

G.L.G.2

RECORD

2. The main questions for determination on this appeal are:-

(A) Whether in the circumstances of the dissolution of the former partnership between the Appellant and the Respondent and the subsequent establishment of a similar but new business by the Appellant it was lawful or reasonable to hold (as the Courts below have done) that the new business was a continuance of the former partnership business with assets belonging to that business, and if so -

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(B) Whether, in the absence of any enquiry directed particularly to ascertain the true apportionment of profits to capital of each of the two partners in the subsequent business it was lawful or reasonable to hold (as the Courts below have done) that the profits of the subsequent business are divisible between the partners on the basis of the former partnership agreement between them, i.e. equally.

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3. The law of England with respect to partnerships is generally applicable in Ceylon, having been introduced into Ceylon by Section 3 of the Civil Law Ordinance (C.79) (1956 Reprint); and, accordingly, the provisions of the Partnership Act, 1890 (53 & 54 Vict. C. 39) regulate generally all partnership transactions and relationships in Ceylon today.

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4. The facts are as follows :-

Ex. P1,
p.111
p.111, 11.
9-18

By Partnership Agreement No. 285, dated the 30th November, 1942, the parties to this appeal agreed to continue to carry on in partnership the business of the sole agency of Kurunegala District for the sale of Caltex Petrol and Kerosene oil.

The following Clauses of the said Agreement are relevant to this appeal:-

p.111

"1. The partnership shall be deemed to have commenced on the first day of May One thousand Nine hundred and Forty-two and shall continue until determined by three months' notice to be given by one partner to the other and sent by Registered Post.

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"3. The capital of the firm shall be Rupees Four thousand only (Rs.4,000) which sum has been already contributed by the said partners in equal shares and the profits and losses of the business shall also be divided between the partners in equal shares.

10 "6. The management of the business shall be in the hands of Mr. R.W. Pathirana and he shall be entitled to an allowance of Rs.50/- from the date of the commencement of the said business as long as he shall hold such office. p.112

"7. Proper accounts shall be kept of all partnership transactions and on the thirty-first of March every year or as soon as afterwards as possible a balance sheet shall be made out showing the assets and liabilities of the firm and what belongs and is due to each partner for capital and share of profits. p.112

20 "13. Upon the determination of the partnership the assets of the partnership shall be realised and applied first in payment of the debts and liabilities of the firm and secondly in paying to each partner the amount of his capital in the said business and the surplus (if any) shall be divided between the partners or their respective representatives in equal shares." p.112

30 5. The sole business of the partnership was to carry on the sale, at Kurunegala, of the petroleum and petroleum products of Caltex Ceylon Ltd (hereinafter called "the Company") subject to the terms and conditions contained in agreements which the partnership and the Company had previously entered into.

Of the said agreements, attention is here drawn particularly to the Service Station License Agreement, dated the 20th April, 1942 (Ex. D 1), from an examination of which the following facts will be apparent:- Ex D 1
p.105

40 (A) The Company agreed to place the two partners in charge of its Service Station at Kurunegala inclusive of the site, buildings, petrol pumps, storage tanks, etc. p.105, 11.
29-35

(B) The Company granted no more than a license to the partners (referred to as "the Licensees" in the agreement) p.105, 1.
35 to
p.106,
1.5

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"to resort to and have temporary use of the Service Station" during the currency of certain other Agreements (the "Equipment Loan Agreement" and the "Petrol Dealer Agreement") for the sole purpose of carrying on business as retailers of the Company's products at the station, subject, inter alia, to the conditions contained in those Agreements and also to the conditions contained in the following Clauses of the said Service Station Agreement:-

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p.106, 11.
7-12

"1. The Service Station shall at all times during the continuance of this License remain the absolute property and in sole possession of the Company and no part of the same shall be removed by the Licensees nor shall the position of any part thereof be changed or altered without the previous written consent of the Company

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p.106, 11.
21-28

"2. The Licensees shall at all times sell the Company's Petroleum Products only The Licensees shall, however, be at liberty to stock and market tyres and other non-petroleum motor accessories and equipment subject to the previous consent in writing of the Company."

p.106

"3. The Licensees shall keep proper books of account of all sales, products and equipment which shall be available for inspection by representatives of the Company."

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p.106

"5. The Licensees agree to provide sufficient staff to transact efficiently all the business of the Company at the Service Station in accordance with the Company's requirements....."

p.107

"6. The Licensees agree to maintain the Company's property, equipment, furniture, fixtures and stocks in good condition....."

