it is not necessary to consider whether sanction granted or that there would be no impediment. Refer page 9 of Judgment of Crabbe J.A. "Burden thrown on plaintiffs to prove due compliance. a pure matter of construction. p. 40 of Record Proviso (b) "upon being called on so to do".

10

Issue 1

It is only if defendant calls on lessee to purchase that lessee bound. Nothing imposes obligation on to call on the lessee. If there was an option to purchase it would have been differently worded.

20

See p. Record from line . At line negotiations for a fresh lease started - and continued for some time.

The provision for a price of Rs.5/- could have operated at the end of first year.

30

Crawshaw Judgment p. 48

Newbold - likewise.

Re Issue 2. Sactioning authority does not sanction all the terms. Exht. G2. P.127 Record. M.C. was not a party to the lease not bound by terms.

Re Issue 3 The reliefs claimed do not include a prayer for mandatory injunction to seek approval.

No evidence has been given that the sanction would be granted.

Re Issue 4 See p. of Record line et seq.

See p. " " " " "

p.

p.

By Court Copy letter dated 4th May, 1960 from
Exht. original Plaintiff to defendant which
D9. was previously Exht. D9 and which has been removed from file of Exhts. (re-filed and marked Exht. D9)

Sanghani This was an unconditional offer. So was p. on record unconditional offer. Submits this constitutes waiver. p. change of tactics. Original plaintiff changed requirements. Defendant consequently changed price.

Plaintiffs seek equitable relief. Even if they had any legal right it would be unjust to enforce it. Defendant did no wrong. Other coolie quarters offered - no compulsion. Plaintiffs' predecessors had grant in aid - now coolie quarters - in negotiations admit true value vastly more. - defendant a public body.

Original transaction of special nature and for public purpose.

Bhatt If there was the contract its sanctity should be respected by a public body - even though market price has risen.

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p. of Record. Chairman had not authority of Board.

Judgment reserved to a date to be notified.

A. G. BLANDFORD, EG.C.J.

22.4.65 Barahim for Bhatt for Plaintiffs.
Sanghani for Defendants.

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Judgment read.

E.G. BLANDFORD, J.

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NO. 14

JUDGMENT.

IN THE SUPREME COURT OF ADEN S.A.L.2.850 fils.
CIVIL SUIT NO. 378 of 1961

HORMUSJI K. HATHADARU & OTHERS Plaintiffs

-versus-

TRUSTEES FOR THE PORT OF ADEN Defendants

JUDGMENT.

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The Plaintiffs, who are the executors of the original plaintiff, claim specific performance of a clause in a lease granted by the defendants' predecessors in title on 9th January 1932 whereby they submit that in the circumstances which have occurred they are entitled to purchase the reversion in the land at the price of Rs. 5/- (now 375 fils) per square yard. The defendants deny that

10 according to the proper construction of the clause the plaintiffs or their predecessors ever had any such right. In the alternative the defendants submit that the original plaintiff waived any right he may have had before this suit was instituted. In the further alternative the defendants say that the plaintiffs cannot have specific performance until they show that the consent of the High Commissioner has been, or will be, granted in accordance with the Ordinance which governs their dealings with land.

20 I do not think it necessary to go at great length into the history leading up to the granting of the lease since for the greater part the events are res inter alios acta. Furthermore I regard the wording of the clause in dispute as so clearly capable of only one meaning that it is hardly necessary to refer to the earlier history before the lease was granted in order to interpret it, but to the extent that that history is relevant, it appears to me to re-inforce the view that the words should be construed in their normal sense.

30 In 1928/1929 there was an outbreak of plague in Aden and in 1929 the Resident and other Officers of the government and the Settlement and representatives of the principal shipping companies had a number of meetings to consider a scheme for re-housing the coolies who worked in the Port in more hygienic conditions in order to reduce the risk of further outbreaks of plague. Eventually a scheme was devised whereby the respective shipping companies were to construct coolie lines of an approved specification and the public bodies concerned were to contribute one half of the cost of the buildings and site. The contribution by the public bodies was to be partly in kind by providing sites, latrines, washing places and by abatement of house tax and so on, and partly by a cash grant in aid.

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Messrs. Cawajee Dinshaw & Bros., the predecessors of the original plaintiff in this suit was one of the shipping companies which joined in this scheme. I will hereafter call that firm "the original lessee". The Defendants' predecessor, namely the Board of Trustees of the Port of Aden, constituted under the Port Trust (Aden) Act No. V of 1888 of Bombay (which I will hereafter call "the former Board") was one of the public bodies which contributed. That former Board's contribution, so far as concerned the original lessee, was the granting of a site for the housing construction under a lease for 99 years for a small quit rent and without charging a premium and the cash payment of Rs. 5,700/- odd.

10

It had been agreed at one of the previous meetings between the various public officers and the representatives of the various shipping companies that if any of the companies used the site granted to them for the purposes other than the housing of coolies the site must be paid for. Originally the arrangement between the former Board and the original lessee was that the site granted to the original lessee would be treated as worth Rs.5/- per square yard but after the original lessee complained that this was excessive the rate was eventually halved. The effect of this was to increase substantially the cash contribution which the former Board was required to make. Originally the price at which the site was to be purchased, if the lessee failed to use it for housing coolies, was also Rs.5/- per square yard. This figure was not changed when the values of the land for the purpose of calculating the subsidy was halved.

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The lease of the site to the original lessee was executed on 9th January 1932. The original Board was therein called "the Lessors" and that term was deemed to include their

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10 successors in office and assigns for the time being, unless such interpretation was excluded by the context. The three partners of the original lessee at that time were therein called "the lessee" and that term was deemed to include their heirs, executors, administrators and assigns unless such interpretation was excluded by the context. The parties to this present suit might therefore be regarded as contemplated by the document for most purposes, though I have some doubt whether they were for the purpose of the particular clause on which this suit is founded. I will return to this point later.

20 The lease contains five provisos inserted between the lessee's and the lessor's covenants. It is the second of these which is in question in this suit. In order to appreciate its context I will refer briefly to the others. The first and last are not provisos in the sense of a quality annexed to an estate by virtue of which it may be defeated, enlarged or created upon an uncertain event. The first is merely a record of the agreed price of the land for the purpose of the subsidy scheme. The last is a declaration as to the lessee's liability for various outgoings. The second is a true proviso and sets out the consequences of the lessee's failing to build the coolie lines within a year or to cease to use the site for housing coolies. I shall read its exact terms later. The third is substantially a normal form of proviso for re-entry which is to apply upon the breach of any condition or lessee's covenant. As to those relating to the construction and use of the premises this third proviso is subject to the second. The fourth is a special proviso for re-entry if the land is required for government purposes, and it is to be noted that, annexed to it, are special stipulations for ascertaining the compensation to be paid to the lessee in the event of the lessor's exercising its rights under that proviso. It has the appearance

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of a common form which was not adapted to meet the circumstances of the particular case.

The second proviso reads as follows:-

"(b) that if the said plot of land is not used for the purpose for which it is granted within one year from the date of these presents or if at any time during the term for which this lease is granted the said plot 10 of land shall cease to be used for such purpose then the lessee shall upon being called upon so to do in writing by the Lessors forthwith purchase the said plot of land at the price of Rs.5/- per square yard PROVIDED that if the Lessees are unwilling to do this they may refuse but upon such refusal this lease shall be deemed immediately to 20 determine and the land shall be surrendered to the Lessors"

The plaintiffs' submission is that the words "the lessees shall upon being called on so to do in writing by the Lessors forthwith purchase....", in the context in which they are used, and having regard to the circumstances of the letting, impose an obligation on the lessors to call on the lessees to purchase as soon as the condition precedent occurs, that is, 30 the lessee's failure to use the site for the purpose for which it was let within a year and continuously thereafter. In effect the plaintiffs' case is that they have an option to purchase at a fixed price as soon as they commit a breach of the covenant and conditions as to user. I am aware that in the events which in fact occurred the lessees' breach of these covenants and conditions was largely, if not wholly, due to the circumstances beyond the 40 control of the original plaintiff. This however does not alter the fact that if the

clause were to be construed in the way the plaintiffs submit, the lessee could at any time have gained an advantage from his own wrong.

10 The general rule is that provisoes or conditions, like covenants, are to be construed according to the real intention of the parties. It is the plaintiff who submits that the Court should have regard to the decisions of the meetings and discussions which eventually led to the granting of this lease. If that is done it is seen that the purpose of inserting a proviso for purchase was intended to be a sanction in case of breach of the condition as to user and to "safeguard the public interests." It was not intended to enable the lessee to profit from his wrong. As the value of the site has increased out of all recognition since the lease was granted that is exactly what would occur if the clause were construed as a binding option in favour of the lessee. Another of the surrounding circumstances which tends to militate against construing the proviso as an option in the lessees' favour is that when the price of the site was reduced for the purpose of the subsidy scheme there was no corresponding increase in the figure for purchase price inserted in proviso (b). The reduction of the figure in proviso (a) increased the amount of the grant in aid. The correspondence shows clearly that the lessor still regarded the real value of the land at that time as being Rs. 5/- per yard. If the lessee had completed the building, obtained the increased grant in aid and immediately broken the condition as to use the loss to the lessor if forced to sell would not have been the amount of the grant in aid originally promised but a substantially increased amount. I do not believe the lessor intended to incur that risk.

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With reference to the words "upon being called upon so to do" Mr. Bhatt for the

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plaintiffs submitted that these were not synonymous with "if called upon so to do." There is however authority for the word "upon" being used elliptically for the words "upon condition of" (see the first definition of the word "upon" in Strouds Judicial Dictionary 3rd ed. vol. 4 at page 3165). In my view the meaning of the proviso is quite clear. It contains two conditions precedent. First there must have been the particular breach of condition on the lessees' part. Secondly, the lessor must have given a written notice, which it was not bound to do. On the happening of both these events the lessee was bound to purchase at the fixed price and, if he failed, the lease was deemed to be surrendered. In other words the option was to be the lessors and not the lessees. The initiative rested with the lessor under proviso (b) just as much as it did under the provisos for re-entry contained in clauses (c) and (d). 10 20

In the pleadings the defendant challenged the original plaintiff's title as derived from the original lessees. This point was not pursued and since there was no argument on the subject I do not propose to go into the matter at any length but I would remark that, even if the clause amounted to an option to purchase, I should regard it as very doubtful whether the original or the present plaintiffs could enforce it. Either Section 55 (b) Transfer of Property Ordinance, Cap. 54 would prevent the benefit and burden of the option running with the land or section 14 of the said Ordinance would avoid it as being contrary to the rule against perpetuities, if it did run with the land and its burden with the reversion. There has been no mention of an express transfer of the benefit of this clause and this would, I consider, have been necessary if the benefit of the option did not run with the land. This is despite the interpretation of the words "lessors" and "lessees" in the premises of the deed as including assignees and so on because in that case the option would be 30 40

"in gross." See Woodall v. Clifton (1905) 2Ch 257 Griffith v. Pelton (1957) 3 All E R. 75 and re Buttons Lease Inman v. Button (1963) 3 All E.R. 708.

At the commencement of the trial five issues were settled for determination as follows :-

- 10 (1) Do plaintiffs prove that it was obligatory on the part of the defendants to call upon the plaintiffs to buy the property at Rs. 5/- (E.A.Shs.7/50) per square yard on the same having ceased to be used for the purpose for which it was granted under the Lease No. 3101 dated 9th January 1932.
- 20 (2) Do plaintiffs prove that the lease No. 3101 contains the sanction necessary under Sec. 21 of the Port Trust Ordinance by the High Commissioner to sell the demised land at Shs. 7/50 per square yard to the plaintiff?
- (3) If the answer to issue No. 2 is in the negative, do the plaintiffs prove that it is for the defendants to obtain the approval of the High Commissioner as aforesaid?
- 30 (4) Does defendant prove that the original plaintiff by making an offer to take a new lease of the demised land as stated in paragraph 10 of the Written Statement, waived thereby his rights (if any) under the lease No. 3101?
- (5) Are the plaintiffs entitled to Specific Performance as prayed in the suit?

40 I have found in favour of the defendants on issue No. 1 and this frustrates the whole claim. I will nevertheless state shortly my findings on the remaining issues.

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As to issue No. 2 the sanction now required for a sale by the Board is that of the High Commissioner, which is made necessary by section 21 of the Port Trust Ordinance Cap. 122. The Plaintiffs' case is that when the Government of Bombay gave its sanction on 22nd July 1930 under section 23 (2) of the 1888 Act to the lease to the original lessee that was a sanction which extended to all the terms of the lease including the ultimate completion of what the plaintiffs contended was the option contained in proviso (b). The plaintiffs therefore submit that no further consent is required for completing the transaction when that option is exercised. The 1888 Act continued in operation after Aden became a Colony in 1937 until it was replaced by the present Ordinance in 1951. In the meantime, by virtue of the General Clauses Acts (Adaptation) Ordinance 1937 references to "the Government" were to be construed as reference to "the Governor" and so on. By section 23 of the Port Trust Ordinance properties vested in the former Board became vested in the present Board subject to and with the benefit of the rights and liabilities attaching thereto. So far as concerns the suit premises this meant subject to liability in respect of the option and with the benefit of the sanction which had already been granted for completing the sale if the option was exercised. This argument depends in the first place on its being accepted that when the sanction was given in 1930 that must be deemed to include the sanctioning of a later transaction under proviso (b). I do not accept this. I do not consider that a sovereign authority can be held to have fettered its own discretion in such a way. A fertiori I do not think such an authority could fetter the discretion of its successor under a replacing statute, that being legislation of another state. I therefore find that the plaintiffs have failed on the second issue.

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As to the third issue I have no doubt that the defendants could, if there were an enforceable option, be required to apply for authority within a given period (the form of the relief claimed extends to this) and, if sanction is forthcoming, to transfer to the plaintiffs within a further period. I am aware that section 17(b) Specific Relief Ordinance Cap 140 gives a purchaser a right to procure the concurrence of other persons only where such persons are bound to "convey" at the vendors request. In Motilal v. Nanhelal 1930 57 I.A. 333 P.C., however, the Privy Council held that where the sanction required was that of a Government authority the Court had jurisdiction to order the vendor to apply. I consider that the decision of the Privy Council is binding on this Court in the circumstances of this case. As to the third issue I therefore find in favour of the plaintiffs.

As to the fourth issue I am not satisfied that the original plaintiff ever waived his right despite the terms of some of the correspondence in 1959 and 1960. On 13th January 1958, a letter was written by the Chairman of the trustees stating that he would recommend to the defendants the grant of a new lease on certain terms "for the purpose of erecting a garage and showroom". (line 11 in the second paragraph of exhibit D.5). This letter was not an offer. It was merely a proposal of certain terms which would have to be referred to the trustees if the original plaintiff agreed to them. In effect the original plaintiff made the offer in his reply (Exhibit D.7) dated 26th October 1959, when he agreed to the terms but stated he would want to use the premises for different purposes. He then went on immediately to refer to the rights he thought he had under proviso (b) and suggested that this dispute be referred to arbitration. In conclusion he said in effect that if he

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failed in the arbitration he would take the lease on the terms previously stated. I think this letter has to be construed as a whole and taken as a whole I do not regard it as constituting a waiver of any rights except to the extent of submitting the dispute to arbitration instead of resorting to court proceedings. The chairman replied first declining to arbitrate and subsequently to let the premises for a different use from that stated in his first letter except upon different terms. The parties were never ad idem. I find that the defendants fail on the fourth issue.

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As to the fifth issue I find that the plaintiffs are not entitled to the relief claimed as they failed on the first issue. If it were not for this, and subject to what I have said as to their title to an option in gross or the application of the rule against perpetuities as the case may be, they would have succeeded since they succeeded on the third and fourth issues. Their failure on the second is made good by their success on the third.

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For the reasons I have given I dismiss this suit with costs.

E.G. BLANDFORD J.

71.

NO. 15.
DECREE.

IN THE SUPREME COURT OF ADEN
CIVIL SUIT NO.378 of 1963

1. Hormusji Kaikhasru Hathadaru
 2. Dr. Nariman Manchershaw Hodiwala
 3. Minocher Rattanshaw Bhavnagari
- Plaintiffs
- Executors & Legal Representatives of
the Deceased: Dinshaw H.C.Dinshaw.

V/S.

Trustees for the Port of Aden Defendant

D E C R E E

THIS SUIT coming for hearing on the 22nd day of April, 1965 before the Hon'ble Mr. Justice E.G.Blandford, Judge, Supreme Court, Aden AND UPON HEARING Mr. A. BHATT, Advocate for the Plaintiffs, and P.K. Sanghani, Advocate for the Defendants IT IS HEREBY ORDERED & DECREED that the Suit is dismissed with costs amounting to Shs.315/- (Shillings three hundred & Fifteen) only.

GIVEN under my hand and the seal of the Court this 22nd April, of 1965.

(Signed) W.H.GOUDIE
SUPREME COURT OF A D E N

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Decree

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NO. 16.
NOTICE OF APPEAL

IN THE SUPREME COURT OF ADEN
CIVIL SUIT NO. 378 of 1961

No. 16.
Notice of Appeal

HORMUSJEE KAIKHASRU HATHADARU & OTHERS
PLAINTIFFS

Versus:

27th April 1965

THE TRUSTEES FOR THE PORT OF ADEN
DEFENDANTS

NOTICE OF APPEAL

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TAKE NOTICE that the plaintiffs being dissatisfied with the decision of the Honourable Mr. Justice E.G. Blandford given herein at Aden on the 22nd day of April, 1965 intend to appeal to the Court of Appeal for Eastern Africa against such part of the said decision as decides that the suit is dismissed with costs on the first issue, the second issue and fifth issue holding inter alia therein that the Plaintiffs are not entitled to specific performance as prayed in the suit because it was not obligatory on the part of the Defendants to call upon the Plaintiffs to buy the suit property at Rs. 5/- (EA.Shs.7.50) per square yard on the same having ceased to be used for the purpose for which it was granted under the lease No. 3101 dated 9th January, 1932 and also because the Lease No. 3101 does not contain the sanction necessary under Section 21 of the Port Trust Ordinance by the High Commissioner to sell the demised land at Shs. 7.50 per square yard to the Plaintiffs.

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Dated this 25th day of April, 1965.

(SD) A. Bhatt
Advocate for the Appellants
(Plaintiffs).

To the Registrar of the Supreme Court at Aden and the Advocate for the Respondents (Defendants) (P.K. Sanghani) the address for service of the Appellants is :-

c/o Cowasjee Dinshaw & Bros. (Aden)
Limited,
Steamer Point,
Aden.

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NOTES:

Respondents served with this notice are required within fourteen days after such service to file in these proceedings and serve on the Appellants a notice of their address for service for the purpose of the intended appeal, and within further fourteen days to serve a copy thereof on every other respondent named in this notice who has filed notice of an address of service. In the event of non-compliance, the Appellants may proceed ex-parte.

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Filed the 27th day of April 1965 at Aden.
(SD) V. D. Tripathi
REGISTRAR

NO.17.

MEMORANDUM OF APPEAL

IN THE COURT OF APPEAL FOR EASTERN AFRICA

CIVIL APPEAL NO. 48 OF 1965

B E T W E E N:

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- 1. Hormusji Kaikhasru Hathadaru,
 - 2. Nariman Munchershaw Hodivala,
 - 3. Minocher Ratanshaw Bhavnagri,
- Executors and Legal
Representatives of the
Deceased: Dinshaw H.C.Dinshaw.)

