

~~P.C.~~  
~~62+6.2~~

Judgment  
14, 1966

Appeal No. 27 1963

Supreme Court of Ceylon  
No. 351 (Final) of 1958

District Court of Kurunegala,  
Case No. 5810/M

IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON

BETWEEN

ROBERT WATTE PATHIRANA of Kurunegala .. .. . *Defendant-Appellant*  
*(Appellant)*

AND

ARIYA PATHIRANA of No. 30. Kandy Road, Kurunegala .. .. . *Plaintiff-Respondent*  
*(Respondent).*

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

## INDEX—PART I

Serial No.	Description of Document	Date	Page
1	Journal Entries .. .. .	25.8.47 8.11.47	1
2	Plaint of the Plaintiff with annex marked "X"—Part (including Agreement, Schedule P1)	25.8.47 30.11.47	16
3	Answer of the Defendant .. .. .	8.11.49	8
4	Amended Answer of the Defendant .. .. .	10.12.49	20
5	Replication of the Plaintiff .. .. .	10.1.50	22
6	Amended Answer of the Defendant .. .. .	15.10.57	24
7	Issues Framed .. .. .	—	27
8	Plaintiff's Evidence .. .. .	—	29
9	Defendant's Evidence .. .. .	—	42
10	Addresses to Court .. .. .	—	66
11	Judgment of the District Court .. .. .	31.7.58	68
12	Decree of the District Court .. .. .	31.7.58	72
13	Plaintiff's Lists of Witnesses (30) .. .. .	—	75
14	Plaintiff's Lists of Documents (5) .. .. .	—	77
15	Defendant's List of Witnesses .. .. .	—	82
16	Defendant's List of Documents .. .. .	—	84
17	Part of Appeal to the Supreme Court .. .. .	9.8.58	84
18	Judgment of the Supreme Court .. .. .	1.7.61	89
19	Decree of the Supreme Court .. .. .	3.8.61	95
20	Application for Conditional Leave to Appeal to the Privy Council .. .. .	10.8.61	96
21	Objections filed by the Plaintiff-Respondent .. .. .	26.10.61	97
22	Decree granting Conditional Leave to Appeal to the Privy Council .. .. .	4.1.62	98
23	Application for Final Leave to Appeal to the Privy Council .. .. .	16.1.62	99
24	Decree granting Final Leave to Appeal to the Privy Council .. .. .	4.4.62	101

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

25 APR 1967

25 RUSSELL SQUARE  
LONDON, W.C.1.

## INDEX—PART II

## PLAINTIFF'S DOCUMENTS

Exhibit No.	Description of Document	Date	Page
P1	Partnership Agreement, No. 285 .. .. .	30.11.42	111
P2	Plaint of the Plaintiff in D.C. Kurunegala Case No. 5029	18. 8.48	131
P3	Answer of the Defendant in D.C. Kurunegala Case No. 5029 .. .. .	21. 9.48	135
P4	Issues framed in D.C. Kurunegala Case No. 5029 ..	14. 5.51	165
P4A	Issues framed in D.C. Kurunegala Case No. 5029 ..	19. 9.49	163
P4B	Issues framed in D.C. Kurunegala Case No. 5029 ..	1. 2.54	165
P5	Extract from the Judgment of the District Court in D.C. Kurunegala Case No. 5029 .. .. .	12.11.54	167
P6	Decree of the District Court in D.C. Kurunegala Case No. 5029 .. .. .	12.11.54	168
P7	Notice of Termination of Partnership given to the Plaintiff .. .. .	10. 9.48	134
P8	Journal Entry in D.C. Kurunegala Case No. 5029 ..	3. 2.49	155
P9	Letter sent to the Defendant by the Plaintiff's Proctors	13. 6.49	158
P10	Letter sent to the Defendant by the Plaintiff ..	16. 8.49	159
P11	Telegram sent to the Defendant by the Plaintiff ..	24. 8.49	160
P11A	Receipt issued by Kurunegala Post Office for P11 ..	24. 8.49	160
P12	Letter sent to the Plaintiff by the Defendant ..	26. 8.49	161
P12A	Registered Envelope addressed to the Plaintiff ..	26. 8.49	162
P13	Extract from the Evidence of R. E. Rughasse in D.C. Kurunegala Case No. 5029 .. .. .	5.11.48	155
P14	Letter sent to N. Selvaratnam by the Defendant (Document marked P46 in D.C. Kurunegala Case No. 5029) .. .. .	23. 4.54	166
P15	Defendant's Additional List of Witnesses in D.C. Kurunegala Case No. 5029 .. .. .	7. 6.49	157
P16	Defendant's Additional List of Witnesses in D.C. Kurunegala Case No. 5029 .. .. .	9. 9.49	163
P17	Defendant's Additional List of Witnesses in D.C. Kurunegala Case No. 5029 .. .. .	26. 4.51	164

## INDEX—PART II—(Contd.)

## DEFENDANT'S DOCUMENTS

Exhibit No.	Description of Document	Date	Page
D1	Service Station License Agreement .. ..	20. 4.42	105
D2	Equipment Loan Agreement .. ..	8. 7.46	114
D3	Letter written by the Plaintiff .. ..	5. 1.48	129
D4	Promissory Note .. ..	8. 4.47	128
D5	Letter sent to the Defendant by the Plaintiff's Proctors	27. 9.48	154
D6	Letter sent to the Defendant by the Plaintiff ..	21. 2.48	129
D7	Letter sent to the Agent, Bank of Ceylon, Kurunegala, by the Plaintiff .. ..	22. 3.48	130
D8	Letter sent to the Defendant by Caltex Ceylon Limited	23. 9.48	138
D9	Letter sent to Messrs. R. W. & A. Pathirana by Caltex Ceylon Limited .. ..	23. 9.48	139
D10	Letter sent to Messrs. R. W. & A. Pathirana by Caltex Ceylon Limited .. ..	23. 9.48	139
D11	Letter sent to Messrs. R. W. & A. Pathirana by Bank of Ceylon, Kurunegala .. ..	11. 2.49	156
D12	Letter sent to the Defendant by Bank of Ceylon, Kurunegala .. ..	5. 5.49	157
D13	Letter sent to Caltex Ceylon Limited by the Defend- ant .. ..	21. 9.48	137
D14	Petrol Dealer Agreement, No. 8 .. ..	29.10.46	120
D15	Kerosene Agency Agreement, No. 16 .. ..	23. 9.48	140
D15	Profit & Loss Account .. ..	—	169
D16	Account of A. Pathirana .. ..	—	170
D17	Account of A. Pathirana .. ..	—	171

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

25 APR 1967

25 RUSSELL SQUARE  
LONDON, W.C.1.

87161

**No. 1**  
**Journal Entries**

No. 1  
Journal Entries  
25.8.49 to  
8.2.62

**IN THE DISTRICT COURT OF KURUNEGALA**

No. 5810.	Ariya Pathirana of Kurunegala.....
Class : V.	..... <i>Plaintiff</i>
Amount : Rs. 25,000/-.	<i>vs.</i>
Nature :	Robert Watte Pathirana of Kurunegala....
Procedure : Regular.	..... <i>Defendant.</i>

**JOURNAL**

10 The 25th day of August, 1949.

Messrs. Tambiraja & Kandiah files appointment and plaint together with documents marked X and move that the same be accepted and that summons do issue and reissue on the defendant until service. As the plaintiff intends to go abroad and is likely that he would be away from the Island for about one year, they move for (torn) returnable date be given (torn)

29.8.49 Summons (torn).

7.9.49.

Messrs. Tambirajah & Kandiah for plaintiff.

20 Summons served on defendant R. W. Pathirana.

Proxy filed. Answer 20.9.

(Intd.) A. S. P.

20.9.49.

Messrs. Thambirajah & Kandiah for plaintiff.

Messrs. Ratnayake & Perera for defendant.

Answer 11.10.

(Intd.) A. S. P.

11.10.49.

Answer 1.11.

30 (Intd.) A. S. P.

1.11.49.

Answer 8.11.

(Intd.) A. S. P.

8.11.49.

Answer filed.

Replication 29.11.

(Intd.) A. S. P.

torn { .....  
.....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

3.12.49.

Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.

(1) *Vide* Journal Entries of 12.12.49.  
Amended answer filed.

(2) Deficiency of stamps Rs. 3/- from Ratnayake & Perera  
supplied.

Replication 10.1.

(Intd.) A. S. P.

Stamps supplied. (Intd.) .....

10

10.1.50.

Replication filed.  
Trial 30.3.

(Intd.) A. S. P.

23.3.50.

As the accounts have not been completed Messrs. Thambirajah  
& Kandiah for plaintiff move that the trial of this case fixed for  
30.3.50 be postponed for another date.

Messrs. Ratnayake & Perera for defendant consent.  
Of consent application allowed.  
Mention on 30.3.50 to refix trial.

20

(Intd.) A. S. P.,  
*A.D.J.*

30.3.50.

Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.

*Vide* motion filed on 23.3.50.

Called to refix trial date.

Trial fixed for 24.7.50.

(Intd.)..... 30

*D.J.*  
30.3.50.

24.7.50.

Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.  
Trial 30.10.

(Intd.) A. S. P.,  
*A.D.J.*

21.10.50.

As case No. 5029 which is between the same parties as in this case, is fixed for trial on 18.12.50 and as the accounting filed by Messrs. Satchithananda, Schokman & de Silva, Accountants, in the said case 5029, is material for the purpose of this case, Messrs. Thambirajah & Kandiah for plaintiff move that this case be also fixed for trial on 18.12.50. Messrs. Ratnayake & Perera for defendant consent.

Of consent allowed.

Trial is refixed for 18.12.50.

10

(Intd.).....

*D.J.*

22.11.50.

Messrs. Thambirajah & Kandiah for the plaintiff.

Messrs. Ratnayake & Perera for defendant.

As the plaintiff is an inmate of the Eye Hospital and unable to attend Court for another two months, Messrs. Thambirajah & Kandiah move that the trial fixed for 18th December, 1950, be postponed for another date. Medical Certificate produced is filed in connected case No. 5029.

20

Messrs. Ratnayake & Perera for defendant consent.

Of consent allowed.

Mention on 18.12.50 to refix date.

(Intd.) A. S. P.,

*D.J.*

18.12.50.

Messrs. Thambirajah & Kandiah for plaintiff.

Messrs. Ratnayake & Perera for defendant.

Case called.

Trial on 14.5.51.

30

(Intd.).....

*D.J.*

18.12.50.

(1) 28.4.51.

Plaintiff's list of witnesses and documents filed. 2 Subpoenas issued.

(Intd.) .....

(2) 10.5.51.

Messrs. Thambirajah & Kandiah file plaintiff's additional list of documents.

40

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

- (3) 14.3.51.  
Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.  
Trial.  
I am hearing another case between the parties who are the same.  
Take case off the trial roll and call on 16.5.51.  
(Intd.).....
- (4) 16.5.51.  
Called.  
Call on 31.5.51. 10  
(Intd.).....
- (5) 31.5.51.  
Called.  
Call before District Judge to ascertain whether he would like to  
hear this case. Call on 12.6.51.  
(Intd.).....
- (6) 12.6.51.  
Called.  
Trial 28.11. 20  
(Intd.).....  
*D.J.*
- (7) 15.11.51.  
As Mr. N. E. Weerasooria, Senior Counsel for the defendant, is  
unable to attend this Court on 28.11.51, Messrs. Ratnayake & Perera  
for defendant move that the trial be postponed. Messrs. Thambirajah  
& Kandiah for plaintiff consent.  
Call on 19.11.51 before District Judge for his order.  
(Intd.).....
- (8) 19.11.51. 30  
Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.  
*Vide* Journal Entry of 15.11.51.  
Called.  
Call on 28.11 to refix trial.  
(Intd.).....
- (9) 28.11.51.  
Called to refix trial.  
Call on 31.1 as appeal in connected case is pending.  
(Intd.).....

(10) 31.1.52.

Called.

On Mr. Dharmalingam's application lay by pending decision in District Court 5029 in appeal.

(Sgd.).....

(11) 22.7.52.

*Vide* connected case 5029.

Called.

Call 5.8.

10

(Intd.).....

(12) 5.8.52.

Called (connected case 5029).

Call on 17 and 18th of November, 1952.

(Intd.).....

(13) 17.11.52.

*Vide* connected case 5029.

Case called.

Call on 9.12.52.