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p.107 UNIVERSITY OF LONDON 12
INSTITUTE OF ADVANCED
LEGAL STUDIES
25 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

The Licensees agree not to sub-let, charge or part with the possession of the Service Station without first obtaining the Company's consent in writing."

4.

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10 "13. The Licensees agree to pay to the Company a monthly rental of Rupee One (Re. 1) effective May 1st, 1942, for the use of the Service Station ... and shall further pay and discharge all rates, taxes and other impositions provided that the Company will pay the actual license fees payable to the Government for getting the necessary storage license"

6. Other relevant Clauses of the said Service Station License Agreement were as follows :-

20 "16. In the event of the Licensees committing or permitting any breach of the terms of this agreement, the Company shall be entitled to terminate the agreement without any period of notice, in which event the Licensees shall surrender and give possession of the Station to the Company and shall deliver up to the Company all of the Company's equipment, property, including any books, records ... etc."

30 "17. Notwithstanding the terms of Clause 19 hereto, the Company may at any time and without assigning any reason terminate this Agreement by giving one day's notice in writing to the Licensees and the Licensees may terminate this Agreement on giving one month's notice in writing to the Company."

40 "19. This Agreement shall automatically cease and be determined immediately on the termination by either party thereto of the said Equipment Loan and/or Petrol Dealer Agreements from any cause whatsoever and this Agreement shall be absolutely dependent upon and co-terminable with the said Equipment Loan Agreement and/or Petrol Dealer Agreement."

"22. This Agreement shall not be construed as creating any right or tenancy in favour of the Licensees in respect of the Service Station aforesaid and

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the possession of the Service Station shall all along vest in the Company.
..... "

7. In the carrying on of the partnership business from 1942 to 1948 differences arose between the two partners and this eventually led to the institution of proceedings (hereinafter also referred to as "the previous proceedings") by the present Respondent against the Appellant in the District Court of Kurunegala (D.C. Kurunegala Case No. 5029). 10

Ex. P2
p.131
p.133, 1.20
to p.134,
1.12

In his plaint, (Ex. P2) in the said previous proceedings, the plaintiff, who did not seek a dissolution of the partnership, prayed for (1) a declaration that he was entitled to a sum of Rs. 18,000/- as his share of the nett profits of the partnership business for the three years ending the 31st March, 1948, or, alternatively, that the Court take an accounting of the transactions of the said business during the said three years; (2) an injunction against the defendant restraining him from (a) preventing the plaintiff from exercising his rights as a partner, and (b) depositing partnership funds into his personal and private banking accounts; (3) an injunction ordering the defendant to (a) pay into the partnership account funds deposited in his personal and private accounts, (b) produce all account books in Court, and (c) produce in Court balance sheets and certified accounts of the partnership for the said three years. 20 30

Ex.P7
pp.134-135
p.135,
11. 4-5

8. Faced with the action and convinced that the partnership business could not be carried on harmoniously and profitably, the defendant (present Appellant) served upon the plaintiff, on the 10th September, 1948, three months' notice of the termination of the partnership (Ex. P7) as provided for by the said Partnership Agreement No. 285 (see Clause 1 of the said Agreement in paragraph 4 hereof) and without prejudice to either side in the action which was then pending. 40

Ex. P3,
p.135

Subsequently, by his Answer, dated the 21st September, 1948, (Ex P3) he denied material averments in the plaint and prayed for a dismissal of the action.

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10 And, on the same day, he wrote to the Company (Ex D13) informing them of his dissatisfaction with the plaintiff's methods of performing his partnership obligations, of the notice terminating the partnership which he had given to the plaintiff, and of the fact that he was now carrying on the business with his own capital. He therefore suggested that the Company should, from the 1st October, 1948, alter the name and style of the Agency from the partnership name and style of "R.W. and A. Pathirana" to "R.W. Pathirana", which name was his own.

Ex.D13
pp.137-
138
p.138, 11.
1-2
p.137,
11.35-36
p.138, 11.
5-9

9. In their reply to the defendant, dated the 23rd September, 1948, (Ex. D8) the Company stated that as from the 1st October, 1948, they would enter into a new Kerosene Agreement with the defendant to replace the old Agreement with the partnership; and as to Petrol, that they would enter into a new Agreement with the defendant within a month.

