A

1. HIRA BHAI PATEL
2. RAMESH PATEL

v.

B

1. BRYAN CHARLES WATSON
2. DENIS ALLAN MCELRATH
3. DAVID WILLIAM ZUNDEL

[COURT OF APPEAL—Speight, V. P., Mishra, J. A., O'Regan, J. A.]

C

Civil Jurisdiction

(Landlord and Tenant—Summons for possession where landlord is lessor, production of lease is sufficient to prove title—time allowed in Notice to Quit, having regard to clause in lease and Land Transfer Act s. 169 sufficient. Refusal of adjournment a matter of discretion—no evidence that Court had acted on wrong principles.)

D

Hearing: 23 September, 1987.
Judgment: 25 September, 1987.

G. P. Shankar for the Appellants
M. S. Sahu Khan for the Respondents.

E

Appeal by Hira Patel and Ramesh Patel (Appellants) against an order made by the Supreme Court for possession of certain land in favour of (Bryan Charles Watson and Others) (the Respondents) following a summons issued by them pursuant to s. 169 of the Land Transfer Act (the Act).

F When originally called on 30 June, 1987 in Chambers before Dyke, J. the second-named appellant (the first-named appellant had died) appeared. The matter was adjourned to a date then later fixed viz the 4 February, 1987. On that day, Counsel appeared on both sides. An application for adjournment on behalf of the appellant was sought and refused. However, respondents' counsel indicated he did not mind if appellants gave evidence. Counsel for appellant said he was ready to do so: but when the matter was called again the Judge was informed that appellant had G decided not to give evidence. Another application for adjournment was refused. Submissions were made. The learned trial Judge said the appellant had not shown cause. Defendant then indicated his intention to appeal.

On appeal Counsel who appeared for appellant argued that at the hearing—

1. Respondents had not proved title.
H 2. There was no proof as to term of the tenancy, hence the appellants may have been entitled to a period in the Notice to Quit longer than 14 days as the Notice had specified.
3. Refusal of the adjournment deprived the appellant of an opportunity to test these allegations.

Held:

1. The summons was brought in the names of respondents as lessors. The respondents had produced the lease, which had a power to re-enter. Accordingly, a sufficient title had been proved.

2. The lease showed the usual clause for payment—of rent half yearly.

3. Rates were an arrears for 7 years and rent for 2 years.

4. By Clause 3(5) of the lease. 'essors were empowered to re-enter if rent was in arrears for 21 days or any other breach committed s. 169*(b)* read:

> "The following persons may summon any person in possession of land to appear before a Judge in Chambers to show cause why the person summoned should not give up possession to the applicant.
>
> *(a)* . . . . . .
>
> *(b)* A lessor with power to re-enter where the lease or tenant is in arrear for such period as may be provided in the lease and. in the absence of any such provision therein. when the lessee or tenant is in arrear for one month. . . and whether or not any previous demand had been made for rent."

Consequently the powers in section 169 and the consequences in section 172 arose without any notice being required.

It was further noted that refusal of an adjournment was a discretionary matter and cannot be a ground for a succesful appeal unless wrong principles have been exercised. In this case any matter which could have met the respondents' claims under s. 169*(b)* could have been simply stated. and without substantial preparation. But the appellants refused the opportunity to give evidence.

No ground for questioning the Order of the Supreme Court had been raised.

Appeal dismissed with costs.

Judgment of the Court

SPEIGHT. V. P.

The Respondents, Executors of the estate of a deceased landowner issued a summons for possession pursuant to section 169 of the Land Transfer Act against the two appellants also executors in a deceased estate. One of the appellants was deceased, but the other, the second named appellant appeared in Chambers at Supreme Court Lautoka when the summons to show cause was called before Dyke J. on 30th January 1987. Although there is no affidavit of service, he obviously must have had the papers prior to that.

The record shows that Dyke J. adjourned the matter to a date to be fixed by the Deputy Registrar and advised the (then) defendant to file an affidavit and/or get a lawyer.

The Deputy Registrar fixed 4th February for hearing.

On 4th February, again in chambers. Dr Sahu Khan appeared once again for the
A applicant and Mr Khan for the defendant. An adjournment for a further date was sought but successfully opposed by Dr Sahu Khan. However he said he had no objection to defendant (who was present) giving evidence and Mr Khan said his client was willing to do that.

The matter was stood down and called on later in the morning. Mr Khan again asked for an adjournment on the ground that he had not had time to prepare the
B case. Asked by the Judge he said, contrary to the previous intimation, that his client was not going to give evidence. Adjournment was refused.

Brief submissions were made on the facts and the learned Judge made an order for possession, saying that the defendant had not shown cause—the lease had expired; the rent was in arrears; notice to quit had been given; and the defendant had no right to possession.

C Defendant (now the appellant) indicated his intention to appeal to this court and a stay of execution was granted.

Mr G. P. Shankar who appeared before us had not been responsible for drafting the grounds of appeal, and as he came into the case at a very late hour, we allowed him a deal of liberty in advancing his case.

D He argued a number of points which were hardly in accordance with the written grounds but the interests of justice require us to deal with them now for it is desirable that the appeal be disposed of one way or the other.

One of the grounds of appeal filed had been that counsel at the Chambers hearing had been refused an adjournment and Mr Shankar has adopted that by demonstrating ways in which, as he claimed, counsel may have been able to help had time
E been given.

First he submitted that the respondents had not proved certificate of title. That is true but as Dr Sahu Khan demonstrated the summons was brought in the name of the respondents as lessors with power to re-enter, (section 169*(b)*) and the lease was produced—that was sufficient.

Mr Shankar then challenged the notice to quit which had been given—he sub-
F mitted that there was no proof as to the term of the tenancy, and hence his client might have been entitled to one month notice or some longer period under the Property Law Act instead of approximately 14 days as was given. Examination of the lease however shows:—

(a) the usual clauses for payment of rent half yearly; and
(b) a covenant by the lessee to pay all rates and taxes.

G An affidavit by one of the respondents showed that rates had been in arrears for seven years and rent for two years.

Section 169*(b)* reads:—

"The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned
H should not give up possession to the applicant:—

(a) . . . . . .
(b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provi-

sion therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent:"

Clause 3(5) of the lease gave the lessors power to re-enter if rent was in arrears for more than 21 days or any other breach committed. Such power was expressed as being exerciseable with or without notice so that the powers in section 169 and the consequences in section 172 arose without any notice being required. Again the point raised does not avail.

Finally it was submitted that the refusal of adjournment deprived the appellant of an opportunity of testing the foregoing allegations. Refusal of adjournment is a discretionary matter and cannot be successfully appealed against unless wrong principles have been taken into account. That is not so here, for the matter which could have challenged the respondents' claimed rights under section 169*(b)* could have been simply stated if any valid challenge existed. Substantial preparation would have been unnecessary for appellant must have known the position between himself and the lessors, but he declined to give evidence which could quickly have demonstrated the existence of bona fide challenge.

No grounds for questioning the order have been made out. Appeal is dismissed with costs to Respondents to be taxed if not agreed.

Appeal dismissed.