(Intd.).....

20 (14) 9.12.52.

Case called with District Court 5029.

On 23.12.52.

(Intd.).....

(15) 23.12.52.

Case called.

Call on 15.1.53.

(Intd.).....

(16) 13.1.53.

Messrs. Thambirajah & Kandiah for plaintiff.

30

Messrs. Ratnayake & Perera for defendant.

Case called.

Call on 29.1.53.

(17) 29.1.53.

Case called.

On 25.6.53.

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

- (18) 25.6.53.  
Case called.  
Call on 9.7.53.  
(Intd.) . . . . .
- (19) 9.7.53.  
Case called.  
Call on 22.9.53.  
(Intd.) . . . . .
- (20) 22.9.53.  
Case called. 10  
Call with District Court 5029 on 1.2.54.  
(Intd.) . . . . .
- 1.2.54.  
Case called with District Court 5029.  
Call on 21.5.54.  
(Intd.) . . . . .
- 21.5.54.  
Case called with D.C. 5029.  
Call with D.C. 5029 for 23.6.54.
- 23.6.54. 20  
Case called with No. 5029.  
Call on 21.9.54.  
(Intd.) . . . . .
- 21.9.54.  
Messrs. Thambirajah & Kandiah for plaintiff.  
Messrs. Ratnayake & Perera for defendant.  
Case called with No. 5029 (Trial).  
Call on 15.10.54.  
(Intd.) . . . . .
- 15.10.54. 30  
Case called with No. 5029 (Trial).  
Call case on 5.11.54.  
(Intd.) . . . . .
- 5.11.54.  
Call on 12.11.54.  
(Intd.) . . . . .

12.11.54.

Called.

Trial on 25.4.55.

(Intd.).....

25.4.55.

Messrs. Thambirajah & Kandiah for plaintiff.

Mr. D. A. B. Ratnayake for defendant.

Trial.

Consent motion filed.

10 Lay by.

(Intd.).....

19.2.57.

As the connected case No. 5029 of this court has been decided in appeal confirming the judgment of this court, proctors for plaintiff move that the notice do issue on the defendant to show cause why the above case should not be restored to the roll of pending cases and fixed for trial.

Proctor for defendant has received notice.

Call case on 12.3.57.

20

(Intd.).....

*A.D.J.*

28.2.57.

Notice issued on defendant to Fiscal. N. W. P.

(Intd.).....

12.3.57.

Notice on defendant served (personal) present. Lay by till the decision of case No. 5029.

Of consent trial for 19.6.57.

(Intd.).....

30 3.5.57.

Proctor for plaintiff files plaintiff's list of witnesses.

Note and file.

(Intd.).....

*D.J.*

5.6.57.

One summons on plaintiff's witness issued to Fiscal, Western Province, Colombo.

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

Eodie. One summons on plaintiff's witness issued to Fiscal,  
Jaffna. (Intd.).....

Eodie. Two summons on plaintiff's witnesses issued to Fiscal,  
North-Western Province. (Intd.).....

13.6.57.

Proctors for plaintiff files plaintiff's additional list of witnesses.  
Note and file.

(Intd.)..... 10  
*A.D.J.*

19.6.57.

Trial.

Defendant submits a medical certificate.

Stamps to be supplied.

Mr. Advocate Pathirana for plaintiff consents on payment of  
costs.

Of consent trial refixed. Defendant to pay Rs. 157.50 as day's  
costs to plaintiff.

(Intd.)..... 20

As the defendant has been a client of mine I do not wish to  
hear this case.

Call before District Judge.

(Intd.).....

19.6.

Trial refixed for 11.9.57.

(Intd.).....  
*D.J.*

16.8.57.

One summons on plaintiff's witness issued to Fiscal, Western  
Province, Colombo.

(Intd.).....

Eodie. One summons on plaintiff's witness issued to Fiscal,  
Jaffna.

(Intd.).....

Eodie. One summons on plaintiff's witness issued to Fiscal,  
North-Western Province.

(Intd.).....

27.8.57.

Mr. Dharmalingam for plaintiff.

Mr. D. A. B. Ratnayake for defendant.

As the plaintiff has gone to the U.S.S.R. as Secretary of the Ceylon Delegation which carried a Bo sapling, and will not be back in the Island on 11.9.1957, the trial date in this case, due to unavoidable circumstances, proctor for plaintiff moves that the said case be postponed for another date.

Proctor for defendant consents.

10 Mention on 11.9.57 to fix a fresh date of trial. Take case off the trial roll.

(Intd.).....

*A.D.J.*

11.9.57.

Case called to fix date of trial.

Take case off trial roll.

Amended answer on 16.10.57.

(Intd.).....

*D.J.*

20 16.10.57.

Deposit note No. A095846 for Rs. 280/- issued to defendant.

(Intd.).....

16.10.57.

Case called for amended answer to be filed.

Filed with Kachcheri Receipt and Account particulars.

Amended answer filed. Consideration for 20.11.57.

(Intd.).....

*D.J.*

20.11.57.

30 Case called.

Trial on 5.2.58.

(Intd.).....

*D.J.*

15.1.58.

Two summons on plaintiff's witnesses issued in hand.

(Intd.).....

29.1.58.

Summons to defendant issued to Fiscal, Kurunegala.

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

5.2.58.

Mr. Dharmalingam for plaintiff.  
Mr. D. A. B. Ratnayake for defendant.  
Trial.  
Defendant moves for a date.  
By consent trial on 19.5.58.

(Intd.).....  
*D.J.*

8.5.58.

Mr. Wettewe files defendant's list of witnesses with notice to proctor 10 for plaintiff and four summons issued to Fiscal, North-Western Province.

(Intd.).....

Eodie. One summons on defendant's witness issued to Fiscal, Western Province. Kachcheri Reciept 266/P/14, No. 038229 for Rs. 20/- filed.

(Intd.).....

8.5.58.

Proctor for plaintiff files additional list of witnesses.

(Intd.)..... 20

17.5.58.

Manager, Bank of Ceylon, Kurunegala, by his letter dated 17.5.58 informs that summons was served on him on 16.5.58 and that he could not trace the books and documents for production before Court on 19.5.58. He begs that his absence from Court on Monday, 19.5.58, be excused.

Inform proctors concerned.

*D.J.*

Defendant informed personally.

(Intd.)..... 30  
17.5.

19.5.58.

Proctors for plaintiff file list of documents.

(Intd.).....

19.5.58.

Trial.  
Mr. S. Dharmalingam for plaintiff.  
Mr. D. A. B. Ratnayake for defendant.  
*Vide* proceedings.  
Further trial on 8.7.58.

(Intd.).....  
*D.J.*

22.5.58.

10 Requisition for Rs. 20/- issued in favour of Mr. A. Dissanayake of Caltex Ltd., Colombo.

(Intd.).....

14.6.

Proceedings submitted.

(Intd.).....

24.6.58.

One summons on defendant's witness issued in hand.  
Kachcheri Receipt 1748/p/14. No. 042365 for Rs. 10/- filed.

(Intd.).....

20 8.7.58.

Trial (Further hearing).  
Mr. S. Dharmalingam.  
Mr. D. A. B. Ratnayake for defendant.

Revocation of Mr. Dharmalingam's proxy and the proxy of Mr. Nadarajah filed.

*Vide* proceedings.  
Judgment on 31.7.58.

(Intd.).....  
*D.J.*

30 9.7.58.

Documents marked D1 to D17 of defendant filed. (2D15).

(Intd.).....

17.7.58.

Documents marked P1-P4, P4A, P4B, P5-P11, P11A, P12, P12A, P13-P17 filed by proctor for plaintiff.

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

24.7. Proceedings of 8.7 typed. (Intd.).....

31.7.58. Judgment delivered in open court in the presence of Mr. Nadarajah and Mr. Wettewa. (Intd.).....  
*D.J.*

2.8.58. Decree entered. 10 (Intd.).....

8.8.58. Defendant moves to revoke the proxy granted to Messrs. Ratnayake & Perera. Mr. R. V. Perera consents. Allowed. (Intd.).....  
*D.J.*

9.8.58. Leave of Court having been granted to the defendant to revoke 20 his proxy Mr. D. A. B. Ratnayake files his proxy and moves that the same be accepted. Accept proxy. (Intd.).....  
*D.J.*

11.8.58. Mr. D. A. B. Ratnayake for Defendant-Appellant files petition of appeal together with stamps for Supreme Court Judgment, Certificate in appeal, notices tendering security in appeal, application for type-written brief and moves that the same be accepted and that notice of 30 security be issued forthwith and that the said petition of appeal be forwarded to the Supreme Court.

ORDER

1. Accept appeal and enter register.
  2. Issue notice of tendering security returnable 19.8.58.
  1. Accept petition of appeal.
  2. Issue notice of security for 19.8.58.
- (Intd.).....  
*D.J.*

11.8.58.

Notice of Security issued to Fiscal, North-Western Province.

(Intd.).....

No. 1  
Journal Entries  
25,8,49 to  
8,2,62—  
*Continued*

12.8.58.

*Vide* motion filed in District Court 10747 moving under Section 234 C.P.C. that proceeds of the decree in this case be applied in satisfaction of the decree in that case. Note and file.

(Intd.).....

*D.J.*

10 19.8.58.

Mr. K. N. S. Nadarajah for plaintiff-respondent.

Mr. D. A. B. Ratnayake for defendant-appellant.

1. Notice of tendering security served on plaintiff-respondent's proctor.
2. He consents to security being accepted.
3. Security accepted.
4. Security papers filed.
5. Issue notice of appeal for 16.9.
6. Forward record to Supreme Court in due course.

20

(Intd.).....

*A.D.J.*

19.8.58.

Bond forwarded for registration.

Notice of appeal issued to Fiscal, North-Western Province.

(Intd.).....

26.8.58.

(1) Notice of appeal served on Proctor for plaintiff-respondent.

(2) Forward record to Supreme Court in due course.

(Intd.).....

*D.J.*

30

27.8.58.

Fiscal, North-Western Province, forwards notice under Section 234 C.P.C. seizing the proceeds in the decree in this case be applied for the satisfaction of the decree in case No. 14460 District Court, Kurunegala.

Note and file.

(Intd.).....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

11.9.58.

Registered security bond filed.

(Intd.).....

9.3.59.

Fiscal, North-West ern Province, forwards prohibitory notice under Section 234 in District Court 14460 seizing the decree in this case in favour of plaintiff under writ issued in District Court 14460.

(Renewal of seizure).

Note and file.

(Intd.)..... 10  
*D.J.*

18.8.61.

Registrar, Supreme Court, forwarded this record with Supreme Court Decree and Judgment. Appeal is dismissed subject to certain variations mentioned in the Supreme Court Decree.

Proctors for parties to note.

(Intd.).....  
*A.D.J.*

21.8.61.

Fiscal, North-Western Province, forwards notice under Section 232 20 C.P.C. seizing the Decree in this case on the Writ issued in District Court, Colombo, Case No. 22483/S. Note and file.

(Intd.).....  
*A.D.J.*

21.8.61.

Mr. K. N. S. Nadaraja, Proctor for plaintiff, applies for execution of Decree by issue of Writ against defendant.

Issue notice on defendant for 18.9.61.

(Intd.).....  
*A.D.J. 30*

23.8.61.

Although the Decree of this Court is dated 31.7.58 the Supreme Court Decree in appeal is of 25.7.61, therefore notice of application of 21.8.61 on defendant is not necessary. The order for notice is vacated.

Issue Writ.

(Intd.).....  
*A.D.J.*

26.1.62.

Writ issued for Rs. 26,985/81 and.....from 1.2.62 till payment in full.....

No. 1  
Journal Entries  
25.8.49 to  
8.2.62—  
*Continued*

(Intd.).....

29.1.1962.

Fiscal, North-Western Province, forwards prohibitory notice under Section 234 in District Court 14460 seizing the Decree in this case in favour of the plaintiff—under the writ issued in District Court 14460.

10 Note and file.

(Intd.).....

*A.D.J.*

2.2.1962.

Mr. K. N. S. Nadaraja for Plaintiff-Respondent.

Mr. D. A. B. Ratnayake for Defendant-Appellant.

