

12 MAR 1960

IN THE PRIVY COUNCIL
25 RUSSELL SQUARE
LONDON, W.C.1.

3,1958

3,1959

No. 23 of 1957

55549

O N A P P E A L

FROM THE COURT OF APPEAL FOR EASTERN AFRICA AT
NAIROBI

B E T W E E N

FAZAL ILAHI ... Appellant

and

GATHUTHI HOTEL ... Respondents

10

C A S E FOR THE RESPONDENTS

RECORD

1. This is an Appeal from a Judgment of the Court of Appeal for Eastern Africa at Nairobi (Worley, P., Briggs, J.A. and Turner, J.A.) (1) allowing with costs the Respondents Appeal from a Judgment of Corrie, J. in the Supreme Court of Kenya at Nairobi dated the 31st July 1956 whereby it was ordered that the Respondents give immediate possession to the Appellant of certain business premises situated on Plot No. 232/1/1 Racecourse Road, Nairobi and pay the Appellant Shs.750/- and mesne profits at the rate of Shs.750/- per month from the 1st day of November 1955 to the 22nd day of November 1955 with interest thereon until realisation and that the Counterclaim for damages be dismissed and that the Respondents pay to the Appellant the costs of the suit, and (2) setting aside the said Judgment and the decree of Corrie, J. and dismissing the Appellant's claim with costs and on the Respondents' Counterclaim ordering specific performance by the Appellant to grant a lease on the following terms:-

p.52-59
inc.

p.25-30
inc.

p.59, 14

p.59, 14

"1. The Lease to be for one day less than the unexpired term which the Respondent at present holds from the Court.

2. The premises to be used for the business of

RECORD

an eating house and for no other purpose.

3. There is to be no assignment or sub-letting of the premises unless on a sale of the business and there should be a covenant that the premises will not be used for any purpose other than the purposes of this business to whomsoever it may from time to time belong.

4. Among the usual covenants to be inserted in the Lease one should be a covenant that the business must be conducted in a lawful and decent manner.

10

5. The Appellants to be allowed to surrender the Lease if they wish to discontinue the business and this to be effected by inserting in the Lease a provision that they may determine the Lease at the end of any quarter by giving twelve months notice to do so.

6. The rent to be Shs.750/- per month payable in arrears on the last day of each month.

And in the alternative it is ordered that if the consent of the Governor to the Lease which must be now sought by the Respondent in case it is necessary to do so, cannot be obtained, there shall be a further enquiry to be made as may be directed by this Honourable Court as to damages. The parties shall have liberty to apply generally and lastly it is ordered that the Plaintiff (Respondent) shall pay the Defendants' (Appellants) costs of the Counter-claim and the Respondent must pay the costs of this appeal."

20

2. The question for decision is whether on a true construction of the evidence the Respondents were at all material times the tenants of the Appellant of certain business premises known as "Akbari Hotel" at Plot 232/1/1 Racecourse Road, Nairobi holding the same on a monthly tenancy which had been duly determined by the Appellant in July 1953 and to which the Appellant was entitled to possession or whether the Respondents were lawfully in possession of the same under an oral agreement or under a written agreement made between the Respondents and the Appellant dated 30th day of June 1953 which agreement properly construed entitled the Respondents to be granted by the Appellant a lease of the said business premises for a term one day less than the length of the unexpired portion of a term of years held by the Appellant in the said business premises and to specific performance by the Appellant of a lease.

30

40

RECORD

3. In and before June 1953 the Appellant and his brother owned, occupied and ran the business of an eating house known as the "Akbari Hotel" at Plot 232/1/1, Racecourse Road, Nairobi (hereinafter called "the premises"). On 10th February 1954 the Appellant bought his said brother's share in the said premises. At the material time the Appellant was in fact a sub-lessee of the premises for the unexpired portion of a term of 90 years from 1st October 1907 he having become the owner of that unexpired portion by an assignment of that sub-lease made to him on 10th February 1954. In June 1953 Wachira s/o Gikonyo, Wamathai s/o Mume and Kiumbani s/o Gachara (hereinafter collectively called "the Respondents") negotiated with the Appellant to buy that eating house, in consequence of which:-
- (a) A written agreement was entered into on the 30th June 1953 between the Appellant as Vendor and the Respondents as Purchasers whose terms relevant to this Appeal are as follows:-
- 10
- 20
- 30
- 40
- p.18, 45
p.19, 1-3
p.19, 1-3