APPELLANTS

- and -

Trustees for the Port of Aden, Aden
RESPONDENTS

30

Appeal from the Judgment and Decree of the Supreme Court, Aden, (the Hon'able Mr. Justice E.G. Blandford) dated 22nd April, 1965 in Civil Suit No. 378 of 1961.

B E T W E E N:

- 1. Hormusji Kaikhasru Hathadaru
 - 2. Nariman Munchershaw Hodivala,
 - 3. Minocher Ratanshaw Bhavnagri.
- Executors and Legal Representatives
of the Deceased: Dinshaw H.C.Dinshaw)

PLAINTIFFS

- and -

Trustees for the Port of Aden DEFENDANTS

40

MEMORANDUM OF APPEAL

(1) Hormusji Kaikhasru Hathadaru, (2) Nariman Munchershaw Hodivala and (3) Minocher Ratanshaw Bhavnagri, the Appellants above named.

SUPREME

In the Court of Aden
~~Appeal for~~
~~Eastern Africa~~

No. 16.

Notice of Appeal

27th April 1965

(Contd.)

In the Court of
Appeal for
Eastern Africa

No. 17.

Memorandum of
Appeal

16th August 1965

In the Court of
Appeal for
Eastern Africa.

No. 17.

Memorandum of
Appeal

16th August 1965
(Cont'd)

appeal to the Court of Appeal for Eastern Africa against the whole of the decision above mentioned dismissing the Appellants' suit with costs, on the following grounds namely:-

1.(a) The learned Judge erred in his construction of clause 3(b) of the Lease dated 9th January 1932, No. 3101.

(b) The learned Judge erred in holding that the condition precedent to the obligation of the lessors to call on the lessees to purchase the plot of land was the lessees "failure to use the site for the purpose for which it was let" and in failing to appreciate that the condition precedent was merely if the said plot of land "shall cease to be used for such purpose".

10

(c) The learned Judge erred in holding that "the plaintiffs' case is that they have an option to purchase at a fixed price as soon as they commit a breach of the covenant and conditions as to user".

20

(d) The learned Judge erred in holding, or proceeding on the assumption, that there had been any breach by the lessees of the covenants and conditions as to the user of the said plot of land.

(e) The learned Judge erred in holding that by construing the said clause 3(b) according to the plaintiffs' submissions "the lessee could at any time have gained an advantage from his own wrong".

30

(f) The learned Judge erred in holding that "the purpose of inserting (in the said Lease) a proviso for purchase (of the said plot of land) was intended to be a sanction in case of breach of the condition as to user and to "safeguard the public interests".

(g) The learned Judge erred in holding that the fact that there was "no corresponding increase in the figure for the purchase price inserted in proviso (b)" when "the price of the site was reduced for the purpose of the subsidy scheme" was a reason "against construing the proviso as an option in the lessees' favour".

40

(h) The learned Judge erred in construing the first word "upon" in the phrase "upon being called upon so to do" as meaning "upon condition of".

(i) The learned Judge erred in holding that the said proviso (b) or the lessees' right to an option to purchase contained or depended upon a condition precedent that there must have been "the particular breach of condition (as to user) on the lessees' part".

In the Court
of Appeal for
Eastern Africa

No.17

Memorandum of
Appeal

16th August
1965
(Cont'd)

10 (j) The learned Judge erred in holding that, under the said proviso (b), if the said plot of land should cease to be used for the said purpose, the lessor was not bound to give a written notice to the lessees requiring them forthwith to purchase or to refuse to purchase at the price of Rs.5/- per square yard.

20 (k) The learned Judge misdirected himself in saying: "On the happening of both those events (i.e. the particular breach of condition as to user on the lessees' part and giving of a written notice by the lessor) the lessee was bound to purchase at the fixed price and, if he failed, the lease was deemed to be surrendered".

(l) The learned Judge erred in holding that the option under the said proviso (n) "was to be the lessors and not the lessees".

2. The learned Judge erred in holding in favour of the defendants in respect of Issue (1)

30 3.(a) The learned Judge erred in holding that the plaintiffs failed on the second Issue.

(b) The learned Judge erred in holding that when the sanction to the lease was given in 1930 it was not to be deemed to include "sanctioning of a later transaction under proviso (b)".

40 (c) The learned Judge erred in failing to appreciate that further approval under section 21 of the Port Trust Ordinance (Cap. 122) was not required inasmuch as the sanction of the Government of Bombay given on 22nd July 1930 under Section 23(2) of the 1888 Act to the lease to the original lessee was a sanction extended to all the terms of the lease including

In the Court
of Appeal for
Eastern Africa

No. 17

Memorandum of
Appeal

16th August
1965
(Cont'd)

ultimate completion on the exercise of the option by the lessee as provided in the said proviso (b) thereof.

(d) The learned Judge misdirected himself when he said:

"I do not consider that a sovereign authority can be held to have fettered its own discretion in such a way. A fortiori I do not think such an authority could fetter the discretion of its successor under a replacing statute, that being legislation of another state".

10

4. The learned Judge erred in failing to hold that no further approval or consent was required for a transfer or sale of the said plot of land to them after the option to purchase was exercised by the lessees.

5. The learned Judge failed to appreciate the fact that the plaintiffs were the assignees of the original lessees and that they were accepted as such by the defendants by endorsing them as the present lessees on the Lease No. 3101 itself.

20

6. The learned Judge erred in holding that the plaintiffs were not entitled to specific performance as claimed by them in their Plaint or in such manner as might be just in law and equity.

7. The doubts expressed by the learned Judge as to the right of "the original or the present plaintiffs" to enforce the option to purchase contained in the said proviso (b) are not well-founded, and the learned Judge misdirected himself in the views he expressed on sections 55(b) and 14 of the Transfer of Property Ordinance, Cap. 154 in relation to the subject matter, but, since the learned Judge expressed no concluded views thereon, the said matters are not made a ground of appeal, though the views indicated or leaned towards by the learned Judge (the Appellants feel it is desirable here to state) are erroneous and not accepted as correct.

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The appellants pray that the Judgment

and Decree of the Supreme Court be set aside and that the appellants be granted the Decree as per relief prayed in the plaint.

Dated this 16th day of August 1965.

S.R. Daluwalla
for A. Bhatt

Advocate for the Appellants.

To
The Honourable the Judges of the Court of
Appeal for Eastern Africa

10

And to
P.K. Sanghani, Esq.,
Advocate for the Respondents,
Section A, Street No. 3,
Crater, ADEN.

Filed on this 16th day of August 1965.

In the Court
of Appeal for
Eastern Africa

No.17

Memorandum of
Appeal

16th August
1965
(Cont'd)

In the Court
of Appeal for
Eastern Africa

No.18

Notes of Sir
Clement De
Lestang
AG. V-P

27th January
1966

NO. 18

NOTES OF SIR CLEMENT DE LESTANG
AG. V-P

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO. 48 of 1965

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS
APPELLANTS

- and -

TRUSTEES OF THE PORT OF ADEN
RESPONDENTS

(Appeal from a judgment and decree
of the Supreme Court of Aden
(Blandford, J.) dated 22nd
April, 1965

in

Civil Suit No. 378 of 1961)

NOTES OF SIR CLEMENT DE LESTANG,
AG. V-P

27.1.66 Coram: de Lestang, Ag. V-P.
Spry, J.A.
Law, J.A.

J.M. Nazareth, Q.C. & A.K. Bhatt for
Appellants.
K.R. Gajera for Respondent.

Nazareth -

1. Construction of 3b of Lease. Grounds
1 and 2.

2. Whether further approval is required
under Cap. 122 of C. of A. Decree could
be made subject to approval being
sought and obtained.

Reads judgment and Lease p.
Clause gives an option to lessee to
purchase in certain circumstances.

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Not right to say that condition occurs upon the "lessee's failure".
 No breaches on the part of the lessees.
 Wrong to say that term would enable "lessee to profit from his wrong".
 Land has ceased to be used without any breach on the part of the lessees.
 Lessor bound to give option to lessee.
 P. Pled in defence. p.
 10 para 2.

Notices to admit documents and facts were received by defendants
 p. 15
 P. 132, 133 Value was less than Rs. 2/8 at the time.
 P. p. p. and p.

Construction of lease. p.141

1. Land demised for accommodation of coolies. 3(b) provides that if land ceases to be used the lease is to determine either by way of sale to lessees or surrender of term to the lessor. The procedure is for the lessor to call upon the lessee to buy at Rs. 5 per sq. yd. If he refuses the lease terminates. If he buys the lease will terminate on transfer of land to lessee. 3(c) is subject to 3(b). Operates only if lessee guilty of breach of covenant. If clause 3(b) comes into play clause 3(c) does not.

No mention in clause 3(b) about refusal to make offer, reason being that land is to be sold if not used.

If lessee not bound to make offer extraordinary situation arises.

Lessee not having committed breach of covenant the lessor cannot determine under clause 3(c). Clause 3(d) does not operate.

Lessee cannot himself determine the lease if he is in default.

Societe des Ateliers etc. v. New Zealand Shipping Co. (1919) A.C. 1 p.6.

BROOM'S LEGAL MAXIMS (9th Edn) p. 197.

The lease would therefore continue although not used for the purpose for which granted and the lessee would have to pay the rent and pay rates for nothing.

In the Court
 of Appeal for
 Eastern Africa

 No.18

Notes of Sir
 Clement De
 Lestang
 AG. V-P

 27th January
 1966
 (Cont'd)

In the Court 2.30 p.m. Bench and Bar as before.
of Appeal for
Eastern Africa Nazareth continues:

No. 18

Notes of Sir
Clement De
Lestang
AG. V-P

27th January
1966
(Cont'd)

Only reasonable inference therefore is that the lessor must call upon the lessees in writing to purchase.

Requirement has to be in writing to protect the lessee, to safeguard his right.

Lessee has incurred expenditure in building. Is he to lose this without compensation?

Payment for the land was raised at the meetings, before the lease was entered into. P. 119 L.31

Land ceased to be used not in breach but at the desire of the lessors to house them elsewhere. P. 140

"Upon" being called upon does not mean "if" called upon.

Meaning in STROUD'S.

R. v. Lancashire Justices 27 L.J.M.C. 161.

No right of appeal until something done.

Construction contra preferentem.

11 HALSBURY 392 - Construction against grantor and in favour of Grantee.

Grounds 1(c), 1(b), 1(c), 1(d), 1(f), 1(g) and 1(h), judge wrong on all these grounds. Misunderstood plaintiff's case and misunderstood the lease, clause 3(b).

Against natural meaning of the word, against the intention and causes injustice.

Grounds 3, 4 and 5

If consent not in fact contained decree may be made subject to consent being applied for and the 1930 Government of India gave its consent to the sale in exercise of the option. P. 131.

In Aden option to purchase does not create an interest in land. S.40, Cap. 154.

It created a valuable right which could be enforced. (Sanctions given for the lease).

Lease includes all the terms and conditions thereof. Sanctions for the lease included sanctions for the sale in accordance with the terms of the lease.

Hankey v. Clavering, (1942) 2 All. E.R. 311.

Right to have transfer sanctioned by the sanction of the lease. There is no later transaction. Once sanction given no discretion left.

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New Board is continuation of old Board.
No question of sovereignty comes into
the picture.

Acceptance of original plaintiff as
lessee.

P. 56 l. 29

P.147 l. 14 Consent to assignment to
plaintiff.

7. Court should ignore other obiter
dicta.

In the Court
of Appeal for
Eastern Africa

No.18

Notes of Sir
Clement De
Lestang
AG. V-P

10

Gajera I will not argue this question at all.

Court It is agreed that this matter should be
ignored.

27th January
1966
(Cont'd)

Gajera Construction of Clause 3(b).
It imposes no obligation on the lessors
to offer the **site** but merely a discretion.
Intention to be gathered from the document
itself.

11 HALSBURY para 632, para 658.

If right to purchase was intended wording
should have been different. Words "upon
being called upon so to do in writing
by the lessors" superfluous. Subsequent
happenings cannot be taken into consideration,
e.g. the transfer of the coolie lines
in 1956. Since lease granted for a specific
purpose clause 3(b) provides sanctions
against non-user. Cessor of user was
brought about by action of third parties.

20

Neither lessor nor lessee committed any
wrong.

P. 16 fact No. 12. Admitted p. 17 l.12
Lessors merely helped the lessees by making
alternative arrangements. No compulsion or
pressure in p. 148, 149

3(b) and 3(c) confer 2 rights on the
lessors - a right to offer for sale and
a right to re-enter. (Clause 1 clearly
a negative covenant).

(pp 141 & 142)

30

Lessors are not taking advantage of their
own wrong - Not responsible for non-user
for coolies. Lessee's construction should
not be upheld. "Writing" merely to
eliminate any doubt. (designed to protect
both parties).

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P. not inconsistent with lessor's
discretion to offer or not but irrelevant in
any case.

In the Court
of Appeal for
Eastern Africa

No.18

Notes of Sir
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Lestang
AG. V-P

27th January
1966
(Cont'd)

"Upon" is conditional. Lessee only
has option if called upon.
11 HALSBURY para 642.
Construction canvassed may result in
lessees taking advantage of their own
wrong. Such a construction cannot be
right.

S.O. 9.30 a.m. on 28/1/66.

28th January
1966

28.1.66. Bench and Bar as before
9.30 a.m.

10

Gajera

2. Sanction.
Whether sanction given depends on
construction of sanction itself. P.127
Sanction accorded only to the leasing
not to the potential sale. Lease dated
9/1/32. Sanction 31/7/30.
Government merely sanctioned the proposed
lease. Did not have the actual lease
before it. Having regard to the great
increase in value specific performance
would not be in the public interest. 20
Construction of lessors is more
compatible with public interest.

Nazareth

1. Clear, purely as a matter of
construction of the lease itself, that
non-user would bring lease to an end
either by sale or surrender.
Concede subsequent events immaterial
on question of construction. ? Cesser 30
by reason of action of Municipality.
Not so, suggestion came from lessors.
Removal caused by the action of lessors.
Initiative came from the lessors.
Lessors accepted rent up to 1960 pp.169,170
Therefore no breach of covenant.
Lessees suffered substantial loss by
having to move.
Hardship not pleaded and is immaterial.

2. Lease was before Government.
p. 124 p.139

40

(Lease is a contract - when saction is
given to the lease it is to all the

terms of the contract)
MULLA 4th Edn. (s. 105 I.T.P.
Act) p.594.

S. 102 Aden Transfer of Property
Act.
Contract cannot be broken up into
constituent parts.

I ask for order for Specific
Performance by way of transfer of
land as prescribed in lease at Rs.
5 per sq. yd. I ask certificate for
two counsel.

10

Gajera

I oppose certificate for two
counsel.

C.A.V.
M.C.N. DE LESTANG

In the Court
of Appeal for
Eastern Africa

No.18

Notes of Sir
Clement De
Lestang
AG. V-P

28th January
1966
(Cont'd)

In the Court
of Appeal for
Eastern Africa

NO. 19

NOTES OF SPRY J.A.

No.19

IN THE COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI

Notes of Spry
J.A.

(Coram: de Lestang, Ag. V-P, Spry and Law,
JJ.A.)

27th January
1966

CIVIL APPEAL NO. 48 OF 1965

B E T W E E N:

HORMUSJI KAIKHASRU HATHADARU
AND TWO OTHERS

10

Executors and Legal Representatives
of the deceased: Dinshaw H.C.
Dinshaw

APPELLANTS

- and -

TRUSTEES FOR THE PORT OF ADEN, ADEN

RESPONDENT

(Appeal from the judgment and decree
of the Supreme Court, Aden,
(Blandford, J.) dated 22nd April,
1965

20

in

27.1.66 Civil Suit No. 378 of 1961)

J.M. Nazareth Q.C. & A.K. Bhatt for Appellants.
K.R. Gajera for Respondent.

NOTES OF SPRY, J.A.

Nazareth: two questions (a) construction of
clause 3(b) and (b) whether further approval
required under Cap. 122 - (b) not of major
importance, as if succeeds on (a), order for
specific performance could be made conditional. 30
Judgment p. 60 Lease p.141 - p. 64 A - should
be an election - not failure, ceasing - B - a
complete misrepresentation - never was a breach
of covenant - p.65 A - not so - B, submits
not so - p.66 A - not correct - B - question
at issue - C. challenged - the option is the
lessee's -

P.65 - C. pleaded by defence - p. 10
para 2 notice to admit served by dft -
p. - notice to admit facts similarly.
p.

In the Court
of Appeal for
Eastern Africa

No.19

P. 61 - A - not correct to say 5/-
true value - see pp. 128, 129, 132, 134

Notes of Spry
J.A.

27th January
1966
(Cont'd)

10 Construction of lease - demised for
accommodation of coolies - 3(b) - if land
ceases to be used for coolies, lease comes
to an end either by purchase or surrender -
procedure - call in writing - 3(c) subject
to 3(b) - no mention in 3(b) of any refusal to
make an offer - if lessor not bound to make
offer, extraordinary situation - lessee not
being in breach, lessor not entitled to re-
enter under 3(c) - 3(d) would not come into
operation - lessee cannot determine -
Societe des Ateliers v. New Zealand Co.
(1919) A.C.1.
20 Brooms Legal Maxims p. 197 - lease would then
continue, although land not being used for
purpose of lease - continuing obligation to
pay rent -

Adjourned to 2.30.

Sgd/ J.F. Spry
J.A.
27.1.66.

2.30 p.m. Bench and Bar as before.

Nazareth:

30 Requirement that offer be in writing is for
the benefit of the lessee - points to a right
having been granted - lessee has expended money
on the land - land ceased to be used for
housing coolies without any breach - desire of
Port Trust - p.150 situation brought about by
lessors - "will have to" at p.151 degree of
pressure -

"upon" not ordinarily construed as "if" -
if meant "if" could have said so -

J relied on Stroud Vol IV 3rd Ed.

40 R. v. Lancashire Justices 27 L.J.M.C. 161. -
reverse position - in present case resp. has to
comply with condition precedent - contra proferente
Halsbury Vol II p. 392 para 641.

Submits justifies M/A 1 (a) - (h) -

In the Court
of Appeal for
Eastern Africa

No.19

Notes of Spry
J.A.

27th January
1966
(Cont'd)

Grounds 3, 4 & 5: whether approval given
in point of law - submits decision erroneous -
submits there was a consent given by the Govt
of Bombay in 1930 -

Aden Tsfr of Property Ord. Cap. 154. s.40.
- option to purchase created a valuable right
though not an interest in land - with tenant in
possession, almost inevitable that anyone acquiring
title will have notice.

p.127 unthinkable that responsible Govt would not 10
have had before it all particulars -

if option contained in lease, approval of lease
must have carried with it approval of each clause,
including option which is outside control of
lessor or Govt -

Hankey v. Clavering (1942) 2 All E.R. 311 at p. 313
bottom. No new transaction - unilateral action bring
tsfr into being - no discretion has been fettered -
Land tsfd to Port Trust subject to right and
burdens - p. 68 line 22. Immaterial whether runs 20
with land or not, rights and liabilities must
continue -

Ground 5 - p. 55 line & p. 147, 148

Ground 7 - never argued - never pleaded -

Gajera: might be said to have been pleaded but
certainly not argued no instructions to argue
(Agreed - not to be argued).

Gajera: Construction of 3(b) of lease of 9.1.32.