Proctor for petitioner files petition and affidavit from the petitioner abovenamed together with a certified copy of the Decree of the Supreme Court granting conditional leave to the petitioner to appeal to Her Majesty the Queen in Council against the Judgment of the Supreme Court, dated 25th July, 1961, marked ' X ' and upon the materials contained therein, moves

(a) that writ issued by this court against the petitioner be recalled;

(b) that all the execution proceedings against the petitioner be stayed;

(c) for costs and for such other and further relief in the premises as to this court shall seem meet.

Proctor for respondent takes notice and he objects.

He moves to notice respondent.

30 Issue notice on Plaintiff-Respondent for 8.2.62.

(Intd.).....

*A.D.J.*

8.2.62.

Mr. K. N. S. Nadaraja for Plaintiff.

Mr. D. A. B. Ratnayake for Defendant-Appellant.

Notice served on plaintiff, plaintiff is present.

*Vide* proceedings.

Recall writ unexecuted on payment of all Fiscal's charges.

(Intd.).....

No. 2  
Plaint of the  
Plaintiff  
25.8.49

**No. 2**  
**Plaint of the Plaintiff**

IN THE DISTRICT COURT OF KURUNEGALA

No. 5810. Ariya Pathirana of Kurunegala.....*Plaintiff*  
Class : V. *vs.*  
Amount : Rs. 25,000/-. Robert Watte Pathirana of Kurunegala.....  
Procedure : Regular. ....*Defendant.*

On this 25th day of August, 1949.

The plaintiff of the plaintiff appearing by his proctors Ponnuswamy Thambirajah and Sinniah Dharmalingam practising in partnership 10 under the name, style and firm of "Thambirajah & Kandiah" states as follows :—

1. The defendant resides and the cause of action hereinafter set out arose at Kurunegala within the jurisdiction of this Court.

2. The plaintiff and the defendant have since the 1st May, 1942, carried on business together in partnership at Kurunegala under Articles of Partnership bearing No. 285 dated 30th November, 1942, and attested by M. O. M. Thahir, Notary Public. A certified copy of the said articles of partnership is annexed marked X and pleaded as part and parcel of this plaint. 20

3. The said articles provided *inter alia* (a) for the dissolution of the partnership by a three months' notice in writing by one partner to the other, (b) for an equal division of the profits and losses, (c) that the defendant should be in the sole management and control of the said business.

4. The defendant committed several breaches of the said partnership agreement and in particular failed and neglected to render a true and correct account of the said partnership from the 1st April, 1945, and thereafter.

(b) On the 18th August, 1948, the plaintiff sued the defendant in 30 case No. 5029 of this Court for an account of the said partnership for the period 1st April, 1945, to 31st March, 1948.

5. Thereafter the defendant fraudulently and wrongfully obtained in his name and not in the name of the partnership as required by the said articles referred to above the sole agency rights for the sale of Caltex Petrol and Caltex Key Brand Kerosene oil in Kurunegala District ; and the defendant on the 10th September, 1948,

gave plaintiff due notice of the determination of the said partnership. Thus the said partnership stood dissolved as on the 10th December, 1948.

No. 2  
Plaint of the  
Plaintiff  
25.8.49—  
*Continued*

6. Thereafter since the 11th December, 1948, the defendant under the Agency rights obtained in his name fraudulently and wrongfully as set out above is carrying on the business of the sale of Caltex Petrol and Caltex Key Brand Kerosine oil in the Kurunegala District. The defendant has to account to the partnership for all profits thus obtained by him.

10 7. A cause of action has accrued to the plaintiff to sue the defendant (a) that the accounts of the said partnership be taken by Court, (b) assets thereof inclusive of goodwill be realised, (c) that each party be ordered to pay to Court any balance due from him upon such partnership account, (d) that all debts and liabilities of the said partnership be paid and discharged, (e) that the balance remaining of such assets after such payment and discharge be divided between plaintiff and defendant equally.

8. The plaintiff values this action at Rs. 25,000/-.

Wherefore the plaintiff prays :—

- 20 (a) that the accounts of the said partnership be taken by Court ;  
(b) assets thereof inclusive of goodwill be realised ;  
(c) that each party be ordered to pay into Court any balance due from him upon such partnership account ;  
(d) that all debts and liabilities of the said partnership be paid and discharged ;  
(e) that the balance remaining of such assets after such payment and discharge be divided between plaintiff and defendant equally ;  
30 (f) for costs and such other and further relief as to this Court shall seem meet.

(Sgd.) THAMBIRAJAH & KANDIAH,  
*Proctors for Plaintiff.*

Settled by :

Mr. J. PATHIRANA,  
*Advocate.*

No. 3  
 Answer of the  
 Defendant  
 8.11.49

**No. 3**  
**Answer of the Defendant**

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala.....*Plaintiff*

No. 5810.

*vs.*

Robert Watte Pathirane of Kurunegala.....  
 .....*Defendant.*

On this 8th day of November, 1949.

The answer of the defendant abovenamed appearing by Damian Adrian Bernard Ratnayake and Rochus Victor Perera, his Proctors 10 practising in partnership under the name, style and firm of Ratnayake & Perera, states as follows :—

1. The defendant admits the averments contained in paragraphs 1, 2, 3 and 4 (b) of the plaint.

2. The defendant denies all and singular that the remaining averments contained in the plaint except that the partnership was duly dissolved.

3. Answering to paragraphs 4 of the plaint, the defendant denies that he has committed any breach of the Partnership Agreement or failed to render a true and proper account of the said partnership and 20 states that contrary to the terms of the said Partnership Agreement the plaintiff :—

(a) withdrew in 1942 a sum of Rs. 1,000/- out of the sum of Rs. 2,000/- contributed by him as his share of the initial capital ;

(b) pledged the credit of the partnership for a loan of Rs. 2,000/- obtained by him. This sum being in excess of the amount allowable by the partnership agreement ;

(c) overdrew his share of capital and thereby embarrassed the partnership business ;

30

(d) ran high credit bills for petrol at the service station of the partnership business.

4. Further answering the defendant states that from 1942 to 1947 the partnership had no Bank account and defendant was obliged to operate on his private account and to deposit partnership moneys in the said account and that this was done with the consent of the plaintiff. In 1947 a loan of Rs. 5,000/- was obtained from the Bank of Ceylon, Kurunegala, by the partnership business and a Bank account opened by it but the fund was not sufficient and the plaintiff failed

and neglected to contribute to the augmentation of the fund though requested and as a result the defendant obliged to revert to the original system of operating in his personal Bank Account, and had to advance his personal funds in order to maintain the partnership business, and to repay the aforesaid loan taken from the Bank.

No. 3  
Answer of the  
Defendant  
8.11.49—  
*Continued*

5. Still further answering the defendant states that up to 31st March, 1947, the plaintiff himself drew up the balance sheets and had access to all books and documents. Thereafter the plaintiff sought to remove the books of account and other documents relating to the  
10 partnership business to Jaffna to which the defendant objected and the plaintiff thereupon adopted an attitude towards the defendant calculated to harass and annoy him. The books and documents have always been and are available to the plaintiff at the place of the partnership business and the way-bills have been regularly submitted to the plaintiff up to 30th April, 1948.

6. The defendant states that the plaintiff filed action No. 5029 of this Court against the defendant on the same Deed of Partnership and that Case has been referred by agreement of parties to a commis-  
20 sion for the examination of accounts and report under Section 430 of the Civil Procedure Code. The defendant says that this action therefore is not maintainable and that the plaintiff is bound by agreement in D.C. 5029.

7. Further answering the defendant states that the Partnership Deed No. 285 pleaded in the plaint provides, *inter alia*, that “all matters in difference in relation to the partnership affairs should be referred to the arbitration of two indifferent persons, one to be appointed by each party or to an umpire to be chosen by the arbitration before entering on the consideration of the matters referred to them” and the defendant submits as a matter of law that this  
30 Court has no jurisdiction to entertain the plaint or to hear and determine this action in view of the said provision in the said partnership Deed.

For the alternative and by way of a claim in reconvention

8. The defendant claims a sum of Rs. ....as due and owing from the plaintiff to the defendant, being moneys overdrawn by the plaintiff in respect of the said business.

Wherefore the defendant prays :—

(a) that the plaintiff's action be dismissed with costs ;

No. 3  
Answer of the  
Defendant  
8.11.49—  
*Continued*

(b) for two alternative for judgment in the sum of Rs. . . . . . in reconvention and for such other and further relief as to this Court shall seem meet.

(Sgd.) . . . . .  
*Proctors for Defendant.*

Drawn and settled by :

C. E. JAYAWARDENA, Esq.,  
N. E. WEERASOORIYA, Esq., K.C.,  
*Advocates.*

No. 4  
Amended  
Answer of the  
Defendant  
13.12.49

**No. 4**

10

**Amended Answer of the Defendant**

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala . . . . . *Plaintiff*

No. 5810.

*vs.*

Robert Watte Pathirana of Kurunegala . . . . .  
. . . . . *Defendant.*

This 13th day of December, 1949.

The amended answer of the defendant abovenamed appearing by Damian Adrian Bernard Ratnayaka and Rochus Victor Perera, his Proctors practising in partnership under the name, style and firm of Ratnayaka & Perera, states as follows :—

1. The defendant admits the averments contained in paragraphs 1, 2, 3 and 4(b) of the plaint.

2. The defendant denies all and singular the remaining averments contained in the plaint except that the partnership was duly dissolved.

3. Answering to paragraph 4 of the plaint the defendant denies that he has committed any breach of the Partnership Agreement or failed to render a true and proper account of the said partnership and states that contrary to the terms of the said Partnership Agreement the plaintiff :

(a) withdrew in 1942 a sum of Rs. 1,000/- out of the sum of Rs. 2,000/- contributed by him as his share of the initial capital ;

(b) pledged the credit of the partnership for a loan of Rs. 2,000/- obtained by him. This sum being in excess of the amount allowable by the partnership agreement ;

(c) overdraw his share of capital and thereby embarrassed the partnership business ;

(d) ran high credit bills for petrol at the service station of the partnership business.

No. 4  
Amended  
Answer of the  
Defendant  
13.12.49--  
Continued

4. Further answering the defendant states that from 1942 to 1947 the partnership had no bank account and defendant was obliged to operate on his private account and to deposit partnership monies in the said account and that this was done with the consent of the plaintiff. In 1947 a loan of Rs. 5,000/- was obtained from the Bank of Ceylon, Kurunegala, by the partnership business and a Bank account opened by it by the fund was not sufficient and the plaintiff failed and neglected to contribute to the augmentation of the fund though requested and as a result the defendant was obliged to revert to the original system of operating on his personal Bank Account and had to advance his personal funds in order to maintain the partnership business, and to repay the aforesaid loan taken from the Bank.

5. Still further answering the defendant states that up to 31st March, 1947, the plaintiff himself drew up the balance sheets and had access to all books and documents. Thereafter the plaintiff sought to remove the books of account and other documents relating to the partnership business to Jaffna to which the defendant objected and the plaintiff thereupon adopted an attitude towards the defendant calculated to harass and annoy him. The books and documents have always been and are available to the plaintiff at the place of the partnership business and the way-bills have been regularly submitted to the plaintiff up to 30th April, 1948.

6. The defendant states that the plaintiff filed action No. 5029 of this Court against the defendant on the same deed of partnership and that case has been referred by agreement of parties to a commission for the examination of the accounts and report under Section 430 of the Civil Procedure Code. The defendant says that this action is therefore not maintainable and that the plaintiff is bound by the agreement in D.C. 5029.

7. Further answering the defendant states that the partnership deed No. 285 pleaded in the plaint provides *inter alia* that all matters in difference in relation to the partnership affairs should be referred to the arbitration of two indifferent persons, one to be appointed by each party or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them " and the defendant submits as a matter of law that this Court has no jurisdiction to entertain the plaint or to hear and determine this action in view of the said provision in the said partnership deed.

In the alternative and by way of a claim in reconvention

No. 4  
Amended  
Answer of the  
Defendant  
13.12.49—  
*Continued*

8. The defendant claims a sum of Rs. 8,500/- as due and owing from the plaintiff to the defendant being moneys overdrawn by the plaintiff in respect of the said business.

Wherefore the defendant prays :—

- (a) that the plaintiff's action be dismissed with costs ;
- (b) for two alternative for judgment in the sum of Rs. 8,500/- in reconvention and for such other and further relief as to this Court shall seem meet.