p.39, 30
p.43, 9
p.44, 19
p.50, 6-13
p.53, 43-45
p.18, 11-32
p.19, 4-10,
26-28
p.21, 4-31
p.22, 9-38
p.23, 1-26

p.62
p.63

"MEMORANDUM OF AGREEMENT made the 30th day of June One Thousand nine hundred and fifty three between Fazal Ilahi s/o Fazil Din of Nairobi in the Colony of Kenya merchant (hereinafter called the Vendor) of the one part and Wachira s/o Gikonyo, Wamathai s/o Mume and Kiumbani s/o Gachari all of Nairobi aforesaid African Traders (hereinafter called the Purchasers) of the other part WHEREAS the Vendor has been for some time past carrying on the business of an eating house on Plot No. 209/232/1/1, Racecourse Road, Nairobi aforesaid under the firm name or style of "Akbari Hotel" (hereinafter referred to as the "said business") and WHEREAS the Vendor has agreed with the Purchasers for the sale to them of the said business including goodwill, furniture fittings refrigerator etc., for the price of Shillings Twenty Thousand (Shs.20,000/-) NOW THIS AGREEMENT WITNESSETH as follows:-

1. The Vendor hereby agrees to sell and the Purchasers to purchase the said business for the price or sum of Shillings Twenty Thousand (Shs.20,000/-) which shall be apportioned in the manner following that is to say the sum of Shillings Eight Thousand (8,000/-) as to the goodwill of the said business and the balance of Shillings Twelve Thousand (Shs. 12,000/-) being the agreed value of the furniture fittings cooking cooking utensils and refrigerator etc., all passing by manual delivery.

2. The said price shall include:-

RECORD

- (a) the goodwill of the said business;
- (b) the furniture fittings cooking utensils and refrigerator etc., lying in the business premises;
- (c) the benefit of trade licence in respect of the said business which shall be transferred in favour of the Purchasers;
- (d) the benefit of the tenancy in respect of the said business which shall be transferred by the Vendor in favour of the Purchasers."

10

p. 21, 17 and 41. (b) The Respondents entered into possession of the premises on 1st July 1953 at an agreed rent of 300 Shillings per month: the premises were subject to Rent Control and that was the controlled rent.
p.22, 18. Before entering into possession no term was agreed orally but the Appellant told the Respondents that so long as they kept the premises clean and paid the rent and/or carried on the business of an eating house on the premises they could remain his tenants in possession.
p.10, 3 and 4.
p.19, 6 and 7.
p.19, 26, 27 and 28.
p.21, 12 and 13.

20

p.22, 1 and 2. (c) It was agreed between the Appellant and the Respondents that when the premises became free of rent control the rent would be increased.
p.22, 19.
p.21, 18-20.
p.22, 19 and 20.

(d) The Respondents have remained in possession of the premises ever since.

p.72, 8. (e) At the end of 1954 the premises became freed of rent control and the Appellant served a Notice to Quit dated 29th November 1954 on the Respondents and increased the rent to 750/- shillings per month.
p.18, 14-18.
p.21, 19.
p.22, 21.

30

p.64, 14-25. (f) On the 9th August 1955 the Resident Magistrate at Nairobi in Civil Case No. 3761 gave judgment for the Appellant in his claim for two months arrears of rent against the Respondents at 750/- shillings per month: in evidence in those proceedings Wachira s/o Gikonyo gave evidence that he had applied to the Landlord and Tenant Court for an assessment of rent on 20th July 1955, and because he wanted to continue the tenancy.
p.65, 66 and 67.
p.102, 33 and 34.
p.103, 12 and 13.

p.67, 25. (g) By an application dated 19th July 1955 the Respondents applied to the Resident Magistrates Court at Nairobi under Part II of the Landlord & Tenant (Shop & Hotels) Temporary Provisions
p.68.
p.68, 13.

40

Ordinance for a new tenancy: in their written application they alleged that their tenancy was for an unlimited period at a rent of shillings 300/-. Their application was dismissed without trial of any issues on the ground that it was made out of time.

p.72, 21
and 45.
p.73, 1-3.