Submits imposes no obligation on lessors - 30
implicit is a right of lessors to offer to
lessees - surrounding circumstances only to be
looked at if meaning not clear - Halsbury Vol. II
para 632 p. 384. - p. 405 para 658 -

If intention of parties was to confer a right on
lessees, wording would have been different -
wording more consistent with an obligation imposed -
all that would have been needed was "shall be
entitled to purchase"

or "then lessors shall call upon"-

Subsequent happenings not to be taken into account - 40

Object of clause to provide a sanction
against non-user -

Removal of coolies not at request of Port
Authority but of an outside agency - lessors
have committed no wrong - (concedes lessees have
done no wrong.)

p. 16 para 12 - admitted at p. 17 line 12.

p.150 no pressure by lessors but by Municipality -

Possible result not enough to base an
inference as to intention. 50

3(b) & (c) must be read together can either call on lessees to purchase or re-enter "conditions ... shall not be observed" - nothing about lessees' breach - can ignore 3(b) if want to - condition not observed, para (1) - implied condition -

Appellants contention would amount to imply a covenant in favour of the appellant -

10 "in writing" - inserted merely to avoid doubt. Protects both -

Expenses - both sides incurred equally -

p.118 - not inconsistent with right of lessors - but ? if relevant -

"upon" may impose a condition - may be equivalent to "if" -

Contra proferentum only to be used as a last resort - Halsbury p. 394

20 If construed as app. wishes, lessees might find it to their advantage to cease user so as obtain right to purchase - would amount to taking advantage of their own wrong.

Adjourned to tomorrow, 28th Jan. at 9.30.

Sgd/- J.F. SPRY

J.A. 27.1.66

28.1.66 Bench and Bar as before
9.30 a.m.

In the Court
of Appeal for
Eastern Africa

No.19

Notes of Spry
J.A.

27th January
1966
(Cont'd)

30 Gajera: sanction - submits does not go beyond the language of the sanction - p.127 sanction only to a lease - all that was sent to the Government was a copy of a Board Resolution - lease executed in 1932 - if forwarding draft lease would have said so - resolution may have contained terms but not produced - only a contingency - did not in fact arise until twenty odd years after - impossible to say clause 3(b) sanctioned -

40 Price has risen - to grant specific performance against a public body contrary to public interest -

28th January
1966

In the Court
of Appeal for
Eastern Africa

No.19

Notes of Spry
J.A.

28th January
1966
(Cont'd)

As to interpretation, as lessors a public body, should not be lightly assumed that they intended to part with control of land.

Nazareth: agrees subsequent events cannot be used for construing the lease - cited to explain lessee - as to lessor, initiative came from Port Trust - lessees moved at instance of Port Trust - not necessarily wrong - to apply pple, need not be wrongful but cannot take advantage of own act -

pp.169,170 rent accepted up to 1960 - waiver of breach if any - sanctity of contract - hardship can only be brought in in limited circumstances - never pleaded - 10

Sanction - form of lease settled - p. 124 to p. 139 terms of contract inseparable - Mulla I. Tsfir of Ppty. 3rd Ed s. 105 (Aden Act s. 102).

Asks that appeal be allowed and an order for specific performance made on terms as in lease - asks for costs of two counsel. 20

Gajera: Costs - leaves to ct. oppose certificate.

Judgment reserved.

Sgd/- J.F. Spry
J.A.

28.1.66

NO. 20

NOTES OF LAW J.A.

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO. 48 of 1965

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS

APPELLANTS

- and -

10

TRUSTEES FOR THE PORT OF ADEN RESPONDENTS

(Appeal from a judgment and decree
of the Supreme Court of Aden
(Blandford, J.) dated 22nd April,
1965

in

Civil Suit No. 378 of 1961)

NOTES OF THE HON. MR. JUSTICE LAW

27.1.66 Coram: de Lestang, Ag. V-P
Spry, J.A.
Law, J.A.

20

J.M. Nazareth Q.C. & A.K. Bhatt for
Appellants

K.R. Gajera for Respondents

Nazareth: Two main questions

- (1) Construction of clause 3(b)
in lease
- (2) Whether "further approval"
required under Cap. 122.

30

Refer to judgment = p. 60
Refer to lease = p. 141
Clause 3(b) = if land ceases to be
used for such purpose p. 64 line 31

In the Court
of Appeal for
Eastern Africa

No.20

Notes of Law
J.A.

27th January
1966

In the Court
of Appeal for
Eastern Africa

No.20

Notes of Law
J.A.

27th January
1966
(Cont'd)

complete misapprehension as to
plaintiff's case. No breach of
covenant by lessees.
Lessor bound to give option in writing
if land ceases to be used for intended
purposes.

p. 67 issues

- | | | |
|-----|----------------------|----|
| (1) | main point in appeal | |
| (2) | second " " " | |
| (3) | in our favour | 10 |
| (4) | " " " | |
| (5) | relief | |

p.70 matter decided entirely on first
issue.

p.65 "It is the plaintiff who submits"
- but defendants had pleaded these
matters in defence - p. 9 para
2. p. 15 notice to admit facts.

p.62 line 28 - 5 rupees - in fact
a high valuation p. 129, 129, 132. 20

Lease = cl. 1 accommodation of coolies.
cl. 3(2) if land ceases to be
used for purpose, lease comes
to an end in 2 ways -

- | | |
|-------|------------------------------|
| (a) | either by purchase by lessee |
| (b) | or by surrender by lessee |
| 3 (c) | is subject to 3(2). |

3(2) deals with consequences of
refusal to accept offer but not
with consequences of refusal to make
offer, because it was intended 30
that upon land ceasing to be used,
lessor is bound to make offer,
otherwise extraordinary situation
arises. Lessee not having
committed breach of covenant,
lessor cannot re-enter under cl.
3(c). Lessee cannot himself
determine lease if in default
Societe des Ateliers etc. v.
N.Z. Shipping Co. (1914) A.C.I. 40
Party cannot take advantage of
default for which he is
responsible.

Broome p. 197 - No man can take
advantage of his own wrong.

If option not offered and lessee not in breach, lease would continue for unexpired term of 99 years, and lessee bound to pay rent, for land which he can under lease only use for housing coolies, which he cannot do because of act of lessor.

In the Court
of Appeal for
Eastern Africa

No. 20

Notes of Law
J.A.

27th January
1966
(Cont'd)

10 2.30 p.m. Bench and Bar as before.

Nazareth continues -

Cl. 3(b) must be construed as conferring an option on lessee, who otherwise is left with the land, but unable to use it for covenanted purpose. Landlord must call upon lessees to exercise option. Requirement of writing is for protection of lessees, so that there can be no doubt that offer was made.

20

p. 118 Public interest safeguarded.
Land ceased to be used for housing coolies at request of Port Trust - p.
"upon" - not "if".
Not synonymous.

30

STROUD - "elliptically" R v. Lancashire Justices 27 LJMC 161. In our case the right is ours but the duty to confer this right rests in the hands of the other party. Construction "contra proferrentes". In doubt, construe in favour of grantee. This covers grounds 1(a) to (f), and ground 2.

40

Submit judge erroneously construed cl. 3(2). Clause requires lessors to offer in writing land for 5 rupees a yard.

Grounds 3,4,5. Sanction has

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Notes of Law
J.A.

27th January
1966
(Cont'd)

been given in law to sale
of land to option to purchase
is registerable interest in land.
When Government sanctioned lease in
1932 it sanctioned the option for
sale, which is a valuable interest.

S.40 Aden Transfer of Property Cap.
154 - same as Indian Act - option
to purchase is a valuable right not
amounting to an interest in land
enforceable against transferee with
notice.

10

Sanction given in 131 "to the lease
of sites etc. for 99 years" All
contents of lease covered by sanction.

S.21 of Cap 144 is in same term as
s. 23 of 1888 Act.

Sanction of the lease is sanction of
the contents.

Once the option has been granted and
is in force it is unilaterally
for the offeree to exercise it.

20

No consensus required.

By exercising option, I bring into
effect contract of sale irrespective
of will of either party.

Hankey v. Clavering (1942) 2 All E.R.

Option confers a right on us to
elect to purchase the land once land
through no fault of our own has ceased
to be used for intended purpose.

30

Contract of sale is not a "later
transaction", as judge said - no
separate transaction.

Submit successor authority has
no discretion over rights and
liabilities contained in the lease.

S. 23 Cap. 122. Port Trust took
land subject to all rights and
burdens.

40

Not a separate transaction because
P.T. are bound to offer the option
under terms of lease which have
been approved.

Now P.T. is merely a continuation
of old Board.

Ground 7 - NOT PLEADED. Not argued in court below Agreed by counsel that matters covered by this ground can be ignored.

In the Court
of Appeal for
Eastern Africa

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J.A.

27th January
1966
(Cont'd)

Gajera:

p. 69 Court could order s.p. subject to appellants for approval.

10

Construction of cl. 3(b) does not impose duty on board to offer land for sale.

I submit cl. 3(b) imposes no duty on lessor, but gives them a right to offer it to lessees, a discretionary right.

20

Surrounding circumstances irrelevant unless it is impossible to ascertain intention of parties from lease itself.

Halsbury Vol. XI para 632 at p.384.

30

Only if absurdity results should literal construction be abandoned. Para 658 - surrounding circumstances. Extrinsic evidence not admissible. If it had been intended to grant option to lessees, different wording would have been used. It would have been made clear that they were entitled to purchase.

40

Surrounding circumstances are those obtaining in 1932. Cessor of user could be due to number of circumstances. It was not due to any action by lessors. Coolies moved as a result of action by Aden Municipality. This is admitted by appellants (p.15). No blame attaches to lessors or lessees. No extraordinary situation arises. All defendant needs do is to offer the lease for surrender. We can ignore 3(b) and re-enter under 3(c) if we want to. 3(b) gives us an option to sell, and 3(c) gives right to enter if condition not

In the Court
of Appeal for
Eastern Africa

No. 20

Notes of Law
J.A.

27th January
1966
(Cont'd)

observed. Condition in clause (1)
is not being observed.

Expenses - lessors have spent as much
as the lessees.

Nothing to be inferred either way
from this.

Contra proferentes - last resort.
Only to be used where all else fails
all other rules of construction.

Adjourned to 9.30 28.1.66

10

E.J.E. LAW

28th January
1966

28.1.66

Bench and Bar as before.

9.30 a.m.

Gajera:

Sanction to lease does not involve
approval to a subsequent sale.
p. 127 "sanction is accorded to the
lease of sites for a period of
99 years".

Lease itself not submitted - only
resolution forwarded. Lease not
executed until 2 years later.
Impossible to say that all the terms
and conditions of the lease were
approved. No question of sale at
that time. In fact first suggestion
of sale did not arise until 26 years
later. How can it be said that that
sale was approved in 1930. Value of
land greatly enhanced.

20

Construction contended for by
appellants is contrary to public
interest.

30

Appeal should be dismissed.

Nazareth:

in reply: Purely as a matter of
construction it is clear that lessors
must offer option of sale in
circumstances of this case, where
situation arises that cessation of
user is not due to any fault on
part of lessees.

40

Municipality Government insisted on change of user; initiative came from Port Trust.

No fault on side of lessee, no question of 3(c) coming into operation. Lessors accepted rent up to and including 1960 (p.169) Even if a breach, it has been waived by acceptance of rent.

10

Lessees have suffered substantial loss as a result of move, this can be set off against advantage they might desire from acquiring land at 5 rupees a yard.

Sanction p.124 (b) "to approve form of lease" Draft lease was therefore in existence before approval sought and obtained.

20

Relationship contract. Interest in land arising out of option is integral part of the contract. Mulla 3rd Ed. p. 624, s. 105 T.P.A., definition of lease. Sanction given to the whole contract.

Appeal should be allowed. Certificate for 2 counsel and specific performance ordered.

30

C.A.V.
E.J.E. LAW
28.1.66

In the Court of Appeal for Eastern Africa

No.20

Notes of Law J.A.

28th January 1966
(Cont'd)

In the Court
of Appeal for
Eastern Africa

No.21

Judgment of
De Lestang
Ag. V-P

6th April
1966

NO. 21

JUDGMENT OF DE LESTANG,
Ag. V-P

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

(Coram: de Lestang, Ag. V-P, Spry and Law, JJ.A)

CIVIL APPEAL NO. 48 OF 1965

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS APPELLANTS

- and -

10

TRUSTEES FOR THE PORT OF ADEN RESPONDENTS

(Appeal from a judgment and decree
of the Supreme Court of Aden,
(Blandford, J.) dated 22nd
April, 1965

in

Civil Suit No. 378 of 1961)

JUDGMENT OF DE LESTANG, AG. V-P

This appeal relates to the construction of
a lease, in particular clause 3(b) thereof. The
lease was executed in 1932 between the predecessors
in title of the present lessors, the respondents,
and lessees, the appellants, in the following
circumstances. As a result of an outbreak of
plague in Aden in or about 1928 and in order to
reduce the risk of further outbreaks in the future
a scheme was devised by the Government whereby,
in the words of the learned judge in the court
below, "shipping companies were to construct
coolie lines of an approved specification and
the public bodies concerned were to contribute
one half of the cost of the buildings and the site.
The contribution by the public bodies was to be
partly in kind by providing sites, latrines,
washing places and by abatement of house tax and
so on, and partly by cash grant in aid". The
predecessors of the lessees took part in the scheme

20

30

and accordingly obtained from the predecessors of the lessors a plot of land for housing construction under a lease for 99 years for a small quit rent as well as financial help for the construction. This is the lease in the case. Under it the land was to be used only for the accommodation of coolies and the only buildings to be constructed were to be coolie quarters (clauses 1 and 3):

3(b) provides:

"that if the said plot of land is not used for the purpose for which it is granted within one year from the date of these presents or if at any time during the term for which this lease is granted the said plot of land shall cease to be used for such purpose then the Lessees shall upon being called upon so to do in writing by the lessors forthwith purchase the said plot of land at the price of Rs. 5/- per square yard PROVIDED that if the Lessees are unwilling to do this they may refuse but upon such refusal this lease shall be deemed immediately to determine and the land shall be surrendered to the lessors".

It is common ground that through no fault of the lessors or lessees the land ceased to be used for housing coolies in 1956 and has remained unused ever since. What happened was that in or about 1953 the housing scheme was revised and it was decided that all coolies should be rehoused together at Malla in accommodation to be built by the lessors and let out at substantial rents to shipping companies. Since the cesser of user in 1956 the lessors have not called upon the lessees to purchase the land and it is the lessees' contention that clause 3(b) on its former construction and in the circumstances which have occurred requires them to do so and that they (the lessees) are entitled to purchase the land at the price stipulated in the clause. This contention did not find favour with the learned judge who said:

In the Court
of Appeal for
Eastern Africa

No. 21

Judgment of
De Lestang
Ag. V-P

6th April
1966
(Cont'd)

In the Court
of Appeal for
Eastern Africa

No.21

Judgment of
Lestang
Ag. V-P

1966
(Cont'd)

"In my view the meaning of the proviso is quite clear. It contains two conditions precedent. First there must have been the particular breach of condition on the lessees' part. Secondly, the lessor must have given a written notice, which it was not bound to do. On the happening of both these events the lessee was bound to purchase at the fixed price and, if he failed, the lease was deemed to be surrendered".

10

In arriving at his decision the learned judge was largely influenced by the assumption that a cesser of user of the land for the housing of coolies constituted a breach of covenant on the part of the lessees and that consequently if the clause were construed in the way contended for by the lessees they could at any time have gained an advantage from their own wrong. With great respect this assumption does not appear to me to be sound. The lease does not contain a positive covenant requiring the lessees to use the land to house coolies but a negative one that "it shall be used only" for that purpose. It is not therefore correct to say that a mere cesser of user without any change of user would constitute a breach of covenant by the lessees. In any case Mr. Nazareth for the lessees contends that having regard to the purpose for which the land was demised, clause 3(b) is designed to cover the situation when through no fault of the lessees and without any breach of covenant on their part it ceases to be used for that purpose. In such a case, he submits, the clause provides that the lease is to determine either by way of sale to the lessees, or if they decline to purchase by surrender of the term to the lessors and prescribes the procedure for achieving either end, such procedure being for the lessors to "call upon the lessees" to elect. He argues that that being the case and in the absence of any other provision to determine the lease in the event of a cesser of user the only reasonable interpretation is that the lessors are under a duty to call upon the lessees to elect.

20

30

40

For the lessors Mr. Gagera submits the same argument which the learned judge used and which I have already dealt with and also makes

the point that if the lessees' contention is correct then the words "upon being called upon so to do in writing by the lessors" in clause 3(b) would be superfluous. I do not think that Mr. Gagera's contention is necessarily right. The requirement of a notice in writing from the lessors is in my view quite consistent with an intention on the part of the parties to avoid dispute on an important matter.

In the Court
of Appeal for
Eastern Africa

No.21

Judgment of
Lestang
Ag. V-P

6th April
1966
(Cont'd)

I find Mr. Nazareth's contention very attractive and in my view it is the correct one. Clause 3(b) is the only provision dealing with a cesser of user and it would be singularly deficient if it purported to give the lessors a discretion. What would be the position if they did not choose to exercise that discretion? Would the lease still continue with the lessees liable to pay, rent, rates, etc; until the expiry of the term of 99 years but deriving no benefit whatsoever from the land and no return on the money expended on the buildings? Such a situation would not only be unreasonable but also unjust and yet the lessors say it is right and they have since the cesser of user claimed and received payment of rent for the years 1956 to 1960. In my view it was clearly the intention of the parties that the lease should come to an end on the fortuitous cesser of user for which neither lessors nor lessees were to blame and that in such an event in order to give efficacy to the clause in question it must be understood as imposing an obligation on the lessors to call upon the lessees to elect whether to purchase or not. In coming to my decision I have not travelled outside the lease but if it were permissible to do so it seems to me that it finds support in the decision of the meetings and discussions prior to the granting of the lease where it is clearly envisaged that in the event of a change of user the public interest would be safeguarded by the land being paid for by the lessees.

The other question for decision is whether the sanction of the High Commissioner is necessary before a sale of the demised land can take place. When the lease was granted in 1932

In the Court
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Eastern Africa

No. 21

Judgment of
Lestang
Ag. V-P

6th April
1966
(Cont'd)

Aden was administered by the Government of Bombay and the Aden Port Trust Act No. V of 1888 of Bombay, which applied, required the sanction of the Government of Bombay to such a lease. That sanction was given on 27th July, 1930. That Act was replaced in 1951 by the Port Trust Ordinance (Cap. 122), section 21 of which provides that no sale of immovable property vested in the lessors shall be valid unless such sale shall have first been approved by the High Commissioner. In these circumstances the lessors on the one hand contend that the sanction of the High Commissioner is necessary and that in any event the sanction of the Government of Bombay was to the lease only and not to a potential sale. The lessees on the other contend that the sanction of the Government of Bombay extended to all the terms of the lease including the potential sale of the demised land to them and submit that no further consent is required.

10

20

It would appear from the record that the lease was approved by the lessors' predecessors on 19th June, 1930 when the following resolution was passed:

"1. (a) That the grant of the site in question on a 99 years' lease to Messrs. Cowasji Dinshaw & Bros. for the construction of accommodation for coal & cargo coolies be sanctioned, subject to approval of Government.

30

(b) That the draft form of Lease be approved.

(c) That for the purpose of the Grant-in-aid sanctioned under Board Resolution No. 15, dated 23rd January, 1930 the value of this land be fixed at Rs. 5/- per sq. yard and that this rate be inserted also in Clause 3a of the lease".

40

A copy of the resolution was then submitted to the Government of Bombay with a request for sanction. The Government of Bombay considered the matter on 31st July 1930 and gave its sanction in the following words:

"Sanction is accorded under Section 23(2) of the Aden Port Trust Act, 1888, to the lease of the sites in question to the Companies concerned for a period of 99 years".