(Sgd.) .....  
*Proctors for Defendant.* 10

Drawn and settled by :

C. E. JAYAWARDENA, Esq.,  
N. E. WEERASOORIYA, Esq., K.C.,  
*Advocates.*

No. 5  
Replication of  
the Plaintiff  
10.1.50

**No. 5**  
**Replication of the Plaintiff**

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala.....*Plaintiff*  
*vs.*  
Robert Watte Pathirana of Kurunegala..... 20  
.....*Defendant.*

No. 5810.

On this 10th day of January, 1950.

The replication of the plaintiff appearing by his Proctors Ponnu-swamy Thambirajah and Sinniah Dharmalingam practising in partnership under the name, style and firm of "Thambirajah & Kandiah" states as follows :—

- 1. The plaintiff joins issue with the defendant on the denials contained in the Amended Answer.
- 2. Save as hereinafter admitted the plaintiff denies the allegations contained in the Amended Answer. 30
- 3. Replying to paragraphs (3) of the Amended Answer the plaintiff states that he had drawn various sums of monies from the business strictly in accordance with the terms and conditions contained

in the Articles of Partnership bearing No. 285 dated 30th November, 1942, and attested by M. O. M. Thahir, Notary Public. The plaintiff denies that he acted contrary to or inconsistent with the said Articles of Partnership.

No. 5  
Replication of  
the Plaintiff  
10.1.50—  
*Continued*

4. Replying to paragraph (4) the plaintiff states that the defendant wrongfully failed to maintain the separate Bank account for the said partnership during the period the business was carried on. The defendant had thereby committed a breach of the said Partnership Agreement. The plaintiff was willing at all times to  
10 contribute further capital to the said business provided the Defendant furnished true and proper accounts of the said partnership business.

5. Replying to paragraph (7) of the Amended Answer the plaintiff states that the defendant has refused to submit the matter in dispute in this action to arbitration as provided for in the Articles of Partnership.

6. Replying to paragraph (8) of the Amended Answer the plaintiff specifically denies that any sum of money whatsoever is due from him to the defendant and further states that the said paragraph  
20 is vague in that—

- (a) the paragraph does not set out the particulars of amount claimed by the defendant in reconvention ;
- (b) how a cause of action has accrued to the defendant to make a claim in Reconvention against the plaintiff.

Wherefore the plaintiff prays :

- (a) Defendant's claim in reconvention be dismissed ;
- (b) for judgment against the defendant as prayed for in the  
plaint ;
- (c) for costs.

30

(Sgd.) THAMBIRAJAH & KANDIAH,  
*Proctors for Plaintiff.*

Drawn and settled by :

P. NAVARATNARAJAH, Esq.,  
*Advocate.*

No. 6  
Amended  
Answer of the  
Defendant  
15.10.57

**No. 6**  
**Amended Answer of the Defendant**

**IN THE DISTRICT COURT OF KURUNEGALA**

Ariya Pathirana of Kurunegala.....*Plaintiff*  
No. 5810. *vs.*  
Robert Watte Pathirana of Kurunegala.....*Defendant.*

This 15th day of October, 1957.

The amended answer of the defendant abovenamed appearing by his proctor Damian Adrian Bernard Ratnayake states as follows :—

1. The defendant admits that this court has Jurisdiction but 10 denies that a cause of action had accrued to the plaintiff to sue the defendant in this action.

2. The defendant admits the averments pleaded in paragraphs 2 and 3 of the plaint.

3. The defendant denies all and singular the various other averments in the plaint which are inconsistent with this answer.

4. The defendant denies the averment in the main portion of paragraph 4 of the plaint and admits sub-para 4(b) of the plaint as regards the filing of action No. 5029 of this court.

5. The defendant whilst admitting as stated in paragraph 5 20 of the plaint that the said partnership was dissolved as from the 10th of December, 1948, with due notice given on the 10th of September, 1948, denies the rest of the allegations in the said paragraph that the defendant fraudulently and wrongfully obtained any agency rights in his own name as stated therein.

6. Further answering the plaintiff the defendant states that the said partnership which was entered into for the purpose of purchase from Messrs. Caltex Ceylon Limited, as agent and or dealer Petrol, Petroleum Products, Kerosine Oil, etc., belonging to the said firm and sale to the public by their machinery and equipment at their petrol 30 and Kerosine Oil Station at Esplanade Road, Kurunegala, stood dissolved and abrogated as from the 10th of December, 1948, by :—

- (a) Three months' notice given on the 10th of September, 1948, as provided for by the partnership agreement No. 285 of the 30th November, 1948.
- (b) Plaintiff bringing action No. 5029 of this court on the 18th of August, 1948.
- (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 40

partnership be dissolved as from the 3rd of July, 1948, and/or the 1st of August, 1948, or soon thereafter.

No. 6  
Amended  
Answer of the  
Defendant  
15.10.57—  
*Continued*

10 (d) The said firm Messrs. Caltex Ceylon, Limited, not being prepared, ready and willing to continue the aforesaid agency and or the dealership of their petrol, petroleum products, Kerosine 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, petroleum products, Kerosine Oil, etc., of the said Company at their Depot with their own equipment while the said partnership was existing.

7. The defendant specifically denies the averments in paragraph 6 of the plaint that he obtained since the 10th of December, 1948, any agency and or dealer rights fraudulently or wrongfully in his own name or that he carried on behalf of the said partnership business any business after the 10th of December, 1948, or that he has to account to the plaintiff for any profits or that there was any legally binding or proper partnership liable to receive or account for profits  
20 from the business carried on by the defendant on his own as contemplated in law.

8. Further answering paragraph 6 of the plaint the defendant states that :—

30 (1) Messrs. Caltex Ceylon, Limited, by Agreement No. 148 of the 20th April, 1942, and other similar agreements for the purchase from the said firm and subsequently sale to the public petrol, petroleum products, kerosine oil, etc., and the hire of the machinery and equipment belonging to the said company on the one part and Messrs. R. W. and A. Pathirana, the defendant and the plaintiff herein this action respectively called the second party of the other part reserved to the said party of the first by certain clauses in the said agreement “ to *ipso facto determino* without any period of notice or without any reason to cancel to terminate and to determine the said agreement No. 148 ” for the purchase and sale of their petrol, petroleum products, kerosine oil, etc., at their aforesaid petrol and kerosine oil station with the equipment hired to the partnership by the said Company.

40 (2) The said agreement entered into with the said Company by the partnership constituted by agreement No. 285 as aforesaid was determined, terminated and cancelled by the said Company by virtue of the powers vested in the said Company on the 1st day of October, 1948, and the 31st day of October, 1948.

(3) Messrs. Caltex Ceylon, Limited, was not ready, willing and agreeable to renew the said agreement with the said partner-

No. 6  
Amended  
Answer of the  
Defendant  
15.10.57—  
*Continued*

ship as constituted by Agreement No. 285 after it was determined terminated and cancelled on the 1st and 31st of October, 1948.

(4) The said Company was not ready, willing and agreeable to renew the said agreement with the said partnership after the plaintiff had by injunction applied for in action No. 5029 of this court tried to restrain and prevent the defendant in this action from selling to the public, petrol petroleum products, kerosine oil, etc., belonging to the said firm with their equipment and machinery at their petrol service station and depot at Esplanade Road, Kurunegala.

10

(5) After the said agreement No. 148 with the said partnership was terminated, determined and cancelled by the said Company, the defendant as he lawfully can openly and not secretly acting on his own behalf obtained agreements with the said Company and he is not liable to account to the plaintiff for any profits obtained by him solely by his own efforts with his own money.

9. The defendant states that the judgment and decree in action No. 5029 of this Court affirmed in Appeal by the Honourable the Supreme Court is *Res Judicata* between the plaintiff and the defendant in this action and that the said judgment and decree creates an Estoppel as between the plaintiff and defendant in this action which prevents the plaintiff from reagitating the same matters in issue in that case in this present action.

10. Further answering the plaintiff the defendant states that the plaintiff in this case who was also the plaintiff in the previous action No. 5029 of this court :—

- (a) Should have included in the said action No. 5029 the whole of his claims past, present and future against the defendant;
- (b) As such, he cannot now sue the defendant in this action for any portion of his claim intentionally omitted or otherwise relinquished or not sued upon in that action;
- (c) he cannot now in this action sue for any remedy or remedies omitted from the previous action ;
- (d) and if the plaintiff has split his causes of action he cannot now sue in this action for the so omitted remedy or remedies without leave of court obtained in the said action No. 5029 of this court before it was heard ; or
- (e) specially reserved by court to permit the plaintiff to bring a fresh action for the same matter or in respect of a part of his rights or claims that were in subsistence at that time ;

(f) the defendant states that if the court holds that the plaintiff can recover any profits from 31st March, 1948, up to 10th December, 1948, in this action from the defendant, the defendant states that half share of the profits from the said business for the aforesaid period amounts to Rs. 280/- as per statement of accounts marked " E " filed of record herewith and the defendant brings to Court herewith the said sum of Rs. 280/- without prejudice to his rights and defences mentioned above in this action.

No. 6  
Amended  
Answer of the  
Defendant  
15.10.57—  
*Continued*

10 Wherefore the defendant prays that :—

- (a) plaintiff's action be dismissed ;
- (b) for costs ;
- (c) and for such other and further relief as to this court shall seem meet.

(Sgd.) D. A. B. RATNAYAKE,  
*Proctor for Defendant.*

Settled by :

H. A. KOTTEGODA,  
*Advocate.*

20 **Documents filed with answer**

- 1. Accounts,
  - 2. K. Deposit Receipt for Rs. 280/-.
- K.R. No. A. No. 095846.

---

**No. 7**  
**Issues Framed**

No. 7  
Issues Framed

19.5.58.

D.C.K. 5810/M.

**TRIAL**

Mr. E. G. Wickremnayake, Q.C., with Mr. Advocate Pathirana instructed by Mr. Dharmalingam for plaintiff.

30 Mr. Advocate Kottegoda instructed by Mr. D. A. B. Ratnayake for the defendant.

Mr. Wickremnayake suggests the following issues :—

- 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 ?

No. 7  
Issues Framed  
—Continued

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 ?
3. 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 ?
4. (a) Did the defendant in carrying on the agency make use of—  
(a) the capital.  
(b) the goodwill of the partnership ?
5. If issues 3 and 4 are answered in the affirmative is the 10 defendant liable to account to the plaintiff until assets are distributed between the parties ?
6. If so what sum is due to the plaintiff by way of profits—  
(a) Up to date hereof ;  
(b) as annual profits up to date of the division of the assets ?

Mr. Kottegoda suggests the following issues ;

7. Was the partnership dissolved (a) with due notice given on the 10th September, 1948, by the defendant ;  
(b) By certain circumstances which arose between the 20 plaintiff and 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 ?
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.
9. Did the defendant lawfully obtain a subsequent agreement in his own name ? 30
10. Is judgment and decree in District Court, Kurunegala, Case No. 5029 *Res Judicata* between the plaintiff and the defendant up to 23rd April, 1948 ?
11. Does the judgment and decree in District Court 5029 create an Estoppel against the plaintiff from maintaining this action with regard to matters that arose in District Court Action No. 5029 ?
12. Can the plaintiff sue the defendant in this action—

- (a) as he had not included the whole of the claim in action No. 5029 of this Court ;
- (b) as he omitted in the said action to sue in respect of the profits claimed in the present cause of action ;
- (c) as he has split up his cause of action ;
- (d) as he has not obtained leave of Court to omit the cause of the action that arose when he brought action No. 5029 ;
- 10 (e) as he has not obtained leave of Court to relinquish any portion of this claim or cause of action and or reserved in the said action the present claim sued upon ?

13. What are the profits of the said business from 23rd August up to dissolution on 10th December, 1948 ?

Mr. Wickramanayake explains the position in regard to issue No. 10 and states that all matters in issue in that case were *Res Judicata* between the parties.

I accept the issues.

(Sgd.) .....  
District Judge.  
19.5.58.

20

**No. 8**  
**Plaintiff's Evidence**

No. 8  
Plaintiff's  
Evidence  
  
Evidence of  
Ariya  
Pathirana  
Examination

Mr. Wickramanayake calls :—

ARIYA PATHIRANA, affirmed, 41, Maradana, Colombo.