10 (h) By a Notice dated 24th June 1955 served on the Respondents the Appellant purported to give the Respondents notice to quit the premises on 31st July 1955. The Respondents remained in possession.

p.73, 1.

4. This action is brought by the Appellant as Plaintiff to recover possession of the said business premises and for mesne profits and interest thereon; the Appellant's Plaint was dated 22nd November 1955 and the Respondents' Defence and Counterclaim was dated 28th January 1956.

p.1.
p.9, 25.

20 The Appellant in his Statement of Claim claimed possession alleging that he had let the said business premises to the Respondents on a monthly tenancy from the first to the last day of each calendar month on and from the 1st day of January 1955 at a monthly rent of 750/- shillings payable at the end of each month of tenancy and that having allegedly duly determined that tenancy by a Notice to Quit served on the Respondents on about the 24th June 1955 which determined the said tenancy at the end of July 1955 the Respondents had ever since remain in wrongful possession of the said premises to which the Appellant was entitled in possession.

p.1, 6.

p.1, 12.

p. 1, 20.

30 The Respondents by their Defence denied that they were monthly tenants but alleged that they were in possession under an oral agreement entered into between them and the Appellant on or about 30th June 1953 one of whose terms consisted of a promise by the Appellant to grant the Respondents a permanent lease of the said premises; they counterclaimed for specific performance by the Appellant of that promise and in the alternative for damages for breach of contract and in the alternative for such other relief as might seem justly expedient.

pp.9 and 10.

p.10, 4
and 5
p.11, 42.
pp.12 and
13.

40 In his Reply and Defence to Counterclaim the Appellant alleged inter alia that the issue raised as to whether or not the Respondents were monthly tenants from 1st January 1955 was an issue already twice resolved in the Appellant's favour in previous proceedings between the Appellant and the Respondents; that plea of estoppel per rem judicatam was specifically abandoned by the Appellant in the Court of Appeal in East Africa and is no longer open to the

p.14

p.14,6-25.

p.36, 17
and 30.
p.42, 17.
p.47, 12.

RECORD

Appellant in this Appeal.

- p.14, 30. In his Reply and Defence to Counterclaim the Appellant further alleged that the oral agreement relied upon by the Respondents was not enforceable being unwritten, unregistered and too vague and uncertain to be enforced; he alleged that the agreement for the sale of the said business premises was made in a written agreement made between the Appellant and the Respondents on the 30th June 1953 and that that agreement did not constitute a promise by the Appellant to grant the Respondents a permanent lease. The Appellant alleged that in about June or July 1953 he granted the Respondents a monthly tenancy of the said premises only. 10
- p.14, 39.
- p.15, 17.
- p.18, 33-35. 5. Evidence was given by the Appellant that he sold his business of an eating house to the Respondent in 1953 and he produced the said written agreement of 30th June 1953; he gave evidence that he let the Respondents into possession of the said premises on terms that they were to pay rent monthly, that there was no decision when that tenancy was to be determined but that he had promised the Respondents that they could remain his tenants in possession so long as they paid the rent and kept the said premises clean; he gave evidence that that tenancy was determined by a Notice to Quit expiring on the 31st December 1954 and that he made a fresh tenancy agreement with the Respondents from 1st January 1955 which was for a monthly tenancy of the said premises at shillings 750/- per month; he produced and proved a Notice to Quit allegedly determining that tenancy on 31st July 1955. It is not disputed that if the Respondents tenancy was a monthly one in 1955 with no express term as to its length or determination that that Notice was effective to determine it on 31st July 1955. The Appellant said that the goods referred to in the aforesaid written agreement of 30th June 1955 were worth shillings 12,000/-. 20 30 40
- p.18, 11.
- p.19, 4 and 5.
- p.19, 5-10.
- p.18, 14.
- p.18, 15.
- p.72
- p.18, 17.
- p.73.
- p.19, 23.
- p.18, 21.
- p.20, 10.
- p.21.
- p.21, 12.
- p.21, 13.
- P.21, 15.
6. Evidence was given by the Appellant and Kassim Ali that the rental value of the said premises in 1955 was shillings 1,500/- per month.
7. Evidence was given for the Respondents by Danson Gachari who gave evidence that of the sums of shillings 20,000/- paid by the Respondents under the said written agreement of 30th June 1953, 10,000/- was in consideration of the Appellant's promise to allow the Respondents to remain in possession of the said premises until they wanted to leave; he agreed that the agreement of the 30th June 1953 was the 50

agreement made in writing between the Appellant and the Respondents. He agreed that at that time he knew that the said premises were controlled by a Rent Restriction Ordinance and that the agreed rent of 300/- shillings per month was the controlled rent.