In the Court
of Appeal for
Eastern Africa

No.21

Judgment of
Lestang
Ag. V-P

5th April
1966
(Cont'd)

10 The facts which I have outlined indicate that the Government of Bombay must have had a copy of the draft lease when it gave its sanction. Indeed I fail to see how it could have properly exercised its discretion without being aware of all the terms and conditions of the lease. As Mr. Nazareth pointed out, a lease is essentially a contract and a contract cannot be approved independently of its terms. It seems to me that it was clearly the Government's duty to examine the draft lease before approving it and I have no doubt that it did so. There is no reason to believe that clause 3(b) was not in the draft

20 lease and in my view in approving the lease with such a clause the Government must be taken to have sanctioned the clause as well and consequently the potential sale of the demised land. Had there been no change in the law I do not think therefore that a fresh sanction would be necessary. I consider however that the sanction lapsed by reason of the change in the law. The present law requiring the sanction of the High Commissioner

30 repealed without saving or reservation the Act under which the sanction was granted and a sale now would be under the Ordinance and not under the Act. As an order for specific performance would be an order for sale now under the Ordinance, I consider that the sanction of the High Commissioner is necessary before a sale to the lessees can take place.

40 In the course of his judgment the learned judge expressed certain views on the right of the lessees to enforce the option, it being in his opinion "an option in gross" and "contrary to the rule against perpetuities". Those matters were neither raised in the pleadings nor argued before the court below. They are mere obiter dicta and at the express request of counsel on both sides have been ignored in this appeal.

In the Court
of Appeal for
Eastern Africa

No. 21

Judgment of
Lestang
Ag. V-P

6th April
1966
(Cont'd)

In the result I would allow the appeal, set aside the decision of the court below together with the order for costs and substitute an order directing the lessors to call upon the lessees in writing to purchase the demised land at the equivalent of five rupees per sq. yard, and to that end take such steps as may be necessary to obtain the High Commissioner's consent. I would also order the lessors to pay the costs both in the court below and in the appeal.

10

Dated at Nairobi this 6th day of April,
1966.

C.N. DE LESTANG
AG. VICE-PRESIDENT

No.22

Judgment of
Spry J.A.

6th April
1966

NO. 22

JUDGMENT OF SPRY J.A.

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

(Coram: de Lestang, Ag. V-P, Spry and Law, JJ.A.)

CIVIL APPEAL NO. 48 OF 1965

20

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS APPELLANTS

- and -

TRUSTEES FOR THE PORT OF ADEN RESPONDENTS

(An appeal from the judgment and
decree of the Supreme Court of
Aden at Aden (Blandford, J.)
dated 22nd April, 1965

in

Civil Suit No. 378 of 1961)

30

JUDGMENT OF SPRY, J.A.

I agree.

Dated at Nairobi this 6th day of April, 1966.

J.F. SPRY
JUSTICE OF APPEAL

NO. 23
JUDGMENT OF LAW J.A.

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

(Coram: de Lestang, Ag. V-P, Spry and Law,
JJ.A.)

CIVIL APPEAL NO. 48 of 1965

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS APPELLANTS

10

- and -

TRUSTEES FOR THE PORT OF ADEN RESPONDENTS

(Appeal from a judgment and decree
of the Supreme Court of Aden,
(Blandford, J.) dated 22nd April,
1965

in

Civil Suit No. 378 of 1961)

JUDGMENT OF LAW, J.A.

20 I agree with the judgment of de Lestang
Ag. V-P and with the order proposed by him.

Dated at Nairobi this 6th day of April,
1966.

E.J.E. LAW
JUSTICE OF APPEAL

In the Court
of Appeal for
Eastern Africa

No. 23

Judgment of
Law J.A.

6th April,
1966

In the Court
of Appeal for
Eastern Africa

NO. 24

ORDER

No.24

IN THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

Order

CIVIL APPEAL NO. 48 of 1965

6th April
1966

B E T W E E N:

- 1. HORMUSJI KAIKHASRU HATHADARU)
- 2. NARIMAN MUNCHERSHAW HODIVALA)
- 3. MINOCHER RATANSHAW BHAVNAGARI)

Executors and Legal
Representatives of the
Deceased: Dinshaw H.C.
Dinshaw

} APPELLANTS 10

- and -

TRUSTEES FOR THE PORT OF ADEN,
ADEN

RESPONDENTS.

(Appeal from the Judgment and Decree of the
Supreme Court of Aden at Aden (the Hon'ble Mr.
Justice E.C. Blandford) dated 22nd April, 1965

in

20

Civil Suit No. 378 of 1961)

B E T W E E N:

Hormusji Kaikhasru Hathadaru &)
2 ors.)
Executors and Legal Representatives)
of the Deceased: Dinshaw H.C.)
Dinshaw)

Plaintiffs

- and -

Trustees for the Port of Aden,
Aden

Defendants

30

In Court this 6th day of April, 1966.

Before the Honourable the Vice-President (Sir
Clement de Lestang) the Honourable Mr.
Justice Spry, a Justice of Appeal
and the Honourable Mr. Justice Law, a
Justice of Appeal.

ORDER

In the Court
of Appeal for
Eastern Africa

No. 24

Order

6th April
1966
(Cont'd)

THIS APPEAL coming on for hearing on the 27th and 28th days of January, 1966 AND UPON HEARING J.M. Nazareth Esquire of Her Majesty's Counsel and A. Bhatt Esquire and M. Husain Mansoor Esquire of Counsel for the appellants and K.R. Gajera Esquire of Counsel for the Respondents it was ordered that this appeal do stand for judgment and upon the same coming for judgment this day IT IS ORDERED THAT:-

10

- (1) the appeal be allowed;
- (2) the judgment of the Supreme Court, Aden (the Honourable Mr. Justice Blandford) dated the 22nd day of April, 1965 be set aside and that there be substituted in lieu thereof the following Order:

20

- (3) THIS COURT DOTH DECLARE that the agreement, contained in Clause 3(b) of the Indenture of Lease dated the 9th day of January, 1932 mentioned in the Plaint filed in the above Civil Case No. 378 of 1961 for the sale to the appellants or their predecessors in title of the plot of land more particularly described in the said Plaint being All That plot of land admeasuring 10800 square feet or thereabouts and situated at Hedjuff and leased to the appellants or their predecessors in title under Lease No. 3101, ought to be specifically performed and carried into execution AND DOTH ORDER AND ADJUDGE the same accordingly;

30

- (4) AND IT IS ORDERED that the respondents do call upon the appellants in writing to purchase the said plot of land at the equivalent of five rupees per square yard and to that end take such steps as may be necessary to obtain the High Commissioner's consent;

40

- (5) AND IT IS ORDERED that the respondents do pay to the appellants their costs in this Court and in the Supreme Court.

In the Court
of Appeal for
Eastern Africa

GIVEN under my hand and the seal of the
Court at Nairobi, the 6th day of April, 1966.

No.24

M.D. DESAI.
REGISTRAR.

Order

COURT OF APPEAL FOR EASTERN AFRICA.

6th April
1966
(Cont'd)

ISSUED at Nairobi this 8th day of July, 1966.

No.25

NO. 25

Order
granting
Final Leave
to Appellants
to appeal to
Her Majesty
in Council

ORDER GRANTING FINAL LEAVE TO APPELLANTS
APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL FOR EASTERN AFRICA

10

CIVIL APPLICATION NO. 5 of 1966

(In the matter of an Intended Appeal to the Privy
Council)

B E T W E E N:

THE TRUSTEES OF THE PORT OF ADEN APPLICANTS

- and -

HORMUSJI K. HATHADARU & ANOTHER RESPONDENTS

(Intended Appeal from the final judgment of
the Court of Appeal for Eastern Africa Sessions
held at Nairobi dated 6th April, 1966 in Civil
Appeal No. 48 of 1965)

20

B E T W E E N:

HORMUSJI K. HATHADARU & OTHERS APPELLANTS

- and -

THE TRUSTEES OF THE PORT OF ADEN RESPONDENTS

O R D E R

UPON MOTION made unto this Court by Mr. F.A.
Barahim, Advocate for the Applicants for Final
Leave to Appeal to Her Majesty-in-Council AND UPON
READING the affidavit of Mr. F.A. Barahim, sworn
on the 29th day of September, 1966 AND UPON HEARING
Mr. K.H. Daftari, Advocate for the Applicant and

30

Mr. M.H. Mansoor, Advocate for the Respondents.

THIS COURT DOTH HEREBY give leave to the Applicants to appeal to Her Majesty-in-Council against the judgment and Order dated 6th April, 1966 in Civil Appeal No.48 of 1965.

Given under my hand and seal of the Court at Aden this 8th day of October, 1966.

E.G. BLANDFORD

Judge, Supreme Court, Aden as
Judge of the Court of Appeal
for Eastern Africa.

In the Court
of Appeal for
Eastern Africa

—————
No. 25
—————

Order granting
Final Leave to
Appellants to
appeal to Her
Majesty in
Council

—————
8th October
1966
(Cont'd)

In the Court
of Appeal
for Eastern
Africa

NO. 26

ORDER GRANTING FINAL LEAVE
TO RESPONDENTS TO APPEAL
TO HER MAJESTY IN COUNCIL

No. 26

Order
granting
Final Leave
to
Respondents
to Appeal to
Her Majesty
in Council
3rd December
1966

IN THE COURT OF APPEAL FOR EASTERN AFRICA

CIVIL APPLICATION NO. 6 OF 1966

(In the matter of an Intended Appeal to the
Privy Council)

B E T W E E N

- 1. HORMUSJI KAIKHASRU HATHADARU
- 2. MINOCHER RATANSHAW BHAVNAGRI

10

Executors and Legal
Representatives of the
Deceased: Dinshaw H.C.Dinshaw } APPLICANTS

A N D

TRUSTEES FOR THE PORT OF ADEN, ADEN RESPONDENTS

(Intended Appeal from part of the Final
Judgment of the Court of Appeal for
Eastern Africa Sessions holden at
Nairobi dated 6th day of April, 1966,
in Civil Appeal Number 48 of 1965)

20

B E T W E E N

- 1. HORMUSJI KAIKASRU HATHADARU
- 2. NARIMAN MUNCHERSHAW HODIVALA
- 3. MINOCHER RATANSHAW BHAVNAGRI

Executors and Legal
Representatives of the
Deceased: Dinshaw H.C.Dinshaw } APPLICANTS

A N D

TRUSTEES FOR THE PORT OF ADEN, ADEN RESPONDENTS

30

O R D E R

UPON APPLICATION made to this Court by
Counsel for the above named Applicants on the 12th
day of November, 1966, for Orders (a) for

10 extension of time for entering into security as ordered in this Court's order dated the 9th day of July, 1966 granting the Applicants conditional leave to appeal (2) for such variations of the said Order and such directions as this Court may think fit (3) for final leave to appeal and (4) that such appeal be consolidated with the appeal to Her Majesty in Council lodged by the Respondents. AND UPON HEARING this 3rd day of December, 1966, M. Husain Mansoor, Counsel for the Applicants and reading his affidavit sworn on the 8th day of November, 1966, AND UPON HEARING K.R. Daftari, Counsel for the Respondents, THIS COURT DOETH ORDER:

- 20 (1) That the time for entering into security as aforesaid be extended up to 12th day of November, 1966 and that as this Court is satisfied that such security as aforesaid has been entered into, final leave to appeal be and is hereby granted to the Applicants:
- (2) That the Appeal of the Respondents and the appeal of the Applicants be consolidated:
- 30 (3) That the costs of this Application be costs in the intended appeal subject to the provisions in regard thereto contained in the security entered into by the Applicants.

GIVEN under my hand and the Seal of the Court at Aden the 3rd day of December, 1966.

E.G. BLANDFORD
JUDGE, SUPREME COURT,
AS JUDGE OF THE COURT OF
APPEAL FOR EASTERN AFRICA

In the Court
of Appeal
for Eastern
Africa

No. 26

Order
granting
Final Leave
to
Respondents
to Appeal to
Her Majesty
in Council
3rd December
1966

(Cont'd)

EXHIBITS

DEFENDANTS
DOCUMENT

C17

Circular No.
3472 as to
housing of
Coolies

19th August
1929.

EXHIBITS

EXHIBIT C.17 - CIRCULAR
NO.3472 AS TO HOUSING OF
COOLIES

SETTLEMENT OFFICE,

Aden, 19th August, 1929.

CIRCULAR NO. 3472

At an informal meeting held at the Residency at 6-30 p.m. on Monday 12th August, 1929 the question of the housing of coolies in connection with the prevention of further Plague Epidemic was considered, representatives of Messrs. Cory Bros. & Co., and of Messrs. Cowasji Dinshaw & Bros. being present.

10

The Resident said that the obvious remedy for the present overcrowding of coolie quarters at Tawahi was to apply strictly the Settlement Rules on the subject and to arrange for the deportation of coolies for whom no accommodation existed. He was not prepared to leave matters as they stood and he believed that the right course would be for the principal employers of labour concerned to co-operate in the provision of additional suitable accommodation particularly for local labourers.

20

The present overcrowding in the coolie lodging houses at Tawahi might be tolerated for a little longer provided that there was reasonable certainty that the additional accommodation might be provided at an early date.

In this connection it was pointed out that Messrs. Cory Bros. & Co. Ltd. had on their own initiative provided accommodation for 175 coolies at Hedjuff in a pukka built house of simple design.

30

If the other Shipping Firms will follow their lead according to the number of coolies employed by them the question of the deportation of houseless coal coolies to the detriment of the work of the port need not arise.

It is recognised that there is a large pool of labour and that coolies do not always work for

40

one firm but the Manager, Messrs. Cory Bros. & Co. states that although they do not compel coolies living in their quarters to work solely for them they nevertheless find it great convenience to have them living close at hand.

10 It was decided by the Resident that any coolies quarters in which no rent was charged should be free of all Settlement taxes and that if suitable Settlement land was available it should be given free of charge.

A meeting to consider the matter will be held at the Port Trust Office on Tuesday 27th, instant at 9-30 a.m. and if possible you are please requested to attend.

Sd/- D.S. Johnston

Major, R.E.

Chairman, Aden Settlement.

To:

20 The Agent, P. & O. S.N. Co.,
" Manager, Messrs. Cory Bros. & Co.
" " " Luke Thomas & Co.
Framroze H.C. Dinshaw, Esq. (Messrs.
Cowasjee Dinshaw & Bros.)

EXHIBITS
DEFENDANTS
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C17

Circular No.
3472 as to
housing of
Coolies

19th August
1929
(Cont'd)

upon the Settlement Committee.

- (4) Major Builderbeck said that medical examination of a percentage of the rats caught was desirable.

He would consult with the Military authorities as to whether, and on what terms they could undertake regular examination.

Accommodation:-

- 10 (5) The matter was discussed on the lines of the note. The Resident said he was not prepared to leave matters as they are and believed the right course would be for the principal employers concerned to co-operate in the provision of additional suitable accommodation, particularly for coal labourers. The present congestion in coolie lodging houses in Tawahi might be maintained a little longer if there was reasonable certainty that the additional accommodation would be provided at an early date. Alternatively he was disposed to stop the congestion by strict application of (Settlement) housing regulations and force coolies who were not properly housed to leave Tawahi.
- 20 Major Johnston undertook to convene a formal meeting of local heads of firms, viz:- Cory Bros. Ltd. Luke Thomas & Co. Ltd., P. & O. and Cowasjee Dinshaw & Bros. and discuss with them the feasibility of combination to provide coolie quarters for 200 - 300 coolies on some central site.
- 30

40 The Resident suggested that the Settlement would be justified in promoting a private building scheme of the kind, by assistance in obtaining a site and special abatement of rates.

DEFENDANTS
DOCUMENT

C.18

Conference
Note with
Note by
Political
Resident

12th August
1929
(Cont'd)

DEFENDANTS
DOCUMENT

C.18

Conference
Note with
Note by
Political
Resident12th August
1929
(Cont'd)Precautions against Plague at Aden

After the outbreak of plague in 1928, a number of precautionary measures were recommended to be taken.

- (1) Public instruction. The basis of this should be the reports by Colonel Phipson and Mr. Chitre. These reports went to Bombay to be printed, and a reminder has been sent. When received copies should be circulated to local bodies likely to profit 10 by them. Material in these reports could be used for talks to children in schools and boy scouts. Public lectures if possible with slides - might be given.

- (2) Appointment of a Medical Officer of Health for the Settlement.

This has been approved in principle by the Executive Committee and inquiry has been made as to the possibility of getting a suitable man through the Government of 20 Bombay.

- (3) Compulsory certificates of deaths before burial.

Temporarily re-introduced in connection with the present small-pox epidemic. Question of its permanent enforcement under Settlement rules is still open.

- (4) Rat catching campaign.

Has been maintained.

- (5) Improved accommodation for coolies. 30

It is generally admitted that the original source of infection was by coolies, and that the rapid spread of the disease to epidemic proportions was due to numbers of them living in congested - and often insanitary - houses in the centre of Tawahi. Compulsory segregation and accommodation of coolies in premises to be built and maintained at the public cost was advocated. I disagreed and postulated

that unless coolies paid commercial rents neither public nor private enterprise could function economically. The upshot of an inquiry into wages of coolie casual labour was that they are very low - scarcely above pre-war rates - as compared with (e.g.) Egyptian ports, but that standards of work were also low. Coolies were content to spend the minimum on their food and accommodation. Therein lies the existing menace to the health of Aden.

10

A simple course would be strict enforcement of present (Settlement) regulations as regards housing conditions to prevent congestion etc., and the expulsion from the Settlement of any surplus coolies for whom suitable accommodation is not available. Its effect would be restriction of labour market, higher wages and interference with the normal and economic working of the port. A palliative course is for private employers of coolies to supplement and improve as far as they can existing accommodation for the labourers required.

20

(Sd) G.S. Symes
Resident etc.

DEFENDANTS
DOCUMENT

C.18

Conference
Note with
Note by
Political
Resident

12th August
1929
(Cont'd)

DEFENDANTS
DOCUMENT

C.19

Conference
Proceedings

27th August
1929

EXHIBITS

EXHIBIT C.19 - CONFERENCE
PROCEEDINGS

Proceedings of a Conference held at the Port Trust Office on 27th August, 1929 to discuss the question of the accommodation of Coal and Cargo Coolies.

PRESENT:-

Major D.S. Johnston, R.E.	Chairman, Aden Settlement.	10
Mr. W. Hook	Messrs. Cory Bros & Co. Ltd.	
" A.H. Adams	} Messrs. Luke Thomas & Co. Ltd.	
" S.N. Day		
Captain H. Elliot Smith	P & O.S.N.Co.	
Mr. Framroze H.C. Dinshaw	Messrs. Cowasji Dinshaw & Bros.	

The Chairman referred to the Circular Memo dated 19th August 1929 convening the Conference which is attached. 20

He also referred to the Census figures for 1921 showing that there were the following houseless Coolies in Tawahi, Hedjuff, Maalla and Crater in that year:-

Tawahi	1450
Hedjuff	344
Maalla	544
Crater	1206

The inference which he drew from these figures was that the coolies of all sorts preferred to save house-rent by living houseless in Coffee shops and Rating houses and that all employers of labour profited in the relatively low rate of wage paid, not the Shipping Firms alone, but that the latter were the largest employers of Coolie labour. 30

Mr. Hook recommended that the best solution of the matter would be to build accommodation for 800 Coolies at Hedjuff and to have compulsory segregation there for all cargo and coal coolies, and that the four large Firms should bear an equal share in the cost, apart from a large settlement contribution, as representing the other rate payers, who are employers of the equally large number of houseless Coolies of Tawahi and Hejuff not connected with the Shipping Firms.