Ex. D8,
p.138

20 On the same date (the 23rd September, 1948) the Company sent to the partnership a notification (Ex. D9) in the following terms:-

Ex D9,
p.139

"Petrol Dealer Agreement
Cancellation

"In accordance with Clause 22 of the Petrol Agreement No. 8 we hereby serve one months' notice of its termination."

30 The relevant portion of the said Clause 22 presumably the same as in Petrol Dealer Agreement No. 8 of the 29th October, 1946 (see pages 120 to 127 of the Record) was as follows :-

"This Agreement may be terminated by either party on giving the other party one month's previous notice in writing to that effect, and the Company is under no obligation to assign any reason whatsoever for terminating this Agreement."

pp.123-
124

40 Further, on the same date, the Company (1) notified the partnership (Ex D10) that they were invoking Clause 36 of Kerosene Agency Agreement No. 16 which they would regard as being terminated as of 1st October, 1948; and (2) entered into a fresh Kerosene Agency Agreement (Ex D15) with the Defendant.

Ex D10
p.139

Ex D15
pp.140-154

RECORD

It is conveniently stated here that in these proceedings the Company's right to terminate the said Agreements with the partnership and to enter into fresh Agreements with the defendant (the present Appellant) is not disputed.

Ex P5 p.167
Ex P6 p.168

10. The said previous proceedings (Case No. 5029) were concluded on the 12th November, 1954, when, by the Judgment (Ex P5) and Decree (Ex P6) of the District Court of that date, the defendant was ordered to pay to the plaintiff the sum of Rs.10,550, as his share of the profits (less his withdrawals) for the three years ending the 31st March, 1948.

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11. While the previous proceedings were still pending, the Plaintiff (the present Respondent) instituted

The Present Proceedings

p.16 in the same District Court of Kurunegala. In his Plaint, dated the 25th August, 1949, he referred to: the said deed of partnership (see paragraph 4 hereof); the previous proceedings (Case No. 5029); the said new Agreements with the Company which, he said, the Defendant had wrongfully and fraudulently obtained; and to the new business which the Defendant had carried on in respect of the profits of which he was liable to account to the dissolved partnership. He prayed

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p.17, 11. (a) that accounts of the partnership be taken by the Court; (b) for realisation of partnership assets, inclusive of goodwill; (c) that payment into Court be ordered by each party of any balance found due from him upon the partnership account; (d) for payment and discharge of partnership debts and liabilities; and (e) for division of the balance between the Plaintiff and Defendant.

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pp.24-27 12. By his Amended Answer, dated the 15th October, 1957, the Defendant (the present Appellant) denied all material averments in the Plaint. He stated, also, that his partnership with the Plaintiff -

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"Stood dissolved and abrogated as from the 10th December, 1948, by:-

RECORD
p.24, 1.32 to
p.25, 1.12

"(a) Three months' notice given on the 10th September, 1948, as provided for by the Partnership Agreement

"(b) Plaintiff bringing action No. 5029 of this Court on the 18th August, 1948.

10 "(c) Circumstances which arose between the Plaintiff and the Defendant which made it impossible to carry on the said partnership and it was just and equitable that the said partnership be dissolved as from the 3rd July, 1948, and/or the 1st August, 1948, or soon thereafter.

20 "(d) the said firm Messrs. Caltex Ceylon Ltd., not being prepared, ready and willing to continue the aforesaid agency and or the dealership of their petrol, petroleum products, Kerosene Oil, etc., at their depot at Esplanade Road, Kurunegala, to the said partnership after the Plaintiff had tried by injunction to restrain and prevent the Defendant from selling to the public petrol, ... etc., of the said Company at their Depot with their own equipment while the said partnership was existing."

30 13. Further, in his said Amended Answer, the Defendant denied that he had fraudulently or wrongfully obtained in his own name any agency and/or dealer rights from the Company or that he had carried on any business on behalf of the partnership after its dissolution or that he was under any liability to account to the Plaintiff in respect of the profits of his subsequent separate business. He referred to the lawful termination of the Agreements between the Company and the partnership and to his open and lawful negotiations with the Company which had led to his being granted the Agreements under which his subsequent business was carried on.

p.25, 11.
13-21

p.25, 1.22 to
p.26, 1.17

40 As to the profits made between the 31st March, 1948 (up to which date the Plaintiff had, in the previous proceedings, received all sums due to him) and the 10th December, 1948 (on which date the partnership was dissolved) he said that if he was

p.27, 11.1-9

RECORD

entitled to any sum at all the Plaintiff was entitled to receive no more than Rs.280/- being a half share of the profits made during the said period, in accordance with the accounts he (the Defendant) had filed.