p.21, 39.
p.21, 39
and 40

10 8. Evidence was given for the Respondents by Wachira s/o Gikonyo a partner in the Respondents firm who gave evidence that of the consideration of 20,000 shillings paid by the Respondents to the Appellant under the written agreement of 30th June 1953, 10,000 shillings was for a deposit with the Appellant for the years the Respondents were to remain in the said premises and that the Respondents were to have the premises for ever. He agreed that at that time the Appellant warned him that he would increase the rent after control was abolished. He agreed that he had given evidence before the Resident Magistrate and that the Magistrates note of his evidence was correct; he denied that in July 1955 on his Application to the Resident Magistrate he intended to ask for a new lease but asserted that all he intended to ask for was a reduction in the rent.

p.22, 26.

p.22, 19.

p.22, 20.

p.23, 11
and 12

p.23, 20.

30 9. Corrie, J. gave judgment for the Appellant holding that the Respondents were estopped from asserting that they were entitled to a permanent tenancy by reason of their application to the Landlord and Tenant Court in case 333 of 1955; he found that the Respondents were tenants whose tenancy had been duly determined by a Notice to Quit dated to expire on 31st July 1955; he gave judgment for the Appellant for possession at once of the said premises and for mesne profits at the rate of 750/- shillings per month with interest thereon; he dismissed the Respondents' Counterclaim. Corrie, J. referred to the written agreement of 30th June 1953 in the following terms:-

p.25.
p.30, 3-14.

p.30, 20.
p.30.

p.28, 12.

40 "It is upon the wording of this agreement that the defendants mainly rely. They argue with some force that no one would agree to pay Shillings 8,000/- for the goodwill of a business if the tenancy of the premises in which it was carried on was merely a monthly tenancy determinable by notice at the end of any month. They maintain that the sum of Shillings 12,000/-, which under Clause 1 of the agreement was payable for the furniture, fittings etc. also covered "the benefit of the tenancy" mentioned in Clause 2(d). In evidence, the first defendant, D.K. Gachara, stated that the sum of 12,000/- was apportioned as follows:-

'Shillings 1,000/- for the tiles on the walls and the refrigerator.

RECORD

Shillings 1,000/- for utensils, plates and bowls.

Shillings 10,000/- to allow us to stay until we wanted to leave'.

That is to say, in more technical language, he alleges that the defendants were paying shillings 10,000/- as premium for the grant of a permanent lease.

It may well be that this was what the defendants understood to be the effect of the agreement, which they say was prepared by a solicitor's clerk, who explained its terms to them in Swahili. 10

The defendants, however, must accept the agreement as it stands: and it is difficult to read paragraph 2(d), which states that the tenancy in respect of the said business "shall be transferred by the Vendor in favour of the Purchasers" as meaning that a permanent tenancy was to be granted by the vendor to the purchasers.

The rights of the parties, however, are not to be determined entirely by this ill-drafted document." 20

He then decided the case in favour of the Appellant on the basis of estoppel per rem judicatam.

10. In argument before the Court of Appeal for East Africa it was conceded by the Appellant that:-

p.36, 17
and 30.
p.42, 17.
p.47, 12.

(a) He no longer relied upon the plea of estoppel raised in his Reply and Defence to Counterclaim.

p.39, 30.
p.43, 9.
p.44, 19.

(b) That the Appellant was the lessee of the said premises there being under a Crown Lease thereof dated 1st January 1906 for a term of 99 years a sub-lease thereof dated 21st December 1907 for a term of 90 years from 1st October 1907 which said sub-lease was assigned to the Appellant on the 10th February 1954. 30

p.31.

11. On the 10th April 1957 the Respondents having appealed by Notice of Appeal filed on 14th August 1956 to the Court of Appeal for East Africa at Nairobi the Court of Appeal (Worley, P., Briggs, J.A. and Turner, J.A.) gave judgment allowing the Respondents appeal with costs; Briggs, J.A. gave judgment with which Worley, P. and Turner, J.A. agreed. Briggs, J.A. in his judgment referred to the terms of the said written agreement of 30th June 1953 and said inter alia with regard to the issues raised in the pleadings:-

p.52.