10

He stated that he would be prepared to recommend such a contribution from his Firm owing to the urgency of the matter although they had already provided quarters for 175 men. He stated further that he had found some trouble in employing only the men housed by his Firm because of jealousy on the part of men housed at Tawahi, so that a central housing scheme would be advisable and beneficial.

20

In the discussion it was agreed that Contractors, shop keepers etc. and the Aden Settlement and Port Trust and Government Departments employed these Coolies on all sorts of work without considering how and where they were housed and that any accommodation provided at Hedjuff for Coal and Cargo Coolies would set free accommodation for some of these houseless men.

30

Mr. Adams and Mr. Dey stated that Luke Thomas & Co. had provided accommodation for 75 wharf Coolies at Hedjuff and they were not prepared to recommend their Directors to build any further quarters. They suggested that if the P & O and Messrs. Cowasjee Dinshaw & Bros. could see their way to provide accommodation similar to that already done by Messrs. Cory Brothers & Co. Ltd., and Messrs. Luke Thomas & Co. Ltd., and the regulations regarding the limitation of numbers residing in Tawahi houses, was enforced, the difficulty would be solved. They felt that to embark on a large segregation scheme at once would be to take the risk of the ignorant Coolies taking offence and marching out on masse as they did in General De Brath's time. On the other hand they would be ready to ask their principals whether in the event of the scheme

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DEFENDANTS
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C. 19

Conference
Proceedings27th August
1929
(Cont'd)

DEFENDANTS
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C.19

Conference
Proceedings

27th August
1929
(Cont'd)

being proceeded with they would be willing to give the site selected free for the purpose, as their full share of the cost of the scheme.

Captain Elliott Smith stated that he could not bind his Company to agree to contribute to any housing scheme for Coolies but that if any such scheme should be necessary it should preferably be under official control.

Mr. Framroze H.C. Dinshaw stated that Cowasji Dinshaw & Bros. pay one or two muccadums 30/- rupees each for housing allowance for the Coolies under them but that no particular houses are provided. 10

He said that he would recommend his firm to join in a General Housing Scheme provided that the coolies were compelled to live in the lines provided and that if the lines were a failure the Companies be relieved of their share of the cost.

Sd/- D.S. Johnston 20

Major, R.E.

Chairman

Aden Port Trust.

EXHIBITS
EXHIBIT C.20 - CONFERENCE
PROCEEDINGS

DEFENDANTS
DOCUMENT

C.20

Conference
Proceedings

30th December
1929

ACCOMMODATION FOR COOLIES

Meeting held at the Port Trust Office at 10-30
a.m. on December 30th 1929.

PRESENT:-

Sir Stewart Symes, K.B.E. C.M.G., D.S.O.,
Resident and Commander-in-Chief.

10 Lt. Col. B.R. Reilly, C.I.E., O.B.E.

Major D.S. Johnston, R.E.

Sir Hormusjee C. Dinshaw, Kt.

Mr. W. Meek, Manager, Messrs. Cory Bros.
& Co. Ltd.

Captain A. Messenger, Agent, P. & O.
S.N.Co.

Mr. E.S. Murray, O.B.E., Manager, Messrs.
Luke Thomas & Co. Ltd.

20 Sir Hormusjee C. Dinshaw stated that as
B.I. Agents they agreed to the scheme for the
accommodation of coolies, but wished to emphasize
the following points:-

(1) The Mukkadums must be attracted to
the scheme by allowing them to have
coffee shops and to cater for their
men.

30 (2) The Accommodation should be in three
or four sites and not concentrated, so
that if one locality was in quarantine
due to some outbreak of disease the
Coolies from the other localities
might be available for work.

The Resident stated that he had consulted

DEFENDANTS
DOCUMENT

C.20

Conference
Proceedings30th December
1929
(Cont'd)

the C.A.M.O. and had been informed that there was not any objection to (2) provided that the sites were reasonably near so as to be controlled by one Subordinate Medical Officer.

Captain Messenger stated that the P. & O.S.N. Company had agreed to the scheme in principle and that they would be responsible for accommodation for 300 coolies preferably on the Messageries site. He was opposed to concentration on one site.

10

Mr. Meek stated that as far as his firm was concerned they would like to put up a large two storied block alongside the present Cooly block to take 246 Coolies giving a total accommodation of 416 Coolies altogether. He was in favour of a Coffee Shop being put up by his Firm quite out side the accommodation scheme so that the building might be rented out to some responsible Contractor. The other Firms prefer that the Coffee shops should be put up by the public bodies as part of the scheme.

20

The Resident recapitulated the terms of assistance by Public Bodies i.e. up to 50% of the total cost of buildings and site.

This assistance to be given in the form of (1) free site (2) abatement of usual House Tax (3) Latrines and washing places to be constructed by Public Bodies, also Coffee shops if inside the scheme. A Grant-in-aid of the balance if any.

30

The site to be leased free on the clear understanding that if used for any other purpose it must be paid for. In this way the public interests would be safe guarded. The rate of quit rent to be the lowest rate permissible.

There was some discussion on the matter during which Mr. Murrey represented that his firm ought to be excused from participation in the Scheme beyond the accommodation (98) already provided, because their business had dwindled down to a small figure and was connected entirely with cealing no cargo work being undertaken by them. He agreed that his Firm might be asked to give a site for

40

Coolie accommodation at a reasonable figure say Rs. 2-8-0 per square yard.

Sir Hormusjee C. Dinshaw agreed that the new accommodation to be provided by his Firm should be for 200 and suggested a site near the Mosque near his garage.

10 It was agreed that the Messageries Maritimes be approached for the purchase of a part of their land at a reasonable rate and that if this proved unsuccessful the accommodation for the P. & O. Coolies should be on part of the site of Luke Thomas & Co. with a site at the back of the small burial ground (at present used as a camel Zariba) for the Coolies of Messrs. Cowasjee Dinshaw & Bros. or a site terraced on the hill side behind the large existing Coffee Shop. It was
20 agreed that very adequate latrine accommodation should be put up and if this did not prevent the fouling of the hill sides that impassable barbed wire fences would be necessary.

Sd/- D.S. Johnston

Major R.E.

Chairman. Aden Settlement.

DEFENDANTS
DOCUMENT

C.20

Conference
Proceedings

30th December
1929
(Cont'd)

DEFENDANTS
DOCUMENT

C.21

Letter
Cowasjee
Dinshaw &
Bros. to
Assistant
ResidentEXHIBITSEXHIBIT C.21 - LETTER, COWASJEE
DINSHAW & BROS. TO ASSISTANT
RESIDENTSubject: Site allotted to us for Cooly
lines at Hedjuff.26th April
1930.

We have the honour to inform you that at the interview which our Mr. Framroze H.C. Dinshaw had with the Resident as regards the above matter, he was asked to see Major Johnston about the site allotted to us for building the cooly lines. Our Mr. Framroze thereupon saw Major Johnston and placed before him our objections to the site allotted to us. Major Johnston first objected to our demand, but seeing our difficulties he kindly suggested to Mr. Framroze to see you and ask your assistance to place our case before the Resident, We, have, therefore, the honour to state here our objections to the said site for favourable consideration of the Resident.

10

20

The said site is situated in such close proximity to a grave yard that we are afraid our coolies might object to reside at such a place. Even supposing that we succeed in inducing our coolies to stay there for the present, if at any time in future these quarters become vacant they will remain useless in our hands, as no other person will be willing to rent them and stay there on account of the close proximity of the grave yard, and all the expenses incurred by us for building the lines would be wasted. This is a serious objection, as we know that ordinary people here have a strong prejudice against residing near a grave yard, and we have to take into consideration the above contingency, as we shall have to spend about Rs.20,000/- for building these lines. Moreover, the site allotted to us will be very inconvenient for our purposes, as our coolies staying there would not be able to see the signals from our Hedjuff Wharf. We may here inform you that for the purposes of shipping we require gangs of coolies at any hour of the day or night whenever ships come into the harbour, and it is very essential for us to inform our

30

40

coolies immediately a ship comes into the harbour, in order that it may not be delayed.

DEFENDANTS
DOCUMENT

C.21

Letter
Cowasjee
Dinshaw &
Bros. to
Assistant
Resident

10

Under the circumstances, we shall be greatly obliged if the Resident will be kind enough to reconsider his decision as to the allotted site and give us a site near our Motor Garage at Hedjuff in front of the small mosque situated there. This site will be very convenient for us, as our coolies will be able to see from that place all signals at our Wharf, and thus it will be a great facility for the shipping in general, as also for our work. We trust the Resident will not consider our request unreasonable, as we do not demand a site in the front line immediately abutting on the main road, but we shall be content if he will allot to us a site about 25 feet away from the Main Road at its back, keeping the front site clear.

26th April
1930
(Cont'd)

20

We beg to enclose herewith a rough sketch of the said site marking the position of the two blocks of the proposed cooly lines, in red ink.

30

We may mention that at the time when the question of building the cooly lines at Hedjuff was first raised, the Settlement promised to give us all assistance in their power, and we feel sure that the Resident will see to it that our difficulties may not be greatly increased by being forced to build the lines on a site which would be inconvenient and unsuitable for our work.

Trusting you will place this letter before the Resident for his favourable consideration and hoping to be excused for the trouble.

123.

DEFENDANTS
DOCUMENT

C.22

Letter - First
Assistant
Resident to
Cowasjee
Dinshaw &
Brothers

19th May
1930

EXHIBITS

EXHIBIT C.22 - LETTER FIRST
ASSISTANT RESIDENT TO COWASJEE
DINSHAW & BROTHERS.

No.A/-2948

The Residency,
Aden: 19 May, 1930.

To:
Messrs. Cowasjee Dinshaw and Brothers,
Aden.

10

Gentlemen,

With reference to your letters dated 26th April, 1930 and 1st May 1930 with regard to the site to be allotted to you for cooly lines at Hedjuff, the Resident is prepared to withdraw his objections to the site that you wish to have if the Port Trust and Settlement authorities are agreeable and if you will undertake to build the premises without delay.

2. I understand that you are prepared to complete construction within six months from the time that the site is leased to you; and that you will build the lines in accordance with the plan discussed with Mr. Alexander at the Residency Office on the 16th instant. The lines will therefore be wholly on Port Trust land with the exception of the latrine, which will be on Settlementland. In order that the necessary arrangements may be completed with as little delay as possible, will you please now communicate 30 direct with the Chairman, Aden Port Trust, with regard to the site for the lines, and with the Chairman of the Settlement with regard to the site for the latrine.

Yours faithfully,

Sd/- B.R. Reilly
First Assistant Resident.

EXHIBITSEXHIBIT C.23 - EXTRACT FROM THE
PROCEEDINGS OF A MEETING OF THE
BOARD OF TRUSTEESDEFENDANTS
DOCUMENTC.23Extracts from
the
Proceedings of
a meeting of
the Board of
Trustees19th June 1930

Considered Secretary's note dated 27th May
1930 submitting for the decision of the
Board:-

- 10 1. (a) The grant to Messrs. Cowasji Dinshaw
& Bros. of a site near their Hedjuff
Garage comprising 1200 sq. yards for
the purpose of building accommodation
for coal and cargo Coolies.
- (b) To approve of the form of lease for
the above site.
- (c) To fix the rate per sq. yd.
- 20 2. (a) To approve of the purchase of a plot
of land from the M.M.Co., as per
plan, amounting to approximately
3000 sq. yards, at Rs. 5/- per sq. yd.
subject to the option required by the
M.M. Co., in the accompanying
correspondence.
- (b) To approve of the grant of this site
to the P. & O. Co. for the purpose
of constructing quarters for coal
and cargo Coolies.
- (c) To approve of the form of Lease for
the above site.

30 RESOLUTION:- Proposed by Mr. Ahmedbhoy I.A. Laljee.
Seconded by Mr. C.H.J. Richmond.

1. (a) That the grant of the site in
question on a 99 years' lease to
Messrs. Cowasji Dinshaw & Bros.
for the construction of
accommodation for coal & cargo
coolies be sanctioned, subject to
approval of Government.
- (b) That the draft form of Lease be
approved.

DEFENDANTS
DOCUMENT

C.23

Extracts from
the
Proceedings
of a meeting
of the Board
of Trustees

19th June 1930
(Cont'd)

- (c) That for the purpose of the Grant-in-aid sanctioned under Board Resolution No. 15, dated 23rd January, 1930 the value of this land be fixed at Rs. 5/- per sq. yard and that this rate be inserted also in Clause 3a of the lease.

Carried by a majority of votes.

Mr. Framroze H.C. Dinshaw left the meeting whilst this was under discussion. 10

Proposed by Mr. G.H.J. Richmond.

Seconded by Mr. Framroze H.C. Dinshaw.

2. (a) That the purchase of the plot of land from the M.M. & Co., as per plan, at a rate of Rs. 5/- per sq. yard, be approved the M.M. Co. having the option to repurchase the land at the same rate, but also paying compensation for the buildings erected thereon, if at any time the land is no longer required for the accommodation of coal and cargo Coolies. Should the M.M. & Co. not wish to declare this option then offered to them, the option shall be deemed no longer to exist. 20
- (b) That the grant of the site in question on a 99 years' lease to the P. & O. Co. for the construction of accommodation for coal and cargo Coolies be sanctioned, subject to the approval of Government. 30
- (c) That the draft form of Lease be approved.

Captain A. Messenger, Agent, P. & O. Co. retired whilst the question of their site was discussed.

Carried.

EXHIBITS

EXHIBIT G1 - LETTER - CHAIRMAN,
ADEN PORT TRUST TO FIRST ASSISTANT
RESIDENT

The First Assistant Resident,
ADEN.

Sir,

Lease of land for the accommoda-
tion of Coal and Cargo Coolies.

DEFENDANTS
DOCUMENT

G.1

Letter -
Chairman, Aden
Port Trust to
First
Assistant
Resident

24th June 1930

10 I have the honour to enclose, herewith,
copy of Board Resolution No. 160, dated 19th
June, 1930, and to request that the sanction
of Government may be granted to the lease of
the sites in question to the respective
Companies for a period of 99 years in
accordance with Section 23(2) of the Aden
Port Trust Act.

I have the honour to be

Sir,

20 Your most obedient servant

(Sd).. Illegible.

Ag. Chairman.

Aden Port Trust.

Accompts:

2 Plans Nos. 17-A-1788 & 1789.

DEFENDANTS
DOCUMENT

G.2

Government
Resolution
No. 750922nd July
1930EXHIBITSEXHIBIT G2 - GOVERNMENT RESO-
LUTION 7509Aden Port Trust

2231

31/7/30

Lease of land for the accommodation
of Coal and Cargo Coolies at Aden.Government of Bombay,
Political Department,
Resolution No. 7509,
BOMBAY CASTLE, 23rd July 1930.

10

Letter from the Chairman, Aden Port Trust, No. 2224,
dated the 24th June, 1930:-"I have the honour to enclose, herewith, copy
of Board Resolution No. 160 dated 19th June 1930,
and to request that the sanction of Government may
be granted to the lease of the sites in question
to the respective Companies for a period of 99 years
in accordance with Section 23(2) of the Aden Port
Trust Act."

20

Memorandum from the Resident and Commander-in-
Chief, Aden, No. A/357/3937, dated the 5th July
1930:-"Submitted to Government in the Political
Department, Bombay, for favour of sanction.RESOLUTION --- Sanction is accorded under
Section 23(2) of the Aden Port Trust Act, 1888, to
the lease of the sites in question to the Companies
concerned for a period of 99 years.

By order of the Governor in Council,

30

(Sd) Illegible.

For Secretary to the Government of Bombay
Political Department.To The Resident and Commander-in-Chief, Aden,
The Chairman, Aden Port Trust, (with the plan)"Typed as an Accompaniment to this Resolution,
C.S. No. 378/61 - Exhibit G.2 - (Sd) E.G.
Blandford, 17/2/65

EXHIBITS

EXHIBIT C.24 - LETTER - COWASJEE
DINSHAW & BROS. TO CHAIRMAN, ADEN
PORT TRUST

DEFENDANTS
DOCUMENT

C.24

COWASJEE DINSHAW
& BROS.

Steamer Point,
Aden, 27th June, 1930

Letter -
Cowasjee
Dinshaw & Bros.
to Chairman,
Aden Port
Trust

10 The Chairman,
Port Trust,
ADEN.

27th June 1930

Sir,

Subject - Accommodation for Coal
and Cargo Coolies

20 We have the honour to acknowledge
receipt of your letter No. 2222 dated 24th
instant giving us approximate figures of the
cost of the proposed cooly quarters at
Hedjuff, which we have considered carefully.
In our opinion the cost of site shown at
Rs.5/- per square yard is very high
particularly in view of the present depressed
times, and we do not think the figure
represents marked value of the land in these
days. We believe Rs. 2/8/- per square yard
correctly represents the value of the land
in question in these times of unprecedented
depression in this port, and we shall
therefore be glad if you will kindly reduce
your figure accordingly.

30 We have the honour to be,
Sir,
Your obedient Servants,

(Sgd)-

Cowasjee Dinshaw.

DEFENDANTS
DOCUMENT

C.25

Letter -
Acting
Chairman,
Aden Port
Trust to
Cowasji
Dinshaw &
Brothers1st July
1930EXHIBITSEXHIBIT C.25 - LETTER, ACTING
CHAIRMAN, ADEN PORT TRUST TO
COWASJI DINSHAW & BROTHERS.

No.2309 of 1930

D/ 1st July, 1930

Messrs. Cowasji Dinshaw & Bros.

ADEN.

Dear Sirs,

Subject - Accommodation for Coal
& Cargo Coolies.

10

I have the honour to acknowledge receipt of your letter of 27th June, 1930 regarding the price of the land allocated to you for the Cooly lines.

The figure was fixed by the Board and an amendment to fix the cost of the site at a lower figure could not find a seconder.

Under these circumstances I cannot see how the matter can be brought before the Board again.

The price is considered a fair and reasonable one and it must be remembered in referring to the present depressed times that the lease is for 99 years. 20

The Board agreed to contribute a maximum of Rs. 25,000/- towards the scheme for housing Coal & Cargo Coolies and any allocation of land at a rate below its market value would result in their actual contribution exceeding the sum fixed by the Board Resolution and approved by Government.

A reduction to Rs.2-8-0 per sq. yard would result in the Board's contribution being exceeded by Rs. 3,000/-. 30

I have the honour to be
Dear Sirs,
Your obedient servant
(SD)

Ag. Chairman, Aden Port Trust.

EXHIBITS

EXHIBIT C.26 - LETTER - COWASJEE
DINSHAW & BROS. to CHAIRMAN, ADEN
PORT TRUST

DEFENDANTS
DOCUMENT

C.26

Letter -
Cowasjee
Dinshaw & Bros
to Chairman,
Aden Port
Trust

2nd July 1930

Steamer Point,
Aden, 2nd July, 1930

The Chairman,
Aden Port Trust,
Aden.

10 Dear Sir,

We beg to acknowledge receipt of your
letter No. 2222 of 1930 dated the 24th ultimo.

20 As regards the 50% Grant-in-Aid, we shall
be obliged if you will be so kind as to explain
to us how the figure of Rs.200/- mentioned in
Item No. 2 has been arrived at. In this
connection we beg to point out that since you
have once capitalised this Abatement of House
Tax at the round figure of Rs.4,000/- the house
whether utilised as Cooly Lines or for any
other purpose (in case coolies refuse to occupy
the house) shall be exempt from House Tax for
ever. We shall thank you to confirm this.