I am the plaintiff in this case. I was a Dentist practising at Maradana. In 1943 I was at Jaffna. I entered into partnership with the defendant in the case. I produce marked P1 a certified copy of the agreement, the original copy of which has been filed in District Court, Kurunegala, Case No. 5029. That agreement was  
30 signed between the two of us on 30th December, 1942, and provided for an agreement which had commenced on the 1st day of May, 1942. My surname is Pathirana and so is the defendant's and it is purely a coincidence, and I am no relation of the defendant. (Counsel reads the agreement). The agreement provides for the investment of a sum of Rs. 2,000/- each on the said business and that the business is for the sale of Caltex Petrol and Key brand kerosine oil. It also provides for lubricants and distilled water, and sundries. The partnership is deemed to have commenced on 1st May and the capital of the firm of Rs. 4,000/- which was provided by the partners in  
40 equal shares, each partner obtaining a receipt. Bankers shall be the

No. 8  
Plaintiff's  
Evidence—  
*Continued*

Evidence of  
Ariya Pathirana  
Examination—  
*Continued*

Bank of Ceylon ; the management shall be in the hands of Mr. R. W. Pathirana ; all cheques shall be signed by both partners ; accounts shall be annually audited by an Auditor recognised by the Government. I point to clause 13 of the agreement—“ Upon the determination of the partnership the assets of the partnership shall be realised . . . ” The assets have never been realised and distributed up to date. We carried on business under the partnership agreement with Caltex Co. entered as between Caltex Co. and our partnership, up to 1945. I did not question any of the accounts of the defendant. Thereafter there was a lot of correspondence about accounts. 10 Ultimately I filed action in District Court No. 5029 of this Court. I produce marked P2 a copy of the plaint and P3 a copy of the answer ; P4 a certified copy of the issues ; and P5 a certified copy of the judgment.

(Mr. Wickremanayake states that P5 is produced only for the purpose of showing the finding in that case).

In that action I originally asked for an injunction against the defendant restraining him from keeping me out of the partnership business. At a certain stage he gave me notice of the termination of the partnership. That was by letter dated 10th September, 1948 20 (which I produce marked P7). The action itself was filed on 18th May, 1948. This letter says that 3 months notice is given. The expiry date is mentioned as 30th December, 1948. On receiving that letter I withdrew the application for injunction that was pending. I mark a certified copy of the motion and Journal Entry dated 3.2.49 (Marked P8). Up to that point of time case has not been set down for trial. There had been an inquiry progressing with regard to the application for injunction and the case was set down for trial, and was taken up for trial on 19th September, 1951, on which date issues were framed and commission was issued to firm of auditors Messrs. 30 Satchithananda, Schokman & de Silva to go into the accounts and to make a report to Court. When the commission was returned that case taken up for trial again on 14th May, 1951, and the issues are produced marked P4. There were two dates on which issues were suggested and they are marked (P4A) of 19th September, 1949, and (P4B) issues of 14th May, 1951, on which issues the case was decided. The defendant raised issues in P4B contending that the plaintiff cannot maintain this action, etc. An issue of law was raised and Court made its order on 16th May, 1951, holding that the matter can go to trial and that jurisdiction of Court is not taken away. The defendant 40 appealed against that order and that appeal was dismissed with costs. Thereafter the case came back for trial, and the issues suggested were (I produce a certified copy of the issues of 1st February, 1954, marked (P4C). These are the issues on which the case went to trial. Judgment was delivered in my favour on 12th November, 1954, answering the issues as follows :—

(Counsel reads out judgment) Profits for three years-31.3.48 Rs. 27,099/-. Issue 2—Rs. 10,530/- due to plaintiff being plaintiff's share of the profits of the partnership business. The stocks were not in dispute. On his own statement. That is D23 produced by him. By way of assets at that date was Rs. 3,284.34. I am content in accepting that his value of the assets due to me by way of capital, and capital depreciation up to that date. So far as the profits were concerned the books were denied to me even prior to the date of filing of that action and the defendant was evading to give me the  
 10 accounts. The assessment of the profits on the statements of accounts submitted for three years proceeding from 31.7.48 was Rs. 27,099/- and my share would amount to half of Rs. 9,033/- per annum, being the net profits of the business, I am content to accepting that amount being put down as the average from year to year.

No. 8  
 Plaintiff's  
 Evidence  
*Continued*

Evidence of  
 Ariya Pathirana  
 Examination—  
*Continued*

While the business was still in existence and before it was dissolved the partnership business carried on with the sale of Caltex products on commission given by the Caltex Co. to agents, and lubricants for profits. The business was carried on at Esplanade Street, Kuru-negala, under the name of R. W. and A. Pathirana. Under the  
 20 partnership agreement the defendant was managing the business with an allowance of Rs. 50/- per month paid to him. He used to write all the letters of the Company. The defendant while the partnership was still in existence entered into fresh agreement with Caltex Co. for the sale of kerosene oil by him alone. I came to know that on 1st October, 1948. I came to know of that subsequently. And in respect of petrol also towards the end of October, 1948. Both of them prior to 10th December. At the time that he commenced his business he had not set apart my share of the business. Up to date my assets are still in that business.

30 Article 13 of the partnership says on a determination the assets shall be realised and after payments of liabilities assets shall be divided between partners. But that has not been done.

The new business is carried on in the same place. There is no change in the place of business. And it is the same products of the same Company, and the same consumers. While that action was pending when I became aware of the new partnership agreement, I told Court and I made an application to Court. On 3rd February, 1949, I withdrew the injunction. On 13th June, 1949, I sent a letter through my proctors to the defendant.

40 (Mr. Wickremanayake calls for the original. Original handed over by Mr. Kottegoda. Mr. Wickremanayake marks the original P9. He reads the letter).

I did not receive a reply to that letter.

(Mr. Wickremanayake calls for the letter of 16th August, 1949. Original handed over and it is marked P10). I draw attention of

No. 8  
Plaintiff's  
Evidence—  
Continued

Court that the present agreement provides for arbitration and that the defendant has taken that up as a defence. I always prefer arbitration in the 1st instance and I wrote letter P10. I got no reply to this letter. Thereupon I sent him a telegram drawing his attention to the letter.

Evidence of  
Ariya  
Pathirana  
Examination—  
Continued

(Mr. Wickremanayake calls for the telegram. Mr. Kottegoda states that he has not received a telegram. Mr. Wickremanayake moves to mark the copy of the telegram dated 24th August, 1949, marked P11) (and the receipt P11A granted to the plaintiff at the time of sending the telegram). 10

Then I received a reply dated 26th August, 1949, which was sent under registered cover. I produce that letter (marked P12) (Mr. Wickremanayake reads the letter). In fact that letter was sent to a wrong address. He knew my address which was 222, Kandy Road, Kurunegala. I produce marked P12A the envelope in which I point to the fact that he had given a wrong address. Ultimately when I came to hear of that letter I went to the post office later and got the letter. I made no drawings after the action was filed and for all drawings that I have made prior to that day I have been debited with. I am asking for the realisation of the assets and for a division 20 of the assets in terms of the partnership and also for my share of the profits from 1st April, 1948, up to date, and also up to date to the time of the assets are realised the profits on my capital.

Evidence of  
Ariya Pathirana  
Cross-  
examination

*Cross-examined* by Mr. Kottegoda.

We were the agents for the sale of the products of Caltex Ltd. We had an agreement with them and they sent us various products. And also a hire of their equipment. We had a Service Station licence agreement. (Shown D1). This agreement was entered into on 20th April, 1944. This is the original agreement between the partnership and the Caltex Co. That is called Service Station Licence Agreement. 30

Q. You also had an Equipment Loan Agreement ?

A. I do not know.

(Shown D2) This is a subsequent agreement entered on 8th July, 1946. That is headed as "Equipment."

Q. So that the Service Station was on hire ?

A. I do not know about that.

The equipment was loaned to the agency by the Caltex Co.

Q. You had the agreement for the sale of kerosene oil, petrol ?

A. Yes, we had agency rights.

Q. So that all the equipments including petrol should be from 40 the Caltex Co. ?

A. No. The petrol belongs to us. We pay cash and we get commission.

Q. In all these agreements the Company reserved to them the right to cancel these agreements at any time without giving any reason ?

(Shown clause 13 of the agreement D1).

A. This is a nominal rental of Re. 1/- for the whole or part of month. By giving one day's notice.

Q. This is also contained in clause 10, D2 of the Petrol Dealer Agreement ?

A. Yes.

The Company had the right to terminate the agreement without giving any reason or without giving any notice.

Q. All agreements signed by the Company were terminable without any notice ?

A. I do not know. All agreements were on similar terms.

(Shown D3) Letter dated 5th January, 1948.

This is written by me to the defendant. It bears my signature.

Q. There you have asked for all accounts and receipts up to 31st March, 1947 ?

A. Yes.

Q. Mr. Ewerts was on good terms with you ?

A. No.

The partnership was sued in action No. 42391 of this Court by one R. B. Perera against myself and the defendant.

(Counsel moves to produce and mark the plaint in that case. Mr. Wickremanayake objects).

Q. You gave evidence in that case against the 1st defendant ?

A. No, I did not give evidence against the 1st defendant. I gave evidence.

Q. The proxy given to Mr. Jayakody in that case was revoked by the two of you ?

A. I did not revoke.

Q. Did you ask Court to permit you to carry on without being represented by anyone ?

A. I do not remember.

No. 8  
Plaintiff's  
Evidence  
Continued

Evidence of  
Ariya Pathirana  
Cross-  
examination—  
Continued

No. 8  
Plaintiff's  
Evidence—  
Continued

(Mr. Kottegoda moves to make a portion of the evidence of the witness in that case. Mr. Wickremanayake objects).

Q. Were you prepared to withdraw the proxy and carry on your defence on your own ?

A. I did not revoke my proxy.

Q. Did you tell the Judge that you did not want to be represented by Mr. Jayasundere, the proctor.

A. I do not remember. All that I can remember is the defendant asked the proctor to carry on but the proctor said that he will not appear for me. But I did not tell the Judge. 10

Q. Will you be surprised to find that the Judge has recorded that the 2nd defendant has stated that he could carry on with this case ?

A. Yes. At that stage I agreed to carry on with the case.

Q. Do you say that the partnership was terminated on 31st August, 1948 ?

A. Yes.

Q. Do you deny if it is so recorded by the Judge ?

A. He gave evidence that he was terminating the partnership on 31st August, 1948, according to the agreement. 20

Q. The agreement gives right to each partner to terminate the partnership by giving 4 months' notice.

A. Yes.

Q. Did you tell Court in that action that the partnership was subsisting at that time ?

A. I do not remember.

I appeared in Court in connection with R. B. Perera's case but I did not appear on the date on which that case was taken up. If it is said so it is correct—that the partnership was cancelled.

(Mr. Wickremanayake states that he is not claiming on subsisting 30 partnership but that the defendant had capital vested by the plaintiff).

Q. You said that the dismissal was justified ?

A. I cannot remember.

All employees were engaged by him. I merely signed the proxy form and went by the statements of the defendant. I did not know exactly whether it is so because I was not managing the business with the defendant.

I came to Kurunegala in 1940. I was in and out of Kurunegala. I am not living in Kurunegala at the moment. I was here for one or

Evidence of  
Ariya Pathirama  
Cross-  
examination -  
Continued

two years in 1946. I was in Colombo. Before that I was in Jaffna. I had a petrol station at Anuradhapura. That agency is with the Standard Vacuum.

No. 8  
Plaintiff's  
Evidence—  
Continued

Q. Is there any rule that one cannot be the agent in the same Company ?

A. Not in the same area.

Evidence of  
Ariya Pathirana  
Cross-  
examination—  
Continued

I am not still carrying on that business. I had handed over that and I left Anuradhapura. I was a member of the Urban Council for some time. I cannot remember when I handed it over.

10 I stated all the employees of the partnership from the time of inception were listed as witnesses but I did not call them for the case.

I remember the elections that took place in 1948. The defendant contested one Thomas S. Piyadasa. I worked against the defendant at the elections.

Q. The partnership was not having enough funds in 1947 ?

A. That was after our relationship got fairly strained.

Both of us borrowed a sum of Rs. 5,000/- from the Bank of Ceylon on a promissory note (that promissory note is dated 8th  
20 April, 1947, that was signed by the two of us as partners of R. W. & A. Pathirana. That is marked D4).

Q. That was subsequently discharged by the defendant ?

A. It was discharged by the partnership.

He as manager has discharged that promissory note. I was sent a letter by the Bank of Ceylon that the amount that I raised had been settled.