40

p.52.

p.53.

10

"The Appellants' defence and counterclaim is a rambling and inconsequential document but the gist of it is that they claim to be entitled to occupy the premises for an unlimited period and counterclaim for specific performance of an agreement to grant a permanent lease and alternatively for damages. Instead of basing their claim on the written agreement they alleged an elaborate oral agreement which cannot have been in fact anything but negotiations for the written agreement and all evidence of the supposed oral agreement should in my opinion have been excluded under section 91 of the Indian Evidence Act. Fortunately for the appellants the Respondent expressly relied on this written agreement in his Reply and Defence to Counterclaim and the right to receive a lease under the provisions of the written agreement is sufficiently put in issue".

20

"The question is therefore purely one of construction of the agreement in the light of the surrounding circumstances. I start from the point that it is highly improbable that the chattels used in the business would be worth Shs. 12,000/- or anything like it, and that the evidence indicates that they were probably worth more than Shs. 2,000/- at most. I note next that the goodwill of an eating-house of this kind could not survive a removal of premises, unless the distance were very short, and I think the appellants cannot have intended to pay a large sum for goodwill unless they were going to have some security of tenure in the premises they took over. The respondent admitted in evidence that he had agreed that, if the appellants duly paid the rent and "kept the place clean", (by which I understand him to mean 'observed the municipal regulations for eating houses') he would continue the tenancy. These factors all indicate the inherent improbability of a mere monthly tenancy. Mr. Salter suggests that the appellants would have been sufficiently protected by the increase of Rent (Restriction) Ordinances but it was already universally known in June 1953 that business premises would very soon be removed from the ambit of the Ordinance. That the appellants themselves were well aware of this appears from the express agreement that the rent might then be raised.

30

40

50

Looking at the words of the agreement with these points in mind, one sees that the respondent undertook to transfer "the benefit of the tenancy in respect of the said business". The words are unexpected in their context of fact for the respondent was not, at least in the colloquial sense, a "tenant". Yet "the tenancy" which he agreed to transfer must mean his own

RECORD

tenancy. It was not merely "a tenancy". It seems to me that there is only one possible interpretation, if the words are to have a grammatical meaning. The respondent was agreeing to transfer the remainder of his interest under the Crown lease in the premises in question. This would not be a "permanent lease" as suggested by the appellants, and, for myself, I am by no means convinced that a permanent lease would be capable of registration under Kenya law. In this case there is an unexpired term of something under forty years, and a lease for one day less than that would be a perfectly ordinary transaction. It would of course be subject to the usual covenants, and, in addition, to any covenants which may appear from the terms of the agreement to have been expressly or impliedly intended by the parties to be embodied in the lease. These require some consideration.

10

I think the tenancy was to be transferred for the purpose of this business of an eating-house, and for no other purpose. I think no assignment or sub-letting should be permitted unless on a sale of this business, and that there should be a covenant that the premises will not be used for any purpose other than the purposes of this business - to whomsoever it may from time to time belong. The usual covenants will provide that the business must be conducted in a lawful and decent manner. I think next that there is a clear intention to allow the appellants to surrender the lease if they wish to discontinue the business. I would suggest that a fair effect could be given to that intention by a provision that they may determine the lease at the end of any quarter by giving twelve months' notice to do so. The amount of the rent now causes no difficulty: it will be Shs. 750/- per month, payable as it is now paid.

20

30

Mr. Salter raised various objections to this interpretation of the agreement. He says first that, if a consideration was given for the creation of the tenancy, it was an unlawful premium under section 18 of the Increase of Rent (Restriction) Ordinance; but if, as I think, the term is to be nearly forty years a premium could lawfully be paid under the provision of ss.(3) of that section. He says next that the lease could not be valid under the Crown Lands Ordinance without the consent of the Governor. That is true; but it is the duty of the respondent, having made an open contract in this respect, to obtain that consent. If he cannot do so, he will have to pay damages in lieu, and I would order an enquiry as to those damages, if the necessity should arise. Mr. Salter's principal argument, however, was that the agreement is so vague and uncertain in its terms as to be

40

50

unenforceable. He relies on Lace v. Chandler (1944)
1 All E.R. 305. In that case the document which fell
to be considered was itself intended to operate as a
lease. I think different considerations apply to an
executory agreement. If the Court can fairly find
room from an executory agreement the intention of the
parties as to all essential terms of the proposed
lease, that is sufficient. It is also to be noted that
the event which was to determine the "lease" in Lace
10 v. Chandler was one outside the control of the parties
and the term of the lease was therefore wholly
uncertain.