Yours faithfully,

(SD) - Cowasjee Dinshaw & Bros.

DEFENDANTS
DOCUMENTS

EXHIBITS

C.27

Letter -
Acting
Chairman,
Aden Port
Trust to
Cowasji
Dinshaw &
Bros.

EXHIBIT C.27 - LETTER - ACTING
CHAIRMAN, ADEN PORT TRUST TO
COWASJI DINSHAW & BROS.

No.2345 of 1930.

D/- 5th July, 1930.

Messrs. Cowasji Dinshaw & Bros.

A D E N.

5th July 1930.

Dear Sirs,

Subject: Accommodation for Coal
& Cargo Coolies

10

I am to enclose herewith a copy of Lease which it is proposed to execute in connection with the above site.

With regard to Clause 3(c) this has to be included as the Lease is a Port Trust Lease and they are unable to commit the Aden Settlement in any way.

You will consequently be given a letter by the Aden Settlement setting forth the position as regards these taxes.

20

In accordance with the Port Trust Act the sanction of Government is required to any lease for a term exceeding 21 years and this sanction has been applied for but can hardly be received before the expiry of a month but there is no reason why any delay should take place in putting the work in hand.

Yours faithfully,

(SD) -

Ag. Chairman.

30

Aden Port Trust.

Copy to: The First Assistant Resident, Aden.
The Chairman, Aden Settlement, Aden.

EXHIBITS

EXHIBIT C.28 - LETTER, COWASJI
DINSHAW & BROS. to CHAIRMAN,
ADEN PORT TRUST.

Steamer Point,
Aden: 5th December, 1930.

The Chairman,
Aden Settlement,
ADEN.

DEFENDANTS
DOCUMENT

C.28

Letter -
Cowasji Dinshaw
& Bros. to
Chairman, Aden
Port Trust

5th December
1930

10 Dear Sir,

Subject - Accommodation for Coal
and Cargo Coolies

20

With reference to the site allotted to us for building the cooly quarters, we have the honour to draw your attention to the very high price of Rs. 5/- per square yard charged to us by the Aden Port Trust for the land. It is our considered opinion that the land, if put up for sale to the public, will not fetch even half the price which the Port Trust requires, and taking into consideration the present acute trade depression we think it would be difficult even to find buyers for this land which can be considered practically as waste land. We may here draw your attention that the Aden Port Trust is also interested in this scheme for housing the coolies and they had expressed their willingness to give every assistance in their power to this scheme when it was first proposed.

30

In view of these circumstances we beg to request you to assist us in this matter and to be so good as to take steps to induce the Aden Port Trust to reconsider their decision and reduce the price of this land to a figure which can be considered as representing the value of the land more correctly.

40

We understand that the land on which Messrs. Cory Bros. & Co. Ltd. have built their cooly quarters, has been given to them

DEFENDANTS
DOCUMENT

C.28

Letter -
Cowasji Dinshaw
& Bros. to
Chairman, Aden
Port Trust5th December
1930
(Cont'd)

by the Aden Settlement at the price of Re.1/- per square yard, and it is also for this reason that we now approach you to use your influence as Chairman of the Aden Settlement to get the Port Trust to reduce the price for the land given to us. We may add that the site granted to Messrs. Cory Bros. is better situated than our site in point of health, and as it is abutting on the sea-front it is much more convenient than our site for having the coolies transported through their wharf to the steamer. It therefore seems inequitable to charge us for our land five times the rate which Messrs. Cory Bros. have been charged.

10

Yours faithfully,

(SD)

Cowasjee Dinshaw & Bros.

EXHIBITS

EXHIBIT C.29 - LETTER COWASJEE
DINSHAW & BROS. TO CHAIRMAN,
ADEN PORT TRUST

DEFENDANTS
DOCUMENT

C.29

Letter -
Cowasjee
Dinshaw & Bros
to Chairman,
Aden Port
Trust

14th February
1931

Steamer Point,
Aden, 14th February, 1931.

The Chairman,
Aden Port Trust,
Aden.

10 Dear Sir,

Re: Accommodation for coal and
cargo coolies.

20

With reference to previous correspondence herein we beg to return herewith the original and duplicate copies of the Lease for the site leased to us at Hedjuff for the above purpose. The said copies of the Lease were sent to us by you with your letter No. 3400 of 1930 for our approval, but in view of the fact that thereafter the Port Trust were good enough to reduce the price of the site and also in view of the decision of the Aden Settlement Committee as regards the House Tax and the quit-rent on the above site we think that the conditions of the lease require some alterations before we can approve the same.

30

We shall therefore thank you to be good enough to make the necessary alterations in the conditions of the Lease and return the amended Lease to us at an early date for our approval.

We remain, Dear Sir,
Yours faithfully,

(SD) Cowasjee Dinshaw & Bros.

135.

DEFENDANTS
DOCUMENT

EXHIBITS

EXHIBIT C.30 - LETTER COWASJEE
DINSHAW & BROS. TO THE SECRETARY
ADEN PORT TRUST

C.30

Letter -
Cowasjee
Dinshaw &
Bros. to
Secretary,
Aden Port
Trust

Steamer Point,
Aden: 7th May, 1931.

7th May 1931

The Secretary,
Port Trust,
Aden.

Dear Sir,

10

Coolie Quarters

We are in receipt of your letter No. 1308
of 1931 dated 22nd April and as requested are
forwarding herewith a statement showing
separately the cost of each of the two blocks
and kitchen.

Yours faithfully,

(SD) Cowasjee Dinshaw & Bros.

136.

EXHIBITS

EXHIBIT C.31 - LETTER, CHAIRMAN
ADEN PORT TRUST TO COWASJI DINSHAW
& BROS.

DEFENDANTS
DOCUMENT

C.31

Letter,
Chairman
Aden Port Trust
to Cowasji
Dinshaw & Bros.

No.5998 of 1931.

Executive Committee of
the ADEN SETTLEMENT.

4th November
1931

4th November, 1931.

10 From, The Chairman,
Aden Settlement,
Aden.

To, Messrs. Cowasji Dinshaw & Bros.
Aden.

SUBJECT:- Accommodation for coal
& cargo coolies.

Dear Sirs,

20 Slip.13 With further reference to this Office
No.5689 dated 8th December, 1930 on the above
quoted subject, I have the honour to state that
the new coolie line constructed by you under the
terms of the coolie housing scheme, has been
assessed for taxation purposes as follows:-

	(a) Gross rateable value taken @) of the capital cost of) Rs.26824 including value of) land viz.Rs.3249-7-0 &) Rs.2066-0-0 Rs.1448-14-0 the cost of) latrine & extension of) cooking shelter.)	
30	(b) Rebate of 10% covering all) allowance for repairs or) any other account whatever) (Settlement Rule 69).)	Rs. 206-0-0
	Net assessable rateable value ...	<u>Rs.1860-0-0</u>

DEFENDANTS
DOCUMENT

C.31

Letter,
Chairman
Aden Port Trust
to Cowasji
Dinshaw & Bros.

(1) House & property tax @ 9% on the net rateable value of Rs.1360/-	}	Rs.167-6-5
(2) General Sanitary tax @ 4½% on the net rateable value.		
(3) Quit-rent on 1299.78 square yards @ 6 pies per sq.yd.	}	Rs. 40-10-0
		<u>Rs.291-11-7</u>

4th November
1931
(Cont'd)

Payable to
P. Trust.

Payable to
Settlement.

or say Rs.124-5-2 per annum (payable for &
from the year 1931-32 commencing 1st April,
1931) excluding the house tax of Rs.167-6-5
allowed as an abatement.

2. As regards the apportionment of the
cost, a net balance of Rs.5702-13-3 will be
refunded to you in due course.

EXHIBITS

EXHIBIT C.32 - LETTER COWASJEE
DINSHAW & BROTHERS TO CHAIRMAN
ADEN PORT TRUST

DEFENDANTS
DOCUMENT

C.32

MESSRS. COWASJEE DINSHAW & BROS.

STEAMER POINT,
ADEN

29th November, 1931.

Letter,
Cowasjee
Dinshaw &
Bros. to
Chairman Aden
Port Trust

29th November
1931

10 The Chairman,
Aden Settlement,
ADEN.

Sir,

Cost of Erecting Cooly Lines
Apportionment of

With reference to your letter No. 5998 of
1931 dated 4th November, 1931 we accept your
figures and shall be obliged to be favoured
with your cheque for Rs.5702-13-3 in due course.

Yours faithfully,

20 (SD) Cowasjee Dinshaw & Bros.

No. 6591 of 1931.

SETTLEMENT OFFICE,
ADEN, 30th November 1931

Copy to:

The Chairman, Aden Port Trust, for
information with reference to this office No.
5999 dated 4th November, 1931.

(Sgd)
CHAIRMAN, ADEN SETTLEMENT.

DEFENDANTS
DOCUMENT

EXHIBITS

C.35

EXHIBIT C.35 EXTRACT FROM PROCEEDINGS
OF MEETING OF THE BOARD OF TRUSTEES

Extract from
Proceedings
of meeting
of the
Board of
Trustees

Accompaniment to Government Resolution,
Political Department, No. 7509,
Dated the 22nd July, 1930.

19th June
1930

Extract from the proceedings of a meeting of
the Board of Trustees held on the 19th June, 1930.

160. Considered Secretary's note dated 27th
May, 1930 submitting for the decision of the Board:- 10

1. (a) The grant to Messrs. Cowasji Dinshaw and
Bros. of a site near their Hedjuff Garage
comprising 1200 sq. yards for the purpose of building
accommodation for Coal and Cargo Coolies.

(b) To approve of the form of Lease for the
above site.

(c) To fix the rate per sq. yard.

2. (a) To approve of the purchase of a plot of
land from the M.M. Co., as per plan, amounting to 20
approximately 5000 sq. yards, at Rs.5/- per sq.
yard, subject to the option required by the M.M. Co.,
in the accompanying correspondence.

(b) To approve of the grant of this site to
the P. & O. Co. for the purpose of constructing
quarters for Coal and Cargo Coolies.

(c) To approve of the form of Lease for
the above site.

RESOLUTION:- Proposed by Mr. Ahmedbhoj I.A.Laljee. 30
Seconded by Mr. G.H.J. Richmond.

1. (a) That the grant of the site in question
on a 99 years' lease to Messrs. Cowasji Dinshaw &
Bros. for the construction of accommodation for
Coal & Cargo Coolies be sanctioned, subject to
approval of Government.

(b) That the draft form of Lease be approved.

DEFENDANTS
DOCUMENT

(c) That for the purpose of the Grant-in-Aid sanctioned under Board Resolution No.15, dated 23rd January, 1930, the value of this land be fixed at Rs.5/- per sq. yard and that this rate be inserted also in Clause 3a of the Lease.

C.35

Extract from
Proceedings
of meeting
of the
Board of
Trustees

Carried by a majority of votes.

10 Mr. Framroze H.C. Dinshaw left the meeting whilst this was under discussion.

19th June
1930
(Cont'd)

Proposed by Mr. G.H.J. Richmond.

Seconded by Mr. Framroze H.C. Dinshaw.

20 2. (a) That the purchase of the plot of land from the M.M. Co., as per plan, at a rate of Rs.5/- per sq. yard. be approved; the M.M.Co. having the option to repurchase the land at the same rate, but also paying compensation for the buildings erected thereon, if at any time the land is no longer required for the accommodation of Coal and Cargo Coolies. Should the M.M. Co., not wish to declare this option when offered to them, the option shall be deemed no longer to exist.

(b) That the grant of the site in question on a 99 years' lease to the P. & O. Co. for the construction of accommodation for Coal and Cargo Coolies be sanctioned, subject to the approval of Government.

30 (c) That the draft form of Lease be approved.

Captain A. Messenger, Agent, P. & O.S.N. Co. retired whilst the question of their site was discussed.

Carried.

PLAINTIFFS
DOCUMENT

"F"

LEASE

9th January
1932

EXHIBITS
EXHIBIT "F" -
LEASE

THIS INDENTURE made the 9th day of January 1932 between the Trustees of the Port of Aden (hereinafter called the Lessors which term shall be deemed to include their successors in office and assigns for the time being unless such interpretation shall be excluded by the context) of the one part, and Sir Hornusjee Cowasjee Dinshaw Kt. I.T.O., O.B.E., Cowasjee Dinshaw, J.P. Sorabjee Dinshaw and Rustomjee Dorabjee Dinshaw (hereinafter called the Lessees which term shall be deemed to include their heirs, executors, administrators and assigns unless such interpretation shall be excluded by the context) of the other part 10

WHEREAS by Board Resolution No. 160 dated 19th June 1930, it was resolved by the Lessors to grant to the Lessees a lease of the plot of land hereinafter referred to 20

NOW THESE PRESENTS WITNESS that in consideration of the rent hereby reserved and the conditions on the part of the Lessees hereinafter contained, the Lessors do hereby lease and demise to the Lessees ALL THAT plot of land contained by admeasurement 10,800 square feet, be the same a little more or less situated at Hedjuff which plot of land is more particularly described in the Schedule hereto and delineated on the site-plan attached hereto

EXCEPT AND RESERVING to the Lessors all mines and mineral products with full liberty of access thereto 30

TO HOLD the said plot of land for a term of 99 years commencing on the 1st Day of April 1930 (YIELDING therefore to the Trustees of the port of Aden on the first day of April in every year during the said term the sum of Rs.37-8-0 being quit rent only at the rate of 6 pies per square yard.

AND THE LESSEES HEREBY COVENANT with the Lessors as follows: 40

(1) The said plot of land shall be used only for

purposes of accommodation of coolies employed in the handling of coal or cargo for ships.

PLAINTIFFS
DOCUMENT

"F"

Lease

9th January
1932
(Cont'd)

10 (2) The Lessees in the use of the said plot of land will observe all the Rules for the time being in force relating to the use, occupation and transfer of land relating to the construction and alteration or the buildings and additions to and use of the same in the Settlement of Aden so far as they may be applicable in respect of the purpose of the for which the said plot of land has been granted under the foregoing condition; and the provision of the said rules shall to such extent be deemed to be incorporated in this lease and to the conditions thereof.

20 (3) The only buildings to be erected on the said plot shall be coolies quarters in accordance with the plans submitted to and approved by the Trustees and also by the Executive Committee of the Aden Settlement as per their Resolution No. 528, dated 14th November 1930; the buildings of the said coolie quarters shall be completed within 1 year from the date of the grant of this lease.

PROVIDED ALWAYS and it is hereby agreed and declared as follows:-

30 (a) That the price of land shall be fixed at Rs. 2-8-0 per square yard of the purpose of the grant of indirect contribution towards the housing schemes of coal and cargo coolies mentioned in clause (1).

40 (b) That if the said plot of land is not used for the purpose for which it is granted within one year from the date of these presents or if at any time during the term for which this lease is granted the said plot of land shall cease to be used for such purpose than the Lessees shall upon being called upon so to do in writing by the Lessors forthwith purchase the said plot of land at the price of Rs.5/- per square yard PROVIDED that if the Lessees are unwilling to do this they may refuse but upon such refusal this lease shall be deemed immediately to determine

PLAINTIFFS
DOCUMENT

"F"

Lease

9th January
1932
(Cont'd)

and the land shall be surrendered to the Lessors.

(c) Subject to Sub-clause (3)(b) above, if any of the conditions of this lease not excepting the provisions of the rules deemed to be conditions of this lease as aforesaid shall not be observed then the Lessors may after three months' written notice enter upon the said plot of land freed from all claims and liabilities created by the Lessees or any person claiming through them and this lease shall thereby be determined.

10

(d) If the said plot of land or any portion thereof shall be declared by the Lessors to be required by Government for public purpose (which declaration shall be final and conclusive) the Lessors may without notice re-enter upon the said plot of land or such portion as may be so required, freed from all claims and liabilities created by the Lessees or any person claiming through them and thereupon this lease shall be determined in respect of the said plot of land or such portion thereof.

20

AND in case of re-entry under this condition, the Lessees shall be entitled to compensation as follows:-

A sum equal to the purchase money paid by the Lessees for the right of lease or, if re-entry is made upon a portion only of the land, then a sum bearing the same proportion to the amount of the purchase money as the area of the portion of the land resumed bears to the whole area together with.

30

The actual value of the buildings, if any, constructed under due authority by the Lessees and in existence on the portion of the land resumed at the time of re-entry, such actual value shall be determined by a Committee of arbitration which shall be constituted as shown in the Annexure attached to this lease, and the lessees shall be entitled to no other compensation save as hereby expressly provided; and the decision of the Committee of Arbitration as to the actual value of the buildings, if any, as aforesaid, shall be conclusive.

40

(e) Nothing herein contained shall be construed to exempt the Lessees from the payment of such

quit rent, assessment, rates, taxes and other dues as may be leviable on the said plot of land under the Laws or Rules having the force of Law for the time being in operation.

PLAINTIFFS
DOCUMENT

"F"

AND THE LESSORS hereby covenant with the Lessees that if they the Lessees duly pay the rent hereby reserved and observe all the covenants and conditions on the part of the Lessees herein before mentioned.

Lease

9th January
1932
(Cont'd)

10 (f) They the Lessees may throughout the said term but subject to the conditions heretofore stated regarding re-entry peacefully possess and enjoy the said plot of land without interruption on the part of the Lessors or any person acting or claiming under them.

20 IN WITNESS WHEREOF the Chairman and two of the said Trustees of the Port of Aden have hereunto set their hands and the common seal of the Trustees has hereto been affixed on the day and year first above written.

SIGNED SEALED AND DELIVERED
by Lt. Col. D.S. Johnston,
R.E. Chairman and by Wing
Comdr. H.C. Crichton, R.A.F.
and by Comdr. M.P. Cooper,
R.I.M. two of the Trustees
of the Port of Aden in the
presence of

S/- D.S. Johnston,
Lt. Col. R.E.
Chairman,
Aden Port
Trust,

Sd/- H.L.
Crichton,
Wing Comdr.
Trustees of
the Port,
Aden.

30 Sd/- Fred. B. Taylor,
Secretary,
Aden Port Trust.

Sd. M.P.
Cooper.
Trustee of
the Port,
Aden.

THE COMMON SEAL of the Aden
Port Trust was hereunto
affixed in the presence of:

40 SD/- Fred B. Taylor,
Secretary,
Aden Port Trust.

PLAINTIFFS
DOCUMENT

"F"

Lease

9th January
1932
(Cont'd)

SIGNED SEALED AND DELIVERED by)

Hormusjee C. Dinshaw, Kaikobad

Cowasjee Dinshaw, Sorabjee

Cowasjee Dinshaw & Rustonjee

D. Dinshaw

In the presence of:-

SD/-Hormusjee C.
Dinshaw

SD/-Kaikobad Cowasjee
Dinshaw

SD/-Sorabjee Cowasjee
Dinshaw

sd/- Jehangir D. Mistry.

SD/-Rustonjee D.
Dinshaw.

10

ANNEXURE

The Committee of Arbitration referred to in this lease shall be composed as under:-

(a) The First Assistant Resident or a Magistrate of 1st class deputed by him to act for him.

(b) A Representative nominated by the Aden Port Trust.