Q. Did you also call upon the defendant to settle the outstanding amount to the Bank (shown a letter dated 27th September, 1948, marked D5) ?

30 A. Yes, and I sent copies of that letter to the proctor and to Mr. Lairis Appu.

Q. So that in 1947 there were no funds to carry on the business and the partnership borrowed a sum of Rs. 5,000/-.

A. There was ample money. We were even giving monthly credit and we wanted excess cash. On the balance sheet at that time we had ample funds and we were giving credit.

Q. On that promissory note you had to pay Rs. 6,000/- ?

A. That I do not know.

No. 8  
Plaintiff's  
Evidence  
Continued

Q. Are you aware that Caltex Company cancelled the partnership agreement between you and the defendant ?

A. I knew of that subsequently. But Caltex did not inform me.

Evidence of  
Ariya Pathirana  
Cross-  
examination—  
Continued

Q. Do you remember Mr. Rogus giving evidence ?

A. I remember somebody from Caltex gave evidence.

Q. You had the injunction to refrain him from carrying on the business ?

A. I applied for injunction asking me to have access for the books. 10

There are other petrol sheds in Kurunegala, sprung up after our business had started. Even recently. Prior to 1947 there were other Stations. There was the Shell, Socony and ourselves.

Q. When you served the injunction the Caltex Co. became aware of it ?

A. I do not know.

Q. Are you aware that they wrote to you cancelling the agreement ?

A. Absolutely not. I was never informed by them.

Q. Did not the defendant inform you ? 20

A. The defendant never informed me.

He only gave me notice of the termination of the partnership.

Q. A copy of that was sent to the Company ?

A. I do not know about that.

I did not go to the Company after I filed action. I did not take any part in the business or seen the Caltex Co.

Q. You had in fact nothing to do after he gave notice on P7 ?

A. I never went to see him. I only wanted my share back again. I contributed Rs. 2,000/- for the start. Before we raised the loan our profits had risen. I got judgment in the previous action up to 31st March, 1948. 30

Q. You were aware at that time that the 2 of you could not carry on the business in partnership ?

A. If he wanted to he may have carried on. I filed action asking him to show the accounts because he refused to show the accounts.

Q. Even in 1947 there were differences between you ?

A. I do not know the period but somewhere at the beginning of 1947 we had differences.

Q. In 1948 you were sworn enemies ?

A. I do not know.

Q. You worked completely against him ?

A. No.

Q. The defendant lost that election ?

A. Yes.

Q. The defendant did not know English ?

A. He knows.

Q. I put it to you that all these accounts were kept by you ?

10 A. No.

Q. The defendant used to send them to Jaffna ?

A. No.

Q. Were you in Jaffna during 1946 to 1948 ?

A. I cannot remember. I was moving from place to place.

I have my father's home at Jaffna and another house at Kurunegala.

Q. These accounts were sent to you at Jaffna ?

A. Not to me but to the auditor.

20 That was prior to 1946 I believe. Because prior to 1946 the accounts were audited by Selvaratnam.

Q. After 1946 the accounts were audited by some other firm ?

A. No.

(Sgd.) .....

*District Judge.*

19.5.58.

Adjourned for lunch.

Resumed after lunch.

Ariya Pathirana, affirmed, recalled.

*Cross-examined* by Mr. Kottegoda.

30 Q. In 1948 you were resident in Colombo ?

A. As I mentioned I was working at these 4 points—Jaffna, Anuradhapura, Kurunegala and Colombo.

Q. And in 1947 you attended to most of the things in Colombo with regard to Caltex Co. ?

A. I told him that I would attend to them but he did not allow ?

(Shown D6).

No. 8  
Plaintiff's  
Evidence—  
*Continued*

Evidence of  
Ariya Pathirana  
Cross-  
examination  
—*Continued*

No. 8  
Plaintiff's  
Evidence--  
Continued

Evidence of  
Ariya Pathirana  
Cross-  
examination  
Continued

Q. Is this your signature ?

A. Yes.

Q. You wrote this letter on 21st February, 1948 ?

A. Yes.

Q. So that daily reports were sent to you ?

A. That was the whole trouble. I was insisting that daily reports be sent to me. I wanted them to be posted but he said he would be bringing them.

That was the time the trouble began.

Q. At that time there was no Bank accounts in the name of the 10 partnership ?

A. A bank account was opened, I believe, in 1945, or so.

Q. Up to 1947 it was in the defendant's name ?

A. No, all the transactions were cash at the beginning.

The partnership agreement provided if ever a bank account is opened it should be with the Bank of Ceylon.

Q. When you opened the bank account who signed the cheques ?

A. I allowed the defendant to sign the cheques.

Q. When the differences arose you wrote to the bank with a copy to the defendant ?

20

A. Yes, in March, 1948, I had information that he was dealing on a partnership account. Then I told him that I also must sign the cheques because it was provided in the agreement. Then I came over and signed a blank form just to see whether it is submitted.

(Mr. Wickremanayake states that Clause 8 of the agreement provides both parties to sign cheques).

I wrote to him a letter saying that I will be coming to sign the cheques.

Q. The loan with regard to the Rs. 5,000/- was paid in 1949 ?

A. We liquidated it by instalments and whatever balance there 30 was for each month we had to renew by applying for it.

Q. It was after you filed action that the amount was fully liquidated by the defendant.

A. The final instalment was paid in 1949.

Q. You also received a letter from the bank saying that the account had been paid by the defendant and the promissory note was returned ?

A. No. They informed me that the loan has been settled and the necessary forms have been sent to the guarantor cancelling them.

Q. Did you say that you were not liable to pay a portion ?

A. No I did not say.

(Shown D5).

Q. Did you write to the defendant saying that you were not liable to pay ?

A. On 27th September I informed him that I was unable to sign blank forms for the renewal of the loan.

10 Copies of this letter were sent to the defendant and to the guarantor Mr. Lairis Appuhamy.

I never maintained that I was not liable to pay my contribution in regard to this loan. I went to the Courts because the accounts were wrong and I wanted the money paid by the partnership capital.

The amount I contributed was Rs. 2,000/- at the inception. Part of the profits accumulated were added to the capital. A part of the profits were also drawn by the defendant. We were entitled to draw up to Rs. 150/- per mensem as partnership profits. I have always given receipts for whatever money I have taken. It is the  
20 defendant who had the custody of the money.

Q. He had to keep a man specially to write the accounts ?

A. I wanted the daily reports of the sales for credit, cash and other transactions. They were not sent regularly.

Q. So daily reports were sent to you ?

A. They were sent spasmodically.

Q. At that time the Bank of Ceylon was calling on the partnership to pay the amount due on the promissory note ?

A. No, they only asked us to send the forms to renew the applications.

30 The promissory note was with the bank.

Q. After April, 1948, you refused to sign the renewal forms ?

A. Yes.

I informed the guarantor and his proctor also at the same time. If I had proper accounts at that time I would have signed for that amount.

Q. But you received the daily reports regularly ?

A. No. Not regularly. That is why I had to come to Court.

The daily reports give the actual transactions at the petrol shed.

No. 8  
Plaintiff's  
Evidence  
Continued

Evidence of  
Ariya Pathirana  
Cross-  
examination  
Continued

No. 8  
Plaintiff's  
Evidence—  
Continued

Evidence of  
Ariya Pathirana  
Cross-  
examination  
—Continued

Petrol is not given to us by the Company on credit. First we pay the money and buy petrol. On the invoice they deduct the commission.

Q. You pay a certain sum and then you get the deduction ?

A. If a gallon of petrol is Rs. 2.50 we pay Rs. 2.40 and the sale price is Rs. 2.50. We pay cash in advance.

Q. When these differences arose Caltex said that they are not prepared to carry on with the partnership ?

A. I did not inform Caltex about the differences with him.

I do not know whether the defendant had informed Caltex Co. 10

Q. In 1948 you wanted to go to Caltex Co. ?

A. I wanted to go.

Every time the defendant visited Colombo he used to charge Rs. 25/- per visit. I have never visited Caltex to attend to this business. I wanted him to entrust that to me but he would not allow.

Q. You did not go to Caltex and interfere with regard to the cancellation of the agency ?

A. No.

I came to know of it in Kurunegala.

Q. All throughout the proceedings in 1948 you did not know of 20 it ?

A. No. I was aware.

That was just before I filed this action. Somewhere in 1948.

Q. You came to know that the Company was not prepared ?

A. I had nothing to do with the Company at that stage because he was managing the business.

Q. Are you aware that at a certain time the business was carried on at a loss ?

A. No.

Q. Are you aware that on your application for injunction they 30 refused to renew the contract ?

A. In fact Caltex Company stated that they were not worried about the affairs between us.

I was not aware of the fact that they wrote letters saying that they were not prepared.

Q. In fact they entered into a new agreement with the defendant ?

A. I did not know of that but I came to know of it subsequently.

I do not know who was responsible for it. They had a right to do it but I do not know the reason why they had to do it.

Q. After 1948 you had nothing to do with the defendant ?

A. After 1948 I did not have any transaction with him. I wrote to him through my lawyer asking him to let me have the accounts.

Q. You say that you were still able to carry on the partnership business in December ?

A. He had a right to give notice under the agreement and I also had the right.

Q. In the last action you did not ask for the capital to be returned to you ?

A. There was no necessity because that was for a limited period where the accounts were in dispute.

Q. You did not reserve a right in the last action ?

A. I do not know. My lawyer drafted the papers. I never asked for a dissolution of partnership in that action.

Q. You were aware that the 2 of you could not carry on the business ?

20 (Question disallowed because it has been repeatedly asked).

*Re-examined* by Mr. Wickremanayake.

Under the partnership agreement we had made special provision, under Clause 6, that the business should be in the hands of the defendant. I observed the terms of the partnership. Except when I wanted to give any advice I did not want to interfere with the working. The capital I had placed was increased by the fact of accumulated profits. The address of the partnership is given as Kurunegala. So far as the loan was concerned Rs. 5,000/- was charged by the partnership, and security was granted by the partnership. The amount was being gradually reduced out of the profits. From time to time we had to sign applications for renewal of the loan. After the previous action was filed the bank wanted me to sign a further application which I refused at that stage. Before that I have signed about 3 or 4 times. There were assets of the Company at that time.

(Sgd.) .....

*District Judge.*

19.5.58.

Plaintiff's case closed reading in evidence P1 to P12.

No. 8  
Plaintiff's  
Evidence -  
*Continued*

Evidence of  
Ariya Pathirana  
Cross-  
examination  
*Continued*

Evidence of  
Ariya Pathirana  
Re-examination

**No. 9**  
**Defendant's Evidence**

Mr. Kottegoda sends out the defendant and calls :—

**L. E. de SILVA**, sworn, 44, Sales Supervisor, Caltex Ltd.

I have been at the Caltex Co. for 25 years. I am aware of the sale by Caltex Co. of their products to the Company. This is done on agreements entered into by the Caltex Company and the agents. One of the agreements is the Service Station Licence Agreement, then there is the Petrol Dealers Agreement; then there is the Kerosene Oil Agents Agreement; and the Equipment Loan Agreement. The 10 equipment is all loaned by the Company. The station is Company owned and hired to various people. In this instance the agency is given to the Pathirana Partnership and they sell on a commission basis.

(Shown D1). This is an agreement entered into by my Company with Messrs. R. W. & A. Pathirana in 1942. In this agreement we have reserved certain rights to cancel the agreement with 24 hours notice. The Company was aware of differences between the partnership in 1948, and letters were written.

(Mr. Kottegoda produces a copy of letter written by the defend- 20 ant's Company to Caltex Co.). The original of this letter is not with the Company. It may have been destroyed.)

(Mr. Kottegoda moves to mark the letter dated 21st December, 1948.)

Mr. Wickremanayake states that it should be proved that it was a letter written . . .

(Mr. Kottegoda states that he will mark it later).

Q. (Shown a letter written by Caltex Company signed by R. D. D. Ruzon dated 23rd September, 1948, marked D8) Was this a letter written by your Company ? 30

A. Yes. This is a letter written by Caltex.

This letter is addressed to Mr. R. W. Pathirana (witness reads the letter).

Q. (Shown a letter dated 21st September, 1948, marked D9)

A. This letter has also been written by Caltex Company and is addressed to Messrs. R. W. & A. Pathirana. (He reads the letter).

My Company wrote another letter to the firm on 27th September, 1948, addressed to Messrs. R. W. & A. Pathirana (that letter is produced marked D10).