pp.27-29,
51

14. Of the several Issues framed at the trial, those relevant to this appeal were answered thus by the learned District Judge:-

p.27, 11.
33-35

"1. The partnership being admitted, what amount is due to the Plaintiff as his share of the profits of the business from 1.4.45 to 10.12.48?" 10

p.70, 11.
40-43

Answer: "The amount due up to March, 1948, was fixed by the decrec in the earlier case at Rs.10,550/-. The profits due to the end of October was Rs.3,600/-. The profits up to the end of 1948 would be the above amount, plus another Rs.1,000".

p.28, 11.
1-3

"2. What amount is due to the Plaintiff by way of his share of the assets and goodwill of the partnership as at the date of dissolution?" 20

p.71, 11.
1-3

Answer: "Barring the amount decreed in the earlier case the amount due to the Plaintiff at the date of the dissolution of the partnership would be Rs.2,300/-."

p.28, 11.
4-6

"3. (1) Did the Defendant obtain an agency for the sale of the same goods (a) from the same firm, viz., Caltex Ltd, (b) while the partnership was still subsisting?

p.51, 11.
16-17

"(2) Did the Defendant in obtaining the said agency act fraudulently?" 30

p.71, 11.
4-6

Answer: in each case, "Yes".

p.28, 11.
7-9

"4. Did the Defendant in carrying on the agency make use of

(a) the capital

(b) the goodwill, of the partnership?"

p.71, 11.
7-8

Answer: to both (a) and (b): "Yes".

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"5. If Issues 3 and 4 are answered in the affirmative is the Defendant liable to account to the Plaintiff until assets are distributed between the parties?"

p.28, 11.
10-12

Answer: "The Defendant is liable to account to the Plaintiff until the assets are distributed between the parties."

p.71, 11.
9-10

"6. If so what sum is due to the Plaintiff by way of profits -

p.28, 11.
13-16

10 (a) up to date hereof?

(b) as annual profits up to date of the division of the assets?"

Answer: "As the account books are not produced I assess that the Plaintiff is entitled to Rs.2,000/- per year as his share of the profits from the business up to date of dissolution."

p.71, 11.
11-13

15. Other relevant Issues were answered thus by the learned District Judge:-

"7. Was the partnership dissolved -

p.28, 11.
18-24

20 "(a) with due notice given on the 10th September 1948, by the Defendant?

"(b) by certain circumstances which arose between the Plaintiff and the Defendant from about July, 1948?

"(c) by the Plaintiff bringing action No. 5029 of this Court?

"(d) by Messrs. Caltex & Co not being prepared and willing to continue the agency in the name of the partnership?"

30 Answer: to (a) (b) and (c): "Yes. As the partnership had been dissolved by notice I need not consider whether the circumstances in fact tacitly dissolved the partnership."

p.71, 11.
14-16

Answer to (d): "The evidence is that Messrs Caltex Ltd terminated their contract with the partnership at the instance of the Defendant."

p.71, 11.
17-19

RECORD

- P.28, 11.
26-28 "8. Was the agreement between the partnership and Messrs Caltex & Co. cancelled by the said Company by virtue of powers vested in the said Company under the agreement?"
- p.71, 1.20 Answer: "Yes".
- p.28, 11.
29-30 "9. Did the Defendant lawfully obtain a subsequent agreement in his own name?"
- p.71, 11.
21-24 Answer: "Defendant obtained a contract with Messrs Caltex & Co at his own instance. The grounds on which he had asked for that agency are shown by D13. The allegations made by the Defendant in D13 are clearly untrue." 10
- Ex. D13,
p.137
- pp.68-72 16. By his Judgment, dated the 31st July, 1958, incorporating his said Answers to Issues the learned District Judge held that the Plaintiff was entitled to receive from the Defendant profits at the rate of Rs.2,000/- per year from the 31st March, 1948, up to the date of the payment of the Plaintiff's capital and costs.
- p.72, 11.
1-3 17. The said conclusions of the learned District Judge were arrived at after references to the evidence which both sides had produced. 20
- In the Appellant's respectful submission the learned Judge was in serious error in several of his conclusions from the said evidence e.g. that in obtaining fresh agreements from the Company for the carrying on by him of an independent business the Defendant had acted fraudulently or that in the continuance of his own new business he had utilised the capital and goodwill of the former partnership. 30
- As to his assessment of the amount due to the Plaintiff from the profits of the new business, it is respectfully submitted, that, in the absence of (1) any enquiry directed to ascertain accurately the apportionment of profits of the subsequent business having regard to the capital and, personal skill and endeavour contributed by each of the two partners, or (2) of any evidence from which the Court itself could so apportion the 40

profits, the learned District Judge was in serious error in apportioning the profits on the former basis when the partnership was subsisting and as if no dissolution at all had taken place.

