

Gondicalo Hypolito Constancio Noronha - - - - *Appellant*

v.

Damji Devji and others - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1953

Present at the Hearing:

EARL JOWITT
LORD OAKSEY
SIR LIONEL LEACH

[*Delivered by* LORD OAKSEY]

This is an appeal from an Order of the Court of Appeal for Eastern Africa dated the 22nd June, 1951, allowing an appeal by the respondents from an Order of the Supreme Court of Kenya dated the 12th December, 1950, whereby the respondents were ordered to give vacant possession to the appellant of certain premises belonging to him and situate in Nairobi and to pay mesne profits in respect of their wrongful occupation thereof.

The Court of Appeal allowed the appeal on the ground that, although proceedings were properly commenced in the Supreme Court of Kenya, the effect of the coming into operation during the course of the proceedings of the Increase of Rent (Restrictions) Ordinance, 1949 (hereinafter called "the 1949 Ordinance") was to deprive the said Court of any further jurisdiction to hear the case, but it expressed no view as to the appeal on the merits.

In the argument before their Lordships' Board the merits of the case have not been gone into but counsel for the appellant raised the following contentions; first that the 1949 Ordinance on its true construction did not deprive the Supreme Court of jurisdiction: second that if it did it was *ultra vires* of the Kenya Legislature: third that the 1949 Ordinance was not retrospective and had no application to suits begun in the Supreme Court before the 1949 Ordinance came into force: and fourth that the action was not an action under the Ordinance but was a Common Law action for possession of the premises against trespassers.

Their Lordships are of opinion that the appeal can and ought to be disposed of upon the first and third contentions, namely, that the 1949 Ordinance upon its true construction did not purport to deprive the Supreme Court of Jurisdiction in actions then pending.

The other questions are questions of importance and difficulty which in their Lordships' view it is undesirable to decide in a case in which they are not strictly necessary to the decision.

The action out of which this appeal arises was brought by the appellant on the 3rd November, 1948, in the Supreme Court of Kenya pursuant to the provisions of the 1940 Increase of Rent and Mortgage Interest (Restrictions) Ordinance at a time before the 1949 Ordinance had been passed. Under the 1940 Ordinance the Supreme Court of Kenya admittedly had jurisdiction to entertain the case. Section 35 of the 1949 Ordinance whilst repealing the 1940 Ordinance declared that the 1940 Ordinance continued in full force and effect until the commencement of the 1949 Ordinance.

By s. 13 (3) of the Interpretation and General Clauses Ordinance Kenya Cap. 1. it is provided:—

“(3) Where an Ordinance repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

* * * * *

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(e) affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been made.”

The provisions of this Ordinance are in accordance with the fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. (See Maxwell on Interpretation of Statutes 10th Ed. p. 213.)