(c) A Representative nominated by the Lessees. 20

Provided that, if such person or persons concerned as aforesaid fails or fail to nominate a member within seven clear days from the day on which they are called upon to do so, or if any member who has been nominated, neglect or refuse to act, and such person or persons fails or fail to nominate within seven clear days from the day on which they are called upon to do so, another member who is willing to act, the Trustees shall forthwith appoint a member in the place of such nominee. 30

2. No person shall be nominated or appointed a member of a Committee of Arbitration unless he is personally disinterested in this matter under reference, and his services are immediately available for the purposes of arbitration; and the nomination of any person who is in the opinion of the Trustees personally interested in the matter under reference or whose services are not immediately available as aforesaid, shall be deemed to constitute a failure to make a nomination within the meaning of the foregoing provisions. 40

3. When a Committee of Arbitration has been duly constituted the Trustees shall, by notice in writing, inform each of the members of the fact, and Committee of Arbitration shall assemble within seven clear days from the service of the notice.

PLAINTIFFS
DOCUMENT

—
"F"

Lease

4. The First Assistant Resident or the Magistrate appointed by him to act in his stead, shall be the Chairman of every committee of Arbitration.

9th January
1932
(Cont'd)

10

5. The decisions of every Committee shall be determined by the majority of the votes taken at a meeting at which all the members present.

The decision of every committee of Arbitration shall be final.

ADEN PORT TRUST

SCHEDULE

PLOT OF LAND AT HEDJUFF

20 Bounded on the North by the Main Road to Crator.

Bounded on the South by the Mohammedan Burial Ground & Mosque.

Bounded on the East by the Port Trust land & Messrs. Cowasjee Dinshaw & Bros. Garage.

Bounded on the West by the Road to fortification and Messrs. Hajeebhoy Laljee's Premises.

Shown on the plan No. 17-A-1788.

Area of Land 10,800, Square feet.

30

Sir, Hormusjee Cowasjee Dinshaw, Kt. executing party, Parsce Gentleman, Merchant, 75, admits execution and he is known to the undersigned Sub-Registrar

Hormusjee Cowasjee Dinshaw

8th March, 1932

PLAINTIFFS
DOCUMENT"F"Lease9th January
1932
(Cont'd)

Lt. Col. D.S. Johnston, R.E., Chairman, Aden Settlement, Aden, Wing Commander H.L. Crichton, R.A.F. and Commander N.P. Cooper, R.I.N. two of the Trustees of the Port of Aden, executing parties, are exempted from personal appearance under Section 88 of the Indian Registration Act, 1908. Their Signatures and the seal of the Aden Port Trust are known to the undersigned Sub-Registrar.

8th March 1932.

Rustonjee Dorabjee Dinshaw, executing party, Parsee Gentleman, Merchant 67, Aden admits execution and he is known to the undersigned Sub-Registrar. 10

Rustonjee D. Dinshaw.

"Transferred to Dinshaw Hormusjee Cowasjee Dinshaw, in pursuance of the Decree of the Supreme Court of Aden in Civil Suit No. 728 of 1956, whereunder the Decree of the Bombay High Court (Original Side) in Suit No. 1501 of 1949 was registered as the Decree of the Supreme Court of Aden by his Honour, the Chief Justice, Supreme Court, Aden as on 13th day of October, 1956. 20

Sgd.
Secretary,
Aden Port Trust

Sgd.
Chairman
Aden Port Trust.

Sgd.
Trustee of the Port of Aden.

10th December 1957

Sgd.
Trustee of the Port of Aden

Behranjee Eduljee Jilla (Agent of Messrs. Kaikobad Cowasjee Dinshaw and Sorabjee Cowasjee Dinshaw, executing parties; Merchants, Parsee Gentlemen, 69 and 66, Bombay) Manager of Messrs. Cowasjee Dinshaw & Brothers Camp Office, Crater, Aden; admits execution by Messrs. Kaikobad Cowasjee Dinshaw and Sorabjee Cowasjee Dinshaw & Behranjee Eduljee Jilla is known to the undersigned Sub-Registrar. 30

Behranjee Eduljee Jila

14th March 1932

148.

REGISTERED No. 81 at
Pages 272 to 279 volume
61 of Book No. 1

Sgd.
Sub-Registrar,
Aden.

PLAINTIFFS
DOCUMENT

"F"

Lease

Sgd.

SUB-REGISTRAR

Dated 22nd March 1932

9th January
1932
(Cont'd)

10

THE SEAL OF THE SUB-
REGISTRAR OF ADEN

Transferred to Dinshaw, H.C. Dinshaw,
as per Decree granted by his Honour the Chief
Justice, Supreme Court, Aden.

Sgd.

REGISTRAR OF CROWN LANDS, ADEN.

DEFENDANTS
DOCUMENT

C.33

EXHIBITS

EXHIBIT C.33 - CIRCULAR LETTER FROM
CHAIRMAN, ADEN PORT TRUST TO SHIPPING
COMPANIES

Circular
Letter from
Chairman,
Aden Port
Trust to
Shipping
Companies

20

PWD/80/5931

11th November, 1953.

11th November
1953

Dear Sirs,

COOLIE LINES AT MAALLA

(previously to have been built near
Caltex Oil Tanks).

As a result of the meetings held following
my letter No. PWD/108/6616 of 20th November,
1952. You will recall that it was proposed that
the Port Trust should construct Coolie Lines at
Maalla to accommodate all Coal and Cargo Coolies
at present occupying temporary accommodation
at the Marine Craft Unit or between Steamer
Point and Hedjuff. This proposal has been
accepted by Government.

30

DEFENDANTS
DOCUMENT

C.33

Circular
Letter from
Chairman,
Aden Port
Trust to
Shipping
Companies11th November
1931
(Cont'd)

2. Detailed plans and estimates have now been received for the construction at Maalla of 12 dormitories (each to accommodate 84 men) 2 shops, 12 kitchen and bathroom blocks and 4 latrine blocks with drainage and water supply connections. These are available for inspection at my office. The total estimated cost is Shs.938,744/- or approximately Shs.80,000 per dormitory with ancillary works and facilities. It was also proposed that the dormitories and ancillary facilities should be leased to those firms requiring them at an annual rental of 6% of the capital value. Until contracts have been let and works have been completed it is not possible to say with accuracy what the annual rental will be but on the basis of the estimates it appears that it should be about Shs.4,800 per annum per dormitory with ancillary facilities. It is suggested that leases should be for twenty one years. 10

3. Before making final arrangements for construction I should be glad to know definitely the number of dormitories which your firm would wish to lease in the knowledge that all coolies now housed between Hedjuff and Steamer Point or at the Marine Craft Unit at Maalla or in other temporary or sub standard accommodation in these areas will have to vacate existing accommodation. 20

4. It will also be necessary for the new lines to be supervised by some central authority and charges in connection therewith would be divisible between lessees. This can be discussed separately and is only mentioned here for record. 30

Yours faithfully,

(Sgd)

Chairman

ADEN PORT TRUST.

Copies sent to:

Messrs. Cory Brothers,
Luke Thomas & Co. Ltd.,
Seven Ries (Aden Shipping) Co.
P. & O.S.N. Ltd.,
Cowasjee Dinshaw & Bros.Chief Engineer, 40
Port Officer,
Wharf Superin-
tendent.

150.

EXHIBITS

EXHIBIT C.34 - LETTER COWASJEE
DINSHAW & Bros. TO CHIEF CLERK
ADEN PORT TRUST

DEFENDANTS
DOCUMENT

C.34

Cowasjee Dinshaw & Bros.

Steamer Point,

27th February, 1954.

Letter -
Cowasjee
Dinshaw & Bros.
to Chief Clerk
Aden Port Trust
Aden.

27th February
1954

The Chief Clerk,
Aden Port Trust,
ADEN.

10

Dear Sir,

We are in receipt of your letter No.PWD/
80/1350 dated 25th February, 1954 as regards
the Coolie Lines at Maalla we would require two
Lines of about 84 coolies each.

Yours faithfully,

(Sgd)

Cowasjee Dinshaw.

DEFENDANTS
DOCUMENT

D.1

Letter -
Cowasjee
Dinshaw & Bros.
(Aden) Ltd. to
Chairman,
Aden Port
Trust

14th September
1956

EXHIBITS

EXHIBIT D.1 - LETTER, COWASJEE
DINSHAW & BROS. (ADEN) LTD. TO
CHAIRMAN, ADEN PORT TRUST.

14th September, 1956

The Chairman,
Aden Port Trust,
Aden.

Dear Sir,

Re: Lease No.3101 dated 9th January
1932 from the Trustees of the
Port of Aden to Sir Hormusjee
Cowasjee Dinshaw, Kaikobad
Cowasjee Dinshaw, Sorabjee
Cowasjee Dinshaw and Rustonjee
Dorabjee Dinshaw, in respect
of Coolie lines at Hedjuff.

10

You are aware that the coolies are shifted
from the above Lines to the New Coolie Lines at
Maalla. Under Clause 3(b) of the lease
referred to above, it is provided as under:-

20

"(b) That if the said plot of land is not
used for the purpose for which it is
granted within one year from the date of
these presents or if at any time during
the term for which this lease is wanted
the said plot of land shall cease to be
used for such purpose then the Lessees
shall upon being called upon so to do
in writing by the Lessors forthwith
purchase the said plot of land at the
price of Rs. 5/- per square yard PROVIDED
that if the Lessees are unwilling to do
this they may refuse but upon such
refusal this lease shall be deemed
immediately to determine and the land shall
be surrendered to the Lessors."

30

We, therefore, desire to purchase the said plot
of land at the price of Rs. 5/- (i.e. equal to
Shs. 7.50) per square yard. We shall therefore
feel obliged if you will please put this matter

40

before the Trustees and apply for sanction for sale of the said plot to us at the said price.

DEFENDANTS
DOCUMENT

D.1

Letter -
Cowasjee
Dinshaw & Bros
(Aden) Ltd. to
Chairman,
Aden Port
Trust

14th September
1956
(Cont'd)

10 Between the said plot and our Motor
Garage at Hedjuff there is a small strip
of land which is kept as a passage between
the said Coolie Lines and our Garage. As
we desire to have up-to-date showroom for
our motor car Agencies and also an up-to-
date Garage we desire to demolish the
present Garage and construct a new showroom
and Garage on the plot of land covered
under your above mentioned lease and on the
plot where our present Garage stands. It
will therefore be necessary for us to either
purchase from you or to take on lease the
land between the Coolie Lines and our present
Garage. We send you herewith a sketch
20 plan which shows the position of the plot
of land on which our present Garage stands
which is marked "B", the Coolie Lines
referred to above which is marked "C" and the
plot of land between these two properties
which is marked "A". We shall therefore
feel very much obliged if you will please
be good enough to put this matter before
the Trustees of the Port of Aden and obtain
the necessary permission either to lease
the said plot of land marked "A" or to
30 sell the same to us at a very reasonable
price.

Thanking you in anticipation,

Yours faithfully,
For COWASJEE DINSHAW & BROS. (ADEN)
LTD.

(SD)

CHAIRMAN.

154.

EXHIBITS

EXHIBIT D.3 LETTER, ACTING CHAIRMAN
ADEN PORT TRUST TO COWASJEE DINSHAW
& BROS. (ADEN) LTD.

DEFENDANTS
DOCUMENT

D.3

Letter, Acting
Chairman,
Aden Port Trust
to Cowasjee
Dinshaw & Bros.
(Aden) Ltd.

NO:PWD/3/2242
PORT TRUST HEAD OFFICE,
STEAMER POINT,
ADEN: 24th June, 1957,

24th June 1957

10 The Chairman,
Messrs. Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point,
Aden.

Subject: Lease No.3101 dated 9th
January, 1932.

Dear Sir,

20 I refer to your letter dated 14th September
1956 and have to advise you that before any
action can be taken upon your application under
Clause 3(b) of the Lease referred to above it
is first necessary to prove that Messrs.
Cowasjee Dinshaw & Bros. are, in law, the
Successors to the 4 persons named in the
original Lease jointly called the Lessees.

2. I shall be grateful if you will forward
me this information as soon as possible.

Yours faithfully,

(SD) Illegible.

Ag. CHAIRMAN,
ADEN PORT TRUST.

DEFENDANTS
DOCUMENT

D.4

Letter -
A. Bhatt to
Chairman,
Aden Port
Trust

29th October
1957

EXHIBITS

EXHIBIT D.4 - LETTER A. BHATT
TO CHAIRMAN, ADEN PORT TRUST

A. BHATT,
Barrister-at-Law.

No. 507/10/57
ADEN: 29th October 1957.

The Chairman,
Aden Port Trust,
Aden.

Dear Sir,

Re: Lease No. 3101

10

I refer you to your letter No. PWD/3/5087 dated 18th September, 1957 addressed to Messrs. Cowasjee Dinshaw & Bros. (Aden) Ltd., and as desired therein I am forwarding herewith the original Decree of the High Court of Bombay in Civil Suit No. 1501 of 1949 duly registered in the Supreme Court of the Colony of Aden in Civil Suit No. 728 of 1956 as Decree of the Court of the Colony.

You will please return the Decree as soon as done with and in the meantime please acknowledge its receipt.

20

Yours faithfully,

(SD) A. Bhatt.

EXHIBITS

EXHIBIT D.5 - LETTER, ACTING
CHAIRMAN, ADEN PORT TRUST TO
DINSHAW H.C. DINSHAW.

No. PWD/1/8505
PORT TRUST HEAD OFFICE,
Steamer Point.
ADEN:

13th January, 1958.

DEFENDANTS
DOCUMENT

D.5

Letter -
Acting
Chairman, Aden
Port Trust to
Dinshaw H.C.
Dinshaw

13th January,
1958.

10 Dinshaw H.C. Dinshaw, Esq.,
Messrs. Cowasjee Dinshaw & Bros.(Aden) Ltd.
Steamer Point,
Aden.

Dear Mr. Dinshaw,

Application for Lease of Land at
Hedjuff for Garage and Showroom

20 I refer to your letter of the 14th September,
1956 in which you applied for a lease of land
at Hedjuff for the purpose of erecting a garage
and showroom. Part of the area referred to is
covered by grant No. 3101 dated the 9th
January, 1932 and the remainder consists of the
land between the above grant and your present
motor garage. We have had some correspondence
on the question of your title to lease No.3101
and now that this has been cleared up the
question of the leases can be considered.

30 In your letter under reference you say
that you wish to purchase the plot of land
covered by lease 3101 at Shs.7.50 per sq. yard
in accordance with the terms of Clause 3(b)
of the grant. I am advised, however, that
your interpretation of Clause 3(b) is not
correct and that the meaning of this clause is
that while the Port Trust could compel you to
purchase the land at Shs. 7.50 per sq. yd. if
they offered it to you at this price, the Port
Trust are not obliged to make the offer. In
40 as much as the plot covered by lease No:
3101 has ceased to be used for the purpose
for which it was granted I propose to

DEFENDANTS
DOCUMENT

D.5

Letter -
Acting
Chairman, Aden
Port Trust to
Dinshaw H.C.
Dinshaw

13th January,
1958
(Cont'd)

recommnd the Trustees to give you 3 months' notice of re-entry under Clause 3 (2) of the lease and to grant a fresh lease for the purpose of erecting a garage and show-room. In view of its commanding position I am advised that this plot would fetch a premium of Shs.200/- per sq.yd. for a 99 year lease. Since the lease for your present garage expires on the 31st March, 2008, i.e. in approximately 50 years' time, I suggest that it would be more suitable to grant a lease for the area covered by lease No.3101 which would expire on the same date. I am prepared to recommend to Trustees that the premium for a lease for this term should be Shs.100/- per sq. yd. and that a rental of Cts. 5 per sq. yd. p.a. should be charged.

10

With regard to the area between your present garage and the plot covered by lease No.3101 I should be prepared to recommend to Trustees that they should grant you a lease of this area on similar terms i.e. a premium of Shs. 100/- per sq. yd. plus the usual rental of Cts. 5 per sq. yd. per annum for a lease expiring on the 31st March, 2008.

20

Drawing No: SM-30/57 is enclosed showing the area which it is proposed to lease. The boundary between Government and Port Trust land is shown on the drawing, the port Trust land being that lying to the north of the boundary line. The areas concerned are therefore:-

30

Area "C" Approximately 108 ft. x 94 ft. in respect of the plot covered by lease No.3101.

Area "A" Approximately 42 ft x 100 ft. in respect of the land between your existing garage and the plot covered by lease No.3101.

Before putting this proposal to Trustees, I would be grateful if you would confirm that these terms are acceptable to you.

40

Yours faithfully,

Ag. CHAIRMAN, ADEN PORT TRUST.

EXHIBITS

EXHIBIT D.6 - LETTER, D.H.C.
DINSHAW TO ACTING CHAIRMAN,
ADEN PORT TRUST

18th January, 1958.

The Acting Chairman,
Port Trust Head Office,
Steamer Point,
Aden.

DEFENDANTS
DOCUMENT

D.6

Letter -
D.H.C. Dinshaw
to Acting
Chairman
Aden Port
Trust

18th January
1958

10 Dear Sir,

I am in receipt of your letter
No. PWD/3/8505 of 13th instant. The matter
referred to in the letter is under my
consideration and I shall write to you again
in due course.

Yours faithfully,
(SD) D.H.C. DINSHAW.

EXHIBITS

EXHIBIT E.1. - LETTER CHAIRMAN,
ADEN PORT TRUST TO HORMUSJEE K.
HATHADARU.

No. PWD/3/1764
PORT TRUST HEAD OFFICE,
Steamer Point,
Aden. 2nd June, 1958.

PLAINTIFFS
DOCUMENT

E.1

Letter -
Chairman,
Aden Port
Trust to
Hormusjee K.
Hathadaru

2nd June 1958.

20

Hormusjee K. Hathadaru, Esq.,
Messrs. Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point,
ADEN.

30 Dear Mr. Hormusjee,

Thank you for letting me see Counsel's
opinion in respect of Lease 3101. The
opinion is returned herewith. It is not
unexpected that your Counsel should try to

PLAINTIFFS
DOCUMENT

E.1

Letter -
Chairman,
Aden Port
Trust to
Hornusjee K.
Hathadaru

2nd June 1958
(Cont'd)

find ways of supporting your case but I regret I am unable to accept his conclusions.

2. There is no doubt whatever that Clauses 3(b) and (c) in the Lease were included to safeguard the interests of the Port Trust and not the interests of the Lessees. They enabled the Port Trust if it so desired to require the Lessees to pay Rs. 5/- per sq. yard for the land or to relinquish it. It was a safeguard in case there was a fall in land values. As it happens land values have gone up and the safeguard is no longer required. The procedure in Clause 3(c) then becomes the only one necessary as far as the Port Trust is concerned.

10

3. I am placing the whole question before the Trustees in the near future and will let you know their views in due course.

Yours faithfully,

(Sd). -

CHAIRMAN, ADEN PORT TRUST.

20

EXHIBITS

EXHIBIT E2 - LETTER, H.K. HATHADARU
TO CHAIRMAN, ADEN PORT TRUST.

PLAINTIFFS
DOCUMENT

E.2

Letter, Mr.
H.K.Hathadaru
to Chairman,
Aden Port
Trust

31st July,
1958.

31st July, 1958

The Hon'ble Mr. R.P. Errington,
Chairman,
Aden Port Trust,
Aden.

Dear Mr. Errington,

10 Kindly refer to your letter to me of 2nd
June, 1958 bearing No. PWD/3/1764.

20 Sir Janshedji Kanga is an old experienced
Counsel in Bombay who is held in high esteem
by the Bar as well as the Bench. He had been
elevated to the Bench himself and was a
permanent Advocate-General for a good number of
years in Bombay. He would be the last person to
support a case and give his opinion thereon in
any manner inconsistent with his own convictions.
Your observation that you are unable to agree
with his conclusions is a different matter.