Q. What was the immediate reason for cancelling the agreement between Caltex Co. and this firm? Was there any trouble?

A. Probably on a letter written by the defendant the firm came to know that . . .

(Mr. Wickremanayake objects to that question).

Q. Did you come to know anything with regard to the service Station at Kurunegala towards the end of 1948—any trouble?

A. Suspected trouble on a letter written by the defendant.

Q. Was there any trouble?

10 A. I do not know.

*To Court :*

Q. You do not know whether the defendant asked that the agreement be terminated or not?

A. I do not know.

After cancelling the agreement our Company entered into another agreement with the defendant.

*Cross-examined by Mr. Wickremanayake.*

20 The original agreements were entered into in 1942, and from that time onwards the person who dealt with Caltex on behalf of the firm of R. W. & A. Pathirana was the defendant. He was a working partner and all dealings with the firm were had with him. In 1948 I am now aware that there was trouble between the partners. As a matter of fact Mr. Ruzon came and gave evidence in this Court. I do not know whether it is correct that our firm was not concerned about the transactions between the partners.

(Mr. Wickremanayake moves to mark P13 the evidence of Mr. Ruzon in that case).

My Company dealt with the firm of the partners.

(Mr. Wickremanayake asks for D8, D9 and D10).

30 In D8 the letter is addressed to Mr. R. W. Pathirana personally. There it could be understood that the defendant personally wrote to the firm. I do not know whether the defendant asked for the cancellation of the agreement. I told Court that it may be that the firm, as a result of the letter of the defendant, suspected that the plaintiff would be causing trouble. The firm did not inquire from the plaintiff. Instead the firm cancelled the agreement after writing the letter D9 which is addressed to Messrs. R. W. & A. Pathirana, Caltex Service Station, Kurunegala. I know that at that time the plaintiff and the defendant were already litigating and this letter was sent to the firm where the defendant alone was working at that

No. 9  
Defendant's  
Evidence  
*Continued*

Evidence of  
L. E. de Silva  
Examination  
*Continued*

Evidence of  
L. E. de Silva  
Cross-  
examination

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
L. E. de Silva  
Cross-  
examination  
— Continued

time. We would have made a note that a copy had been sent to the plaintiff if we had sent a copy. But in this letter D9 we have not made any note that a copy has been sent to the plaintiff. Even in D10 it does not say that a copy has been sent to the plaintiff.

We entered into a fresh agreement with the defendant for the supply of petrol, kerosene oil and other products to the same station which had been carried on by the two of the partners and presumably to the same customers; presumably to the same business that had been carried on before. So far as the products are concerned we supplied the partnership with petrol. Thereafter we sold some things 10 to the defendant. On the sale of petrol we allow agents 7½ cts. commission. The amount of commission paid would be available in our books. These accounts would be available to the defendant on the new business. We allowed commission on kerosene supplied. The amounts paid on kerosene are available to the defendant. These accounts will be available to the defendant but not to the plaintiff. We cannot give these figures to anyone else. We also supply lubricating oil. It is sold outright. The agent has a right to sell it below maximum prices. Our records will show the amount of lubricating oil supplied. The agent is required by the agreement to 20 keep books of account; in respect of articles supplied; including lubricating oil; and any other articles sent to him by the Company. The books of the firm are supposed to be available for inspection by officers of our firm. In 1948 I was the Sales Representative. I am now Sales Supervisor, which is the same as Sales Manager in other companies. Sales representatives get by way of salary about Rs. 400/- per month. At that time it was about Rs. 310/- or Rs. 300/-.

Evidence of  
L. E. de Silva  
Re-examination

*Re-examined* by Mr. Kottegoda.

I was summoned by the plaintiff. The plaintiff has taken summons on me to produce the accounts with regard to the sales up 30 to December, 1948.

On 5th November, 1948, Mr. Ruzon gave evidence in the earlier case. The present plaintiff was entitled to see the accounts at that time.

(Sgd.) .....

*District Judge.*

19.5.58.

Evidence of  
R. W. Pathi-  
rana  
Examination

R. W. PATHIRANE, affirmed, 70, Trader, Kurunegala.

I am the defendant in this case. I entered into partnership with the plaintiff in 1942. Ariya Pathirana's father was known to 40 me. We had met at a meeting of the Sinhala Maha Sabha at Anuradhapura and I was introduced to the plaintiff's father. In 1942 the Caltex petrol shed was closed due to the raid. The Caltex

Company at the instance of the Government Agent here gave the agency to me. I went to Colombo and made arrangements to take the Caltex Shed. Then the plaintiff's father came with the plaintiff and gave me Rs. 2,000/- and I took him as a partner. I do not know English well. As I did not know English and as the plaintiff knew English I agreed to take him on. The plaintiff promised to attend to correspondence with the American and English officers. They came to Kurunegala during the raid. Before that the plaintiff was in Jaffna. PI is the agreement entered by us. First I entered into  
 10 agreement with the Caltex Co. After signing the agreement with the plaintiff I did not sign an agreement with the Caltex Co. Both of us signed the agreement with Caltex Co. There were actually four agreements which we signed. They are the Service Station Lease, Petrol Dealers Agreement, Kerosene Agents and Equipment Loan Agreement. The service station belongs to the Caltex Co. The equipment also belongs to Caltex Co.

The first time we got petrol was when we sent a cheque direct to them. When we got the order to make a deposit there. We make payments mostly by cheque and then send the petrol to  
 20 Kurunegala. After selling them we make the payment deducting the commission. We do not wait till we sell the petrol. Before we sell from time to time we make orders for the supply of petrol. We carried on business from 1942 till 1948. Between 1947 and 1948 the Storekeeper kept the accounts and I only checked the sales book and then accepted the money.

The accounts were sent to Jaffna.

Q. Were the accounts sent to the plaintiff ?

A. Every year the plaintiff comes and takes the accounts. Sometimes we sent the accounts to the plaintiff at Jaffna.

30 Every year he, the plaintiff, used to come to Kurunegala and takes stock on 31st March. He signs the sheet and gives a copy and takes the daily reports book with him to Jaffna.

*To Court :*

Q. Are you producing any of the things that has been signed by him, in regard to stock ?

A. Yes.

Q. After 1945 ?

A. Yes.

Q. In 1948 you received this letter D3 (shown letter) ?

40 A. Yes.

Q. In fact you sent the accounts to Mr. Ewart ?

A. Yes, he used to come here and remove.

No. 9  
 Defendant's  
 Evidence—  
*Continued*

Evidence of  
 R. W. Pathi-  
 rana  
 Examination—  
*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Examination—  
Continued

*Q.* This letter also refers to a proxy ?

*A.* There was an action brought by one R. D. Perera against the partnership.

I produce the plaint in District Court 4279 and the answer filed by the two of us.

(Mr. Wickremanayake objects on the ground that this evidence is not admissible, the document is withdrawn).

*Q.* Did Ariya Pathirana give evidence in that case ?

*A.* Yes.

*Q.* For whom ?

10

*A.* In favour of Perera.

*Q.* Did he withdraw the proxy given jointly to Mr. Jayasundera ?

(Mr. Wickremanayake objects).

*Q.* He withdrew from the case ?

(Mr. Wickremanayake objects that this evidence is not relevant to the case).

(Mr. Kottegoda says that it is relevant because it relates to the differences between the two of them).

*Q.* At the time he gave evidence in R. D. Perera's case was the earlier action filed ?

20

*A.* Yes.

*Q.* At that time did you give notice that you were going to cancel the agreement with the plaintiff ?

*A.* I wrote letter P7.

I also contested in an election. The plaintiff worked against me. That was in 1948. Both of us borrowed some money from the Bank of Ceylon. I produce D8 of 8th April, 1947.

*Q.* Who paid that money back ?

*A.* We were paying by instalments of Rs. 200/- per month at the time of the partnership. We had already paid some amount and there was a balance of about Rs. 2,400/- or Rs. 2,200/- and when there was differences between us I asked him to pay his portion. I then found that he had sent a letter to the bank prohibiting me from signing any cheques. At that time he wrote that letter I do not think there was more than Rs. 100/- in the bank. Then the bank asked me to pay the amount due. They wrote to me by letter. (I produce a letter marked D11, dated 11.2.49). After that I paid the money to the bank.

We had to renew the agreement with the Bank of Ceylon for this loan. The plaintiff did not sign the renewal. The Bank sent me a letter on 6th October, 1949, and afterwards I paid the balance due. I produce the letter marked D12. It is addressed personally to me by the Bank of Ceylon.

(Mr. Wickremanayake invites attention of Court that in that letter D12 there is typed in red "copy sent to Mr. A. Pathirana").

In 1948 the plaintiff filed an earlier action. He also applied for an injunction. When he took the injunction the business was held up for 3 days. I went and informed the Company. No injunction was taken out.

I wrote to the Manager of Caltex (marked D13) a letter dated 21st September, 1948, and the Company informed me that they were cancelling the agreement with the partnership and gave me an agency solely in my name. I informed the plaintiff about this and sent him a registered letter. The Company wrote to me D8, D10 and D9. Therefore they cancelled the agreement in the name of the firm and a fresh agreement was entered into. I produce marked D14 the Petrol Dealer Agreement No. 8 of 29th October, 1948, and the Kerosene Agents Agreement No. 19 of 23rd September, 1948, that was existing at that time.

Q. How is it that the agreements were given to you ?

A. Because once the agreement with R. W. & A. Pathirana was cancelled they had to give it to somebody and they gave it to me.

They could have given to anybody else.

In this connection I have brought into Court the balance due to the plaintiff up to 10th December, 1948.

Q. You also say that you paid the amount due to the bank on behalf of the plaintiff ?

(Mr. Wickremanayake objects).

Q. Did you pay to the bank Rs. 1,600/- ?

A. No. Rs. 2,000/-.

I have brought into Court the balance due after deducting that amount. I say that nothing is due to him after December, 1948. I say that the agreements were cancelled and it was after that the agreements were taken in my name.

*Cross-examined* by Mr. Wickremanayake.

I said that I took over the plaintiff as a partner because he knew English. I do not know English. I wanted somebody to be the Manager of the business. Because the management of the business

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Examination—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination—  
Continued

meant correspondence with the Caltex Co. and because his father introduced him to me.

I know Proctor Thahir.

Q. You gave instructions to Mr. Thahir to draft this agreement ?

A. No. The plaintiff told him everything.

I had no instructions to give to Mr. Thahir.

Q. Nor did Mr. Thahir explain to you the agreement ?

A. He explained to me.

Q. Did you realise that the partnership provided that the plaintiff should pay Rs. 2,000/- and that he had no part in the 10 agreement ?

A. Although it is there in the agreement I came to know about that addition in the agreement after the other case.

Mr. Thahir explained to me the whole agreement. He did not explain to me about the management. So far as I recollect in the presence of Mr. Thahir it was Mr. Ariya Pathirana who explained.

I said he explained. But he could still have explained leaving aside some portion. The earlier case was concluded long ago.

Q. At the time of the case you first became aware of the fact that contrary to the instructions certain agreements about manage- 20 ment is put down there ?

A. I got to know it during the time of the case.

Q. In fact you were not the Manager ?

A. Yes.

He explained the agreement but not about the management.

Q. In point of fact the first cheque paid for the petrol was paid by a cheque for Rs. 4,000/- by the plaintiff ?

A. No. At that time he did not have a bank account.

Q. You have a cheque book ?

A. Yes.

30

Q. Do you remember coming down to Colombo in the plaintiff's car ?

A. Yes. I went alone. The plaintiff did not have a car at that time.

That was not the day agreements were signed.

(Mr. Wickremanayake states that this witness answers questions before they are interpreted into Sinhalese and that it may be noted).

When the agreement was signed the plaintiff was present. It was 5 days after that we had the opening.

A person from the Company was present at the opening.

*Q.* You answer most of the questions before they are interpreted ?

*A.* I do not understand them very well.

The plaintiff did not come with me to get the petrol down. I had to make the first payment to order for the petrol.

*To Court :*

10 *Q.* What did you mean by 'Api' ?

*A.* I meant myself.

The first payment I paid by cheque. Cheques can go by post. There was no bank here in Kurunegala. I had to go to Colombo to pay by cheque. Caltex did not wait for the realisation of the cheque. When the cheque was received by them they sent the petrol. Petrol is brought in Caltex bowsers and pumped into the tank here. I had to take the cheque with me. That day I happened to get a cheque from somebody, I had a bank account at that time. I cannot remember whether I had borrowed the cheque from anybody. I said earlier  
20 that my cheque counterfoils would show the amounts drawn.