Mr. Salter was constrained to admit on the
evidence that the parties had contemplated a reasonably
extended term, but he said that its actual extent could
not be ascertained from the agreement. The respondent
is grantor in this case, and I think the agreement
should be construed, if necessary, contra proferentem.
20 If the words "the tenancy in respect of the business"
were too wide to express the respondent's true
intention, he should have used other words.
Construing them so as to make them, if possible,
effective rather than ineffective, I think they refer
to a term of one day less than the unexpired period
of the Crown lease.

I give full weight to the fact that the
respondent has consistently alleged that there is only
a monthly tenancy, and also to the fact that the
appellants, in that very inept document, their
30 application to the Magistrate's Court, stated that
their tenancy had been determined. I note also that
they were advised to base their claim primarily on an
alleged oral agreement instead of the obviously
valid written one. In spite of these matters I think
the correct interpretation of the written agreement
is as I have described it. I think that the agreement,
though admittedly somewhat obscure, is not too
uncertain to be enforced.

I would accordingly allow this appeal and set
40 aside the judgment and decree of the Supreme Court. I
would substitute a decree dismissing the plaintiff's
claim with costs and on the counterclaim ordering
specific performance of the agreement to grant a
lease, the lease to be on the lines which I have
described above: in the alternative, if the consent
of the Governor to the lease cannot be obtained,
there should be an inquiry as to damages. The
plaintiff should pay the defendants' costs of the
counterclaim, and the parties should have liberty to
50 apply. Both parties have stated that they expect to
be able to settle the draft lease by agreement, and
that it is not necessary at this stage to refer it to

RECORD

conveyancing counsel of the Court. The respondent must pay the costs of this appeal."

p.61.

12. On the 30th day of September 1957 the Court of Appeal for Eastern Africa granted the Appellant final leave to appeal to Her Majesty in Council.

13. The Respondents submit that this Appeal should be dismissed with costs for the following amongst other

R E A S O N S

1. BECAUSE as the Court of Appeal have rightly held on a true construction of the written agreement of 30th June 1953 the Respondents were never monthly tenants but were in possession under the said agreement and entitled to specific performance by the Appellant of a lease in the terms of the Judgment in the Court of Appeal. 10

2. BECAUSE as the Court of Appeal have rightly held the Appellant is not and was never in fact entitled to possession of the premises.

3. BECAUSE the Judgments of the Court of Appeal were right. 20

4. BECAUSE in any event if the tenancy of the Respondents was oral one of its terms was that the Respondents could remain in occupation as tenants so long as they paid their rent and kept the premises clean and there being no allegation by the Appellant that the Respondents had failed at the material time namely in June 1955 to pay their rent or to so keep clean the Appellant's Notice to Quit of June 1955 was ineffective to determine the Respondents' said tenancy and the Appellant was not entitled to possession at the date of the issue of his proceedings herein. 30

5. BECAUSE on a true construction of the Respondents' tenancy if oral it was not determinable by the Appellant so long as the Respondents carried on business in the said premises and/or paid their rent and kept the said premises clean, as they have, the Respondents having entered into the written agreement of 30th June 1953 and having entered into possession and having agreed to pay rent and having paid rent all on the faith of the Appellant's promise that they could remain his tenants so long as they so carried on their business and so kept clean and so paid. In the premises the Appellant is estopped 40

from alleging that he duly determined the said tenancy in the manner alleged.

JAMES MISKIN

No. 23 of 1957

IN THE PRIVY COUNCIL

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

B E T W E E N
FAZAL ILAHI ... Appellant
 - and -
GATHUTHI HOTEL ... Respondents
 ...

CASE FOR THE RESPONDENTS

WRAY SMITH & CO.,
3/4, Adelaide Street,
London, W.C.2.
Respondents' Solicitors.