30 With reference to para 2 of your letter, I
do not think that the Port Trust was desirous
of entering into a one sided agreement with Mr.
Dinshaw under which the Port Trust was to
decide, having regard to the market value of the
land, whether Mr. Dinshaw should be called upon
to purchase the land or not. Even the Agreement
as it stands does not spell out any such
intention.

As regards the procedure in Clauses 3(c)
the same has no relevance at the present stage
since there is no breach of any of the conditions
of the lease.

I trust you will explain to the Trustees
our understanding of the matter so that the
controversy may be ended to the mutual
satisfaction of both the parties.

Yours faithfully,

(Sd).....

(GENERAL MANAGER)

PLAINTIFFS
DOCUMENT

E.3

Letter,
Chairman,
Aden Port
Trust to Mr.
H.K. Hathadaru

5th August
1958

EXHIBITS

EXHIBIT E.3 - LETTER, CHAIRMAN,
ADEN PORT TRUST TO H.K.HATHADARU

No. PWD/3/3809

PORT TRUST HEAD OFFICE,
Steamer Point,
Aden,

5th August, 1958

Hormusjee K. Hathadaru,
Messrs. Cowasjee Dinshaw & Bros. (Aden) Ltd., 10
Steamer Point, Aden.

Dear Mr. Hormusjee,

Thank you for your letter dated 31st
July, 1958 regarding lease No. 3101. Sir
Jamshedji Kanga is not known to me personally,
but I have no doubt that he is an eminent
legal personality. At the same time the Port
Trust does not accept the interpretation he has
placed on Lease No. 3101.

The matter has already been considered by 20
the Trustees and as a result I had a discussion
with Mr. Dinshaw. I had been waiting to hear
his views on our discussion.

Yours faithfully,

(SD) - R.P. Errington

CHAIRMAN

ADEN PORT TRUST.

EXHIBITS

EXHIBIT E.4 - LETTER, CHAIRMAN, ADEN
PORT TRUST TO DINSHAW H.C. DINSHAW

PLAINTIFFS
DOCUMENT

E.4

No: PWD/3/5407
PORT TRUST HEAD OFFICE,
Steamer Point,
Aden, 12/14th September,
1959.

Letter -
Chairman,
Aden Port
Trust to
Dinshaw H.C.
Dinshaw

12th/14th
September,
1959

10 Dinshaw H.C. Dinshaw, Esq.,
Messrs. Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point, Aden.

Dear Mr. Dinshaw,

Lease No. 3101

While going through the correspondence relating to the above lease, and your application for land at Hedjuff for garage and showroom, I find that you have not replied to my letter PWD/3/8506 of the 13th January 1958.

20 In order to finalise this matter would you let me have your confirmation whether or not the proposal as submitted to you in my above mentioned letter is accepted by you, not later than the 31st October, 1959.

Yours faithfully,

(SD)

CHAIRMAN,
ADEN PORT TRUST.

163.

DEFENDANTS
DOCUMENT

EXHIBITS

EXHIBIT D.7 - LETTER - DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

D.7

Letter -
Dinshaw H.C.
Dinshaw to
Chairman,
Aden Port
Trust

26th October 1959

The Chairman,
Aden Port Trust,
Steamer Point, ADEN.

26th October
1959.

Dear Sir,

Re: Lease No. 3101

10

With reference to your letter No.PWD/3/5407 dated 12/14th September, 1959 I have to state that I am agreeable to take a new lease for a period of 99 years on a premium of Shs.200/- per sq. yd. for the areas 'C' & 'A' referred to in your letter bearing No.PWD/3/850 dated the 13th January, 1958, and I also agree to the rental of Cts. 5 per sq. yd. per annum, to be charged to me. You will please note that the property which I want to construct is for business and for residence and that the lease should be for business-cum-residence purposes, with liberty to assign portion or portions thereof.

20

I feel that I have got a legal right under the lease to buy the land at Shs. 5/- per sq.yd. You will therefore, appreciate that if I have got such a right, I may not be denied the right.

Though I have agreed to purchase from you the land, as stated above, I request that I should be given an opportunity to get the lease construed by any independent person.

30

I therefore, suggest, we, in a friendly capacity might request personally the Hon'ble Chief Justice Mr. Campbell, to give his views on the construction of the documents.

If he holds that I am entitled to buy the land as agreed in the lease, I may be allowed to do so.

If however, he holds that I am not entitled

to buy the said land as mentioned in the lease, then I undertake to buy the land at the premium of Shs.200/- per sq. yd., for a fresh lease for 99 years as stated above.

Thanking you, I remain,

Yours faithfully,

(SD)-
(DINSHAW H.C. DINSHAW)

Dho.tvs.22.

DEFENDANTS
DOCUMENT

D.7

Letter -
Dinshaw H.C.
Dinshaw to
Chairman,
Aden Port
Trust

26th October
1959
(Cont'd)

D.8

Letter -
Chairman,
Aden Port Trust
to Dinshaw H.C.
Dinshaw

28th November
1959

10

EXHIBITS

EXHIBIT D.8 - LETTER - CHAIRMAN, ADEN
PORT TRUST TO DINSHAW H.C. DINSHAW

No: C.100/7856

PORT TRUST HEAD OFFICE,
Steamer Point,
Aden. 28th November 1959.

CONFIDENTIAL

Dinshaw H.C. Dinshaw Esq.
Messrs. Cowasjee Dinshaw & Bros.(Aden) Ltd.
Steamer Point,
ADEN.

20

Dear Sir,

The suggestion made in your letter dated 26th October, 1959 that the interpretation to be placed on Lease No.3101 should be construed by some independent person such as the Hon. Chief Justice Mr. R.A. Campbell was considered at a meeting of the Trustees on 26th November, 1959.

30

The Trustees did not favour this proposal and I regret therefore that they are unable to agree. Trustees consider that the Port Trust interpretation of the Lease in the correct one and should be glad to know that your Company is prepared to accept the offer which was discussed between Mr. Irrington and Mr. Dinshaw some months ago and which it had been understood was acceptable to your Company i.e. Shs.100/- per sq. yd.

Yours faithfully, (SD) --

40

CHAIRMAN, ADEN PORT TRUST

DEFENDANTS
DOCUMENT

EXHIBITS

D.10

EXHIBIT D.10 - LETTER - CHAIRMAN,
ADEN PORT TRUST TO DINSHAW H.C.
DINSHAW

Letter -
Chairman,
Aden Port
Trust to
Dinshaw H.C.
Dinshaw

No: PWD/3/1317
PORT TRUST HEAD OFFICE,
Steamer Point,
Aden.

10th May 1960

10th May, 1960.

Dinshaw H.C. Dinshaw Esq.
c/o Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point,
Aden.

10

Dear Sir,

Lease No. 3101

Thank you for your letter of the 4th May, 1960 containing your acceptance of a premium of Shs. 100 per sq. yd. for a new lease to expire on the 31st March, 2008. Your letter goes on to ask that the lease should permit a building for business-cum-residential purposes and I must point out that the premium we have quoted you, and which has now been accepted by you, related to the use of the plot as a garage and showroom. You will appreciate that any change of use may entail a revised rate of premium and I should, therefore, be grateful if you would let me know exactly what type of building you propose to erect on this plot, together with a note of the intended number of storeys.

20

30

Yours faithfully,

(SD)

CHAIRMAN ADEN PORT TRUST.

EXHIBITS

EXHIBIT D.11 - LETTER, DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

16th May, 1960

The Chairman,
Aden Port Trust,
Aden.

Re: Lease No. 3101

DEFENDANTS
DOCUMENT

D.11

Letter -
Dinshaw H.C.
Dinshaw to
Chairman,
Aden Port
Trust

16th May 1960

10 Dear Sir,

I am in receipt of your letter No.
PWD/3/1317 dated the 10th instant on the above
subject.

Please note that I desire to construct
property on the above plot, consisting of
ground floor and 3 or 4 upper storeys. The
ground floor will be used for shops for
business purposes and the upper floors will
be used for residential purposes.

20 The space between the land comprising
under Lease No. 3101 and the present garage
will be utilised by us for construction of a
new garage when we demolish the present
garage and re-build it.

Yours faithfully,

(SD)

(Dinshaw H.C. Dinshaw)

DEFENDANTS
DOCUMENT

EXHIBITS

D.12

EXHIBIT D.12 - LETTER, DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

Letter -
Dinshaw H.C.
Dinshaw to
Chairman
Aden Port
Trust

18th July, 1960

18th July 1960

The Chairman,
Aden Port Trust,
Aden.

Dear Sir,

I am sending you herewith a sketch which shows the plots of land which belong to me, either on lease from the Port Trust or from the Commissioner of Crown Lands. From the said sketch, you will find that "B" is the plot of land which is leased to me by you. "A" is the area which is lying between plot "B" and "C" for which I had applied to you long since. You had agreed to give the lease for the said plot for a further period of 99 years at a premium of Shs. 100 per square yard. I had agreed to the same. In this connection, I have to refer you to your letter No. PWD/3/8505 dated the 13th June, 1958 addressed to me. 10 20

As my present Garage is in a very dilapidated condition, I have to pull it down and construct a new one in its place. The layout of the Garage and the Showroom is also shown on the sketch sent herewith. In order to construct the new Garage, I will require the use of the said plot of land marked "A" and shall therefore feel very much obliged to you if you will please be good enough as to give me the said plot of land on a lease for 99 years at Shs. 100 per square yard as already agreed to. 30

I may state here for your information that as you will find from the sketch part of this land which admeasures about 42 feet in width will be used for a road (about 20 feet) and the balance of 22 feet will be used for the construction of the premises for showroom and spare parts. The structure which we want to put 40

up, is at present two-storey structure, the ground floor of which will be used partly for showroom and partly for storing the heavy motor spare parts and the upper floor over the full area of 42 feet will be used for storing other motor spare parts. Naturally, the office for the showroom and the Garage will be accommodated in this structure.

10 In the circumstances mentioned above and in view of the fact that our present Garage requires to be demolished at a very early date, I shall feel greatly obliged to you if you will please be good enough as to consider this matter and let us have your necessary sanction to give us the required lease and utilise the land as stated above.

Yours faithfully,

(SD)

(Dinshaw H.C. Dinshaw)

20 Encl: sketch.

DEFENDANTS
DOCUMENT

D.12

Letter -
Dinshaw H.C.
Dinshaw to
Chairman
Aden Port
Trust

18th July 1960
(Cont'd)

PLAINTIFFS
DOCUMENT

E.5

Letter -
Chairman,
Aden Port Trust
to Cowasjee
Dinshaw & Bros.
(Aden) Ltd.

17th/18th
November 1960

EXHIBITS

EXHIBIT E5 - LETTER, CHAIRMAN,
ADEN PORT TRUST TO COWASJEE
DINSHAW & BROS. (ADEN) LTD.

No: PWD/3/8294

PORT TRUST HEAD OFFICE,
Steamer Point,
Aden, 17/18th November 1960.

Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point,
Aden.

10

Dear Sirs,

Plot of land at Hedjuff,
Former Lease No. 3101

As the releasing of plot of land at Hedjuff covered by Lease No. 3101 is still under negotiation, this office is therefore prepared to accept rent up to 31st March 1960 only. Your cheques sent with your letters dated 22nd April 1959 and 20th October 1960 are returned herewith and I shall be glad if you will pay the outstanding rent of Shs. 158/61 as shown in the attached Bill No. 0439 dated 16th November, 1960.

20

Yours faithfully,

(SD)

CHAIRMAN
ADEN PORT TRUST

Enc. 2 Cheques
Bill No. 0439.

30

170.

EXHIBITS

EXHIBIT E.6 - LETTER, DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

PLAINTIFFS
DOCUMENT

E.6

Letter -
Dinshaw H.C.
Dinshaw to
Chairman Aden
Port Trust

29th November, 1960

The Chairman,
Aden Port Trust,
Aden.

29th November
1960

10

Re: Plot of land at
Hedjuff
Former Lease No.
3101

Dear Sir,

I am in receipt of your letter No.
PWD/3/8294 dated the 18th instant addressed
to Messrs. Cowasjee Dinshaw & Bros. (Aden)
Ltd. on the above subject.

20

As requested therein, I am sending
you herewith a cheque for Shs. 158-61 in
your favour being the amount of rent in
respect of the above mentioned plot of
land for the period from 1-4-1957 to
31-3-60.

Please send your receipt for the said
sum.

Yours faithfully,

(SD)

(Dinshaw H.C. Dinshaw)

Encl. Cheque.

171.

DEFENDANTS
DOCUMENT

EXHIBITS

D.14

EXHIBIT D.14 - LETTER - DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

Letter -
Dinshaw H.C.
Dinshaw to
Aden Port
Trust

27th February, 1961

27th February
1961

The Chairman,
Aden Port Trust,
Aden.

Dear Sir,

Plot of land comprised under lease
No. 3101

10

I have to refer you to the previous correspondence on the above subject ending with my letter to you dated the 16th May, 1960 and shall thank you to let me know how the matter stands. Your early reply in the matter will be greatly appreciated.

I have paid the rent reserved under the above lease up to 31st March, 1960. I had also tendered to you rent for the period from 1st April, 1960 to 31st March, 1961 which you returned to me stating that as the re-leasing of the plot of land at Hedjuff covered by the above lease is still under negotiations with your office, you had accepted rent up to the period 31st March, 1960 only.

20

Please note that I am still prepared to pay the rent of the said plot for the year 1st April, 1960 to 31st March, 1961 and I shall do so on hearing from you, and you could let me know when you complete the arrangements for releasing the plot to me.

30

Yours faithfully,

(SD)

(Dinshaw H.C. Dinshaw)

EXHIBITS

EXHIBIT D.15 - LETTER -
CHAIRMAN, ADEN PORT TRUST TO
DINSHAW H.C. DINSHAW

No. PWD/3/12557
PORT TRUST HEAD OFFICE,
Steamer Point,
Aden.

6th March, 1961.

DEFENDANTS
DOCUMENT

D.15

Letter -
Chairman,
Aden Port Trus
to Dinshaw
H.C. Dinshaw

6th March 1961

10 Dinshaw H.C. Dinshaw Esq. O.B.E.
c/o Cowasjee Dinshaw & Bros. (Aden) Ltd.
Steamer Point,
Aden.

Dear Sir,

Plot of land formerly under Lease
No. 3101

20 Thank you for your letter of the 27th
February, 1961. You will be aware that we
have accepted rent for this plot (area "C"
on the Drawing) up to the 31st March 1960 only
in the hope that we should be able to include
definite arrangements for leasing this plot
prior to the 31st March 1961. In view of
your request to develop the land for
residential/commercial purposes instead of
limiting it to commercial purposes only the
question of an appropriate premium was
referred to the Commissioner of Lands and he
has advised me that a price of Shs.250/-
30 per sq. yd. would be appropriate for a lease
expiring in the year 2008 (i.e. at the same
time as your lease for the garage premises).
In addition to the premium the usual rent
of 5 cents per sq. yd. per annum would be
payable. The exact area available for leasing
may be slightly less than that shown as area
"C" on the Drawing as Government are anxious
to preserve a right of way passed the Mosque
at the rear of the property. The difference
40 would however not be very great. Before I
approach Trustees in this matter I should be
grateful if you would let me know that this
premium is acceptable to you.

Yours faithfully, (SD) -

CHAIRMAN - ADEN PORT TRUST

DEFENDANTS
DOCUMENT

EXHIBITS

D.16

EXHIBIT D.16 - LETTER, DINSHAW
H.C. DINSHAW TO CHAIRMAN, ADEN
PORT TRUST

Letter -
Dinshaw H.C.
Dinshaw to
Chairman,
Aden Port
Trust

18th March, 1961

18th March
1961

The Chairman,
Aden Port Trust,
Steamer Point,
Aden.

Dear Sir,

10

I acknowledge receipt of your letter No. PWD/3/12357 dated the 6th instant on the above subject and I regret I cannot accept the price and the terms and conditions mentioned therein. I once more, without prejudice offer to buy at the price and terms and conditions mentioned in my letters dated 1st December 1959 and 4th May 1960.

If my above is not accepted by the Board of Trustees, I am advised to take legal proceedings for asserting my right to buy the land at the price mentioned in the Original Lease No. 3101 dated 9th January, 1932.

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You will kindly let me know your Board's final decision in the matter on or before 30th April 1961, failing which I will hand over papers to my Counsel to take necessary action.

As regards the rent for the year 1960/61 I refer you to my letter dated 20th October 1960, and your letter dated 17/18 November 1960 and my subsequent letters dated 29th November 1960 and 27th February 1961, and I once more hereby tender you the rent and send herewith a cheque for E.A. Shs. 52.87 being the rent for the year 1960/61 as your proposal made in your letter No. PWD/3/12357 dated 6th instant is not acceptable by me.

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Please acknowledge its receipt and oblige.

Yours faithfully,

(SD) -

(Dinshaw H.C. Dinshaw)

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EXHIBITS

EXHIBIT D.16A - LETTER -
CHAIRMAN, ADEN PORT TRUST TO
DINSHAW H.C. DINSHAW

No. PWD/3/13778

PORT TRUST HEAD OFFICE,
Steamer Point,
Aden.

27th March, 1961.

DEFENDANTS
DOCUMENT

D.16A

Letter,
Chairman,
Aden Port
Trust to
Dinshaw H.C.
Dinshaw

27th March 1961

10 Dinshaw H.C. Dinshaw Esq., O.B.E.
Cowasjee Dinshaw & Bros. (ADEN) Ltd.
Steamer Point,
Aden.

Dear Sir,

I refer to your letter of the 18th March, 1961, from which I note that you consider the price for the land previously under Lease No. 3101 to be too high. This price was fixed in consultation with the Commissioner of Lands and I am bound to say that I consider it a fair one in view of the use of which you now propose to put the plot. As indicated in my letter No. PWD/3/12957 of the 6th March 1961, I have not yet put this price to the Trustees for approval, but I could not recommend to them that we should dispose of this plot at a price any lower than that I have quoted. The price of Shs.100/- per sq. yd. which was accepted by you in your letter of the 1st December 1959, clearly referred to the use of the plot as a garage and showroom (my letter No. PWD/3/8505 of the 13th January 1958, refers). My letter No. PWD/3/1317 of the 10th May 1958 made it quite clear that if the plot were used for any other purpose than as a garage and showroom it would be necessary to revise the premium in conformity with the new purpose. You will, I am sure appreciate that the price to be charged for a plot of land depend on the use of which the Lessee is permitted to put the land.

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DEFENDANTS
DOCUMENT

D.16ALetter,
Chairman,
Aden Port
Trust to
Dinshaw H.C.
Dinshaw

27th March 1961
(Cont'd)

Your reversion to the idea of buying the land at the rate of Shs. 7/50 per sq. yd. cannot be accepted since your letters of the 1st December 1959, and 4th May 1960, clearly convey your admission that that basis was not the correct one. The only point in issue appears to me to be whether you accept the price of Shs. 250/- per sq. yd. for the plot for residential/commercial purpose. As I have said earlier, I consider this price to be a fair one in view of levels at which land is being sold today and in considering it you should ignore the fact that the land was previously leased to you for that purpose.

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If you are not clear at any of the points I have made I should be pleased to discuss them with you at any time.

Yours faithfully,

Sd. ? ? ?

20

For CHAIRMAN ADEN PORT TRUST

O N A P P E A L
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N:

TRUSTEES FOR THE PORT OF ADEN

Appellants

- and -

HORMUSJI K. HATHADARU and
MINOCHER RAJANSHAW BHAVNAGARI

Respondents

↑
- and -

CROSS APPEAL (CONSOLIDATED)

R E C O R D O F P R O C E E D I N G S

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