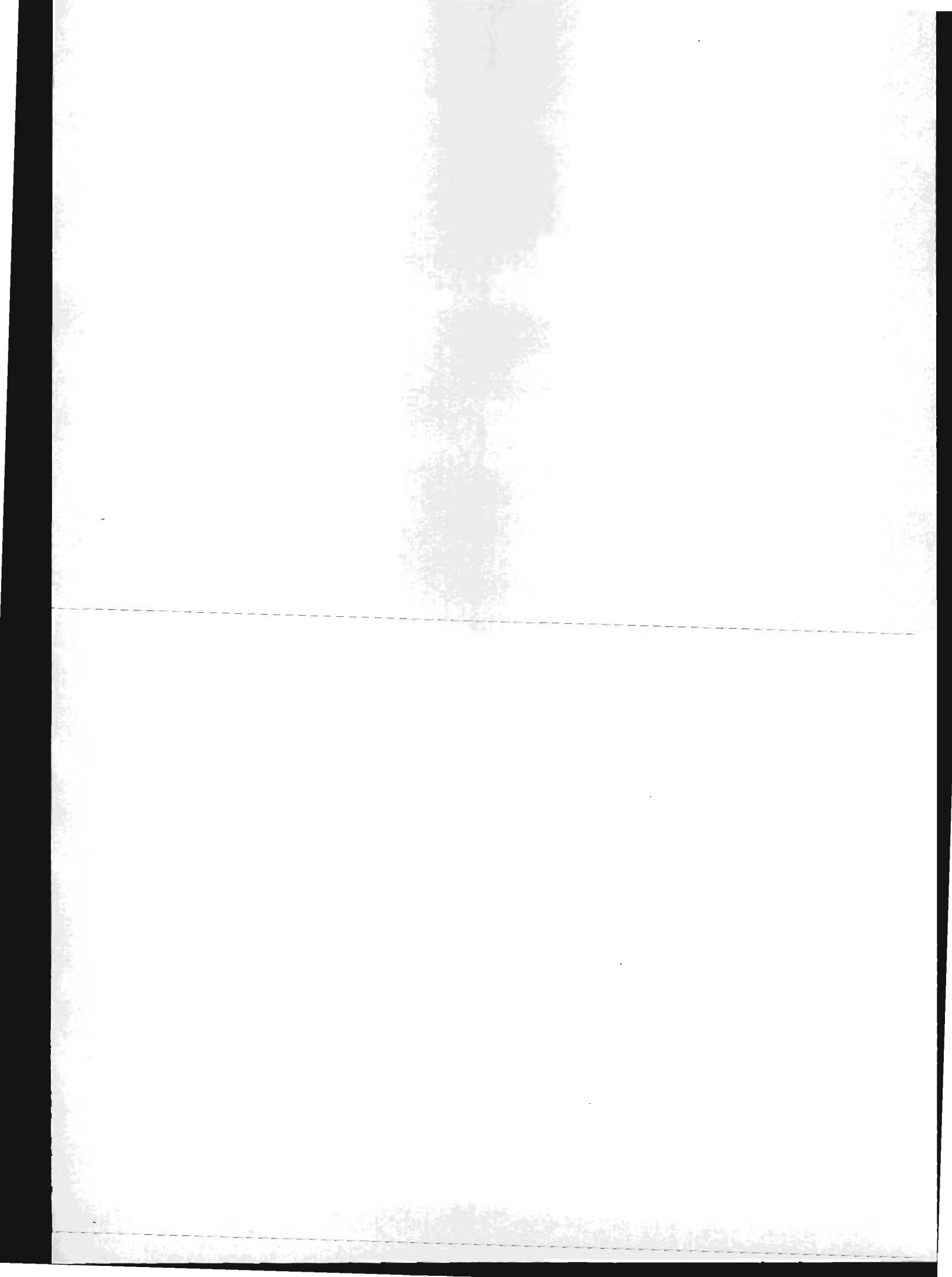
In their Lordships' opinion the appellant's action was a legal proceeding within the meaning of this section and is therefore unaffected by the 1949 Ordinance unless a contrary intention appears therein and no such contrary intention does appear.

The 1949 Ordinance contains no section which purports to affect pending proceedings and it is to be observed that there is no reason why it should since the substantive provisions of both Ordinances are practically identical (compare s. 8 of 1940 and s. 16 of 1949).

In spite therefore of the able and exhaustive judgment of Mr. Justice Lockhart-Smith in the Court of Appeal their Lordships are unable to agree that the 1949 Ordinance had any reference to pending actions and they are therefore of opinion that this appeal must be allowed.

Counsel for the respondents suggested that the case ought to be remitted to the Court of Appeal to pronounce upon the merits which were decided in favour of the appellant by Mr. C. P. Connell, acting Judge, but as counsel offered no grounds upon which he challenged the findings of the Trial Judge and the suggestion of a remittal was not mentioned in the reasons in the respondents' case their Lordships are unable to accede to it.

Their Lordships will therefore humbly advise Her Majesty that this appeal ought to be allowed and the judgment of the Supreme Court of Kenya of 12th December, 1950, restored. The respondents must pay the costs here and below.



In the Privy Council

GONDICALO HYPOLITO CONSTANCIO
NORONHA

v.

DAMJI DEVI AND OTHERS

DELIVERED BY LORD OAKSEY

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