10 18. A Decree in accordance with the Judgment of the learned District Judge was drawn up on the 31st July, 1958, and against the said Judgment and Decree the Appellant appealed to the Supreme Court of Ceylon upon the grounds set out in his Petition of Appeal, printed on pages 84 to 88 of the Record. p.72

19. By their Judgment, dated the 25th July, 1961, the learned Judges of the Supreme Court (Gunasekara and Sinnetaanby JJ.) dismissed the appeal subject to variation of the Decree of the District Court in the terms stated in paragraph 1 hereof. pp.89-94

20 20. Delivering the main Judgment of the Supreme Court, Sinnetaanby J. (with whom Gunasekara J. agreed) said, on the subject of accounts, that "there was no issue suggested or adopted in regard to whether the Defendant had, in terms of the partnership agreement, submitted accounts to the Plaintiff after March, 1945. The consequence was that the learned Trial Judge permitted evidence to be led which need not have been gone into if the correct procedure had been followed." In his view if in a partnership case the defendant denies the truth of the plaintiff's allegation that accounts have not been rendered the Court must determine whether in fact accounts have been rendered and if so up to what date. It should then direct accounts to be rendered from the date from which it finds they have not been rendered. The learned Judge then referred to the procedure set out in Sections 508 (Actions of Account) 513 (where accounting party makes default) and 515 (adjournment of the hearing until after accounts have been taken) of the Civil Procedure Code, and, continuing, said that:- p.90, 11. 32-38

30 p.90 1.44 to p.91 1.5

40 p.90, 11. 5-20

"In the case of partnerships Section 202" of the said Code "expressly provides that accounts shall be taken before a decree for dissolution is made. Ordinarily in partnership p.90, 11.23-28

RECORD

cases, an action for accounting is never instituted except when it is associated with a prayer for an order of dissolution unless in point of fact there has already been a dissolution.

p.91, 11.
38-40

"In the present case the Defendant was not called upon to exhibit an account and, indeed, he did not submit one which was supported by books".

p.92, 11.
6-9

Because of this failure of the Defendant to do something which he was not called upon to do, the learned Supreme Court Judge thought erroneously, it is respectfully submitted, that the learned District Judge "was entitled to draw inferences adverse to the accounting party." 10

p.92, 11.
26-33

21. The learned Supreme Court Judge drew attention to the previous proceedings in which the audited partnership accounts for the three years ending the 31st March, 1948, had shown a total profit of Rs.27,099 out of which, on the basis of equal shares, the Plaintiff was found to be entitled to Rs.10,550/-, after deduction of withdrawals by him. For the subsequent period the learned District Judge had assessed profits of the partners on the same basis and this, in the view of the learned Supreme Court Judge, he was entitled to do. 20

p.92, 1.44
to
p.93, 1.32

The learned Supreme Court Judge then referred to, and rejected, the argument on behalf of the Defendant that the Plaintiff was not entitled to claim any profits after the 23rd September, 1948, the date of the termination of the partnership agreements with the Company. In his view Section 29 of the Partnership Act, 1890 (53 & 54 Vict. C.39), which deals with the accountability of partners for private profits, applied to the profits made by the Defendant after he had induced the Company to cancel the partnership agreements and enter into new ones with him personally. In his view the Defendant was liable to share the said profits with the Plaintiff. 30 40

p.93, 11.
33-39

22. As to the Order of the District Court that the Defendant should pay to the Plaintiff profits at the rate of Rs.2,000 per year from the 31st March, 1948, up to the date of payment of his capital, and costs, the learned Supreme Court Judge said that

Counsel for the Plaintiff had conceded that he was not entitled to profits until the said date. Continuing, he said that partnership accounts must be kept open even after dissolution of the partnership for the debiting and crediting of money payable by the partners and money they are entitled to receive both in respect of new and old transactions. On the "main question" he said:-

RECORD

p.93, ll.
40-44

10 "The main question to be taken into account is whether the business is being conducted with property belonging to the partnership and not to the individual partner who continues to trade in the partnership business without the consent of his co-partner. The general rule in such a case, as stated by Lindley, is for the continuing partner to be condemned to pay either a share of the profits till final distribution of the assets or, in the alternative, interest on the capital at the usual rate, whichever is higher."

p.94, ll.
1-9

20 23. Applying the said general rule (substantially Section 42 (1) of the Partnership Act, 1890) to what he considered to be the circumstances of this case, the learned Supreme Court Judge thought that the Plaintiff was entitled to recover profits so long as the business of the partnership had continued. He held as follows:-

p.94, ll.
12-14

30 "In this case as assets had not been distributed at the time of the action, the Plaintiff is entitled to recover profits on the basis of the Judge's Order up to the date of the Decree for by its Decree the Court has, in effect, distributed the assets and therefore it cannot be said that the Defendant was still carrying on the business utilising partnership assets. The Plaintiff's rights have, in short, been merged in the Decree and, as learned Counsel for the Plaintiff-Respondent conceded, the Order as to profits must come to an end on the date of the Decree. Thereafter the Plaintiff would only be entitled to legal
40 interest on the aggregate sum found due to him."

p.94, ll.
16-26

His variation of the Decree of the District Court in accordance with this view was as stated in paragraph 1 hereof.

24. A Decree in accordance with the Judgment of the learned Judges of the Supreme Court was drawn up on the 3rd August, 1961, and from the said

p.95

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pp.98, 101

Judgment and Decree this appeal to Her Majesty in Council is now preferred, the Appellant having obtained Leave to Appeal by two decrees of the Supreme Court, dated the 4th January, 1962, and the 4th April, 1962.

The Appellant respectfully submits that this appeal ought to be allowed, that the Judgments of the Courts below should be set aside, and the action dismissed, or at least that the case should be remitted to the Supreme Court with appropriate directions for a judicial decision on the amount, if any, due to the Respondent only after a full enquiry in respect of the appropriation of profits of the separate business, attributing the said profits to the actual capital utilised of each of the partners, with costs throughout, for the following among other 10

R E A S O N S

1. BECAUSE on the evidence it is clear that after the dissolution of the partnership (the validity and effectiveness of which is not disputed) the Appellant lawfully carried on a separate business under agreements with Caltex Ceylon Ltd. which were openly and lawfully entered into. 20
2. BECAUSE the said separate business of the Appellant was not the business of the former partnership and no part of its profits are lawfully due to the Respondent. 30
3. BECAUSE in the circumstances of this case the profits of the separate business cannot reasonably be said to be a benefit derived by the Appellant from a transaction concerning the former partnership or from any use by him of the partnership property name or business connection within the meaning of Section 29(1) of the Partnership Act, 1890.
4. BECAUSE in the said circumstances and on the evidence it is clear that the carrying on of the said subsequent and separate business of the Appellant was not a carrying on of the business of 40

the dissolved partnership with its capital and assets within the meaning of Section 42 (1) of the Partnership Act, 1890.

5. BECAUSE even if it be held that the profits of the said separate business are properly apportionable between the two former partners yet such apportionment cannot lawfully and/or reasonably take place in the absence of any enquiry as to whether, in the carrying on of his separate business, the Appellant had in fact utilised the Respondent's capital or any portion thereof and, if he had done so, to what extent the profits of the separate business could reasonably be attributed to the Respondent's capital.
- 10
6. BECAUSE even assuming that the Appellant carried on the separate business with the assets and capital of the former partnership still the Respondent, who claims profits instead of interest on the use of his share of the partnership assets, is entitled to no more than an amount which is judicially found to be attributable to the use of his share of the partnership assets and this has not been done in the present case.
- 20
7. BECAUSE the apportionment by the Courts below of the profits of the Appellant's separate business should have been without regard to the proportions in which the profits of the former partnership were divisible; and the apportionment, therefore, of the said profits on the same basis as that of the former partnership and as if that partnership had not been dissolved was contrary to law.
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E.F. GRATIAEN

R.K. HANDOO

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7 OF 1963

IN THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT
OF CEYLON

ROBERT WATTE PATHIRANA

-and-

ARIYA PATHIRANA

CASE FOR THE APPELLANT

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