The agreement provided the name of the firm to be R. W. & A. Pathirana. I do not know that a receipt has to be obtained if either partner pays in a further capital. All documents on behalf of the firm was signed by me. I signed for R. W. & A. Pathirana. I say that I have put in some money but I have not taken a receipt. It has been entered in the books. We are entitled to 6 per cent interest on monies put in as capital. The agreement states that the management should be in my hands. It is true that I looked after the management.

30 *Q.* Why did you tell Court that you did not manage and that you did not know how to manage ?

*A.* Yes. I said so.

I said so because I did not do anything with regard to the accounts. I only paid and received monies. There was a storekeeper in charge of the stores. There was a salesman in charge of the kerosene.

*Q.* Do you say that the plaintiff insisted on signing the cheques ?

*A.* I said so. But that was not the complaint.

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination—  
*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination—  
Continued

I said that it would cripple the business by his insisting on signing cheques. According to the agreement I knew that both partners have to sign cheques. Even when I wrote that letter I knew that.

Till 1947 the plaintiff accepted the correctness of the books. Till 1947 he raised no questions. In 1947 he began to question the accounts and there was a lot of correspondence between the partners. In 1948 he brought an action asking for the profits of the years 45-46, 46-47 and 47-48. That was the complaint. At the time he brought that action the partnership was still being carried on. Even after 10 the action was filed the partnership continued. Answer in that case was filed by me. Along with the action he asked for an injunction.

I told Court that because of the injunction I was unable to carry on the business for 3 days. I told Caltex Co. that because of the injunction the business is at a standstill for 3 days. It was closed down altogether.

Q. He asked Court to enjoin you to show the accounts and why he should not be granted an injunction ?

A. Yes.

Q. No injunction was ever taken out ?

20

A. I do not know.

Q. No injunction was ever granted by Court ?

A. I do not know. I was represented by Mr. D. A. B. Ratnayake who filed an objection to the issue of injunction. These papers were settled by Mr. Weerasuriya, Q.C.

Q. What the plaintiff wanted was that you should not take away the books of account away from the place of business and that you should make them available to the plaintiff ?

A. I cannot remember.

(Mr. Wickremanayake reads the statement in the injunction). 30

Q. You filed an affidavit stating that you will be seriously affected if the books of accounts are ordered to be tendered to the plaintiff or kept in Court ?

A. I cannot say.

(Sgd.) .....  
District Judge.  
19.5.58.

At this stage trial is postponed for 8.7.58.

(Sgd.) .....  
District Judge. 40  
19.5.58.

8.7.58.

D.C.K. 5810/M.

No. 9  
Defendant's  
Evidence—  
*Continued*

## TRIAL

Appearances same.

Following corrections of the proceedings of last date attended to :—

Issue No. 5 :—Instead of the words “ how the annual ” the word “ until ” inserted ;

Issue No. 12 (*d*) the word “ not ” inserted in between “ has obtained ” ;

10 (e) the words “ claim or ” to be inserted before “ cause of action ” ;

Page 5—The word “ half of ” inserted before Rs. 9,033/- ;

Page 19—“ Loan ” instead of “ land ” ;

Page 31—“ enjoin ” instead of “ induce ”

Mr. Wickremanayake moves to add another issue arising out of the evidence of the witness, numbered 3(2)—“ Did the defendant, in obtaining the said agency, act fraudulently ? ”

Mr. Kottegoda has no objection.

I accept the corrections made and the additional issue.

20 (Intd.) .....

D.J.

8.7.58.

R. W. PATHIRANA, affirmed, recalled (P.E.R.O.).

*Cross-examined* by Mr. Wickremanayake (*Contd.*).

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination—  
*Continued*

In the earlier action at a certain stage the parties agreed to issue commission to a firm of auditors Messrs. Satchithananda Schokman & De Silva. I agreed to that and also paid half the commission expenses. I appeared before Messrs. Satchithananda Schokman & De Silva with my documents to prove the accounts. They made a  
30 report to Court. I admitted that I had made entries in the cash book myself.

Q. You also admitted that you were unable to reconcile the cash book entries with the ledger entries ?

A. May be, I do not know.

They did not question me. I admitted that I made entries in the cash book.

Q. That was on their questioning ?

A. No.

They asked me for the book and I gave them and told that I  
40 made entries in the cash book. They did not ask me who had made

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination—  
Continued

the cash book entries. I cannot remember why but I told them that I made the entries. I did not tell them that I made the entries in the ledger. The auditor made a report to Court and the case proceeded on with that report. It was a report sent by the commissioner to whom a commission had been jointly issued at the expenses of parties. They did not question me about the accounts. They did not ask me to explain the accounts.

Q. You are aware of the fact that the entries in the book are false . . .

(Mr. Kottegoda objects). 10

(Mr. Wickremanayake states that he is only seeking to know the knowledge of this witness).

Q. You contested that case ?

A. Yes.

Q. You retained Queen's Counsel to appear for you ?

A. Yes.

Q. You know that report was produced in Court ?

A. Yes.

Q. I suggest that they reported that the entries in the first book are not correct entries ? 20

A. I do not know.

Up to date I do not know.

Q. You denied any liability in that case ?

A. Yes.

Q. You contended in that case that you had nothing to do with the plaintiff ?

A. I may have said that.

Q. In that case he asked for an accounting up to March, 1948 ?

A. Yes.

Q. And for the payment of money due to him ? 30

A. Yes.

Q. In default he asked for payment at Rs. 18,000/- which he assessed as profits ?

A. Yes.

Q. You said that you accounted fully and nothing was due to him ?

A. Yes.

Q. At that time there was available the records from Caltex Co. showing the amount of petrol that had been supplied to you ?

A. Yes.

Q. Also the amount of lubrication oil and other products that were supplied to you ?

A. Yes.

All these documents were removed by the plaintiff.

Q. These records were made available to the auditors ?

A. I gave only the books and bill books.

10 Q. And they made their audit basing on your books and the records of the Caltex Co. ?

A. I cannot say.

I did not give evidence in that case.

Q. Instead you called two persons who purported to have made some accounts ?

A. Yes.

Q. Both of them had merely made statements from books which you provided ?

A. Yes.

20 Q. And both of them knew nothing at all about the accounts, and they provided the statements from what you gave ?

A. I cannot say.

One of them was a Municipal Tax Collector. The other was an employee somewhere who looked at my books and prepared a statement. He is the Chief Clerk of the Municipal Council.

Q. Court ordered you to pay Rs. 13,000/- odd after an accounting ?

A. Yes.

30 Q. In the course of that case were produced statements sent by Caltex Co. of the quantities of petrol supplied to Pathirana & Pathirana during that period ?

A. May be. But the petrol is not sold at the price we buy. We buy petrol at a fixed price and we get only commission.

Q. So if the total number of gallons is given the commission can be worked out ?

A. No. We also pay commissions.

Q. I am only asking you were these figures available ?

A. Yes.

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—Continued

*Q.* They also produced cheques on which you had drawn money out of the partnership business for the settlement of your private debts ?

*A.* No. I never paid with partnership cheques for private accounts.

*Q.* Were cheques produced in that case ?

*A.*

(Mr. Wickremanayake moves to get down the record in case No. 5029) (case sent for).

*Q.* The payment to Thirathdas—they never supplied anything 10 to the Company ?

*A.* If ever I had borrowed money from persons I had to settle them.

I had two accounts. From No. 2 account these things were settled. Whenever the partnership runs short of money I borrowed and then paid back later.

I never borrowed from Thirathdas. I have purchased things from Thirathdas and I have paid for them by cheque. Cheques of the partnership—and I have put in cash to the account of the Company. 20

*Q.* That was not a loan that you paid to Thirathdas ?

*A.* No.

*Q.* To K. D. David ?

*A.* K. D. David—I must have paid some donation to the Pushpadana Society.

*Q.* You paid to K. D. David a donation to the Pushpadana Society, out of the partnership cheques ?

*A.* There were no restrictions to my drawing from the partnership business.

*Q.* Do you know one Ranasinghe ? 30

*A.* No.

*Q.* In that case several cheques were produced ?

*A.* I do not know.

*Q.* Were you in Court when the cheques were produced ?

*A.* Yes.

*Q.* The cheques would establish that you were drawing from the partnership funds ?

*A.* No.

Q. But that was the suggestion ?

A. May be.

Q. You did not get into the box and deny that suggestion ?

A. No.

Q. Nor did you think at that time of giving this explanation of putting money back into the till box ?

A. It is a matter for my counsel to decide whether I should give evidence or not.

Q. The plaintiff got into the box and produced those cheques  
10 and said that you had drawn for your personal benefit from the partnership ?

A. May be.

Q. You did not instruct your counsel to put this suggestion of your having replaced the money in the till box at that time ?

A. I may have said that.

Q. But your counsel never put such a suggestion ?

A. I do not know that.

Q. You know in the last case the injunction was asked for only to produce the books ?

20 A. I cannot remember.

Q. You filed an affidavit objecting to the injunction ?

A. May be, I cannot remember.

Q. Do you remember one Mr. Rogus from the Caltex Co. giving evidence at the inquiry in connection with the injunction ?

A. May be I cannot say.

Q. While the injunction inquiry was pending you sent a letter giving notice of termination of partnership ?

A. I cannot remember.

Q. Did you give notice to the plaintiff of the termination of  
30 the partnership agreement ?

A. I cannot remember.

Q. Then is the partnership going on between the two of you ?

A. No.

Q. How did it come to end ?

A. I received a letter from the Company and I informed the plaintiff about that.

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—Continued

Q. How did the partnership agreement terminate ?

A. That was terminated by the Caltex Company who cancelled the agreement with us.

Q. They cancelled what ?

A. They cancelled the agency.

Q. So the partnership automatically ended ?

A. No. I went to the Company and they asked me whether I am prepared to take an agency in my name.

I sent a notice to the plaintiff terminating the partnership that day itself. I think it was sent through my proctor. Messrs. 10 Ratnayake & Perera were my proctors.

Q. Did you give them instructions to send a letter terminating the agreement ?

A. I think I remember I told them.

Q. What was the date on which the partnership agreement was supposed to be terminated ?

A. I cannot remember.

I know that under the partnership 3 months' notice had to be given of termination. P7 is a letter that was written by Messrs. Ratnayake & Perera to the plaintiff. 20

Q. To that you received a reply (P10) ?

A. May be.

Q. In 1949 the plaintiff intimated to you that he could hold you responsible for the profits of the business running in your own name ?

A. I cannot remember that.

Q. Are you calling any of the accountants to supply the accounts ?

A. No.

Q. Chelvanayagam or Vandort ? 30

A. No.

Q. Are you calling anybody today to speak to the accounts ?

A. An auditor from Tudor Perera & Company ; a gentleman by the name of Seneviratne.

Q. When did Tudor Perera & Company start auditing your accounts ?

A. In that case because the account prepared were all wrong I had to give the books from 1946 upwards to Tudor Perera & Co.

Q. When did you give them ?

A. I cannot remember the date.

Q. You gave the books at once or year by year ?

A. I gave the 1946 accounts in 1946 ;  
 1947 accounts in 1947 ;  
 1948 accounts in 1948 ;  
 1949 accounts in 1949.

Q. When did the last case come up to trial ?

A. I cannot remember.

10 (Mr. Wickremanayake gives the date as 15th October, 1954, when Vadivelu gave evidence and 21st September, when Chelvanayakam gave evidence).

A. The trial took place in 1954.

Q. So you had given the accounts to Tudor Perera after the accounts went wrong in the last case and after the witness gave evidence ?

A. I cannot remember.

Q. The accounts of this business had been audited from the inception by a man called Selvaratnam ?

20 A. Yes. From the beginning.

Selvaratnam was called by the plaintiff as a witness in the earlier case. In 1954 I may have written to Selvaratnam.

(Shown the original of document P46 filed in case No. 5029 marked P14 in that case).

This contains my name and signature. This letter is addressed to Selvaratnam, Main Street, Jaffna, and is dated 23rd April, 1954. I have stated " I am desirous of having the accounts of the Caltex petrol station for 1948 audited by you." I have also said that the books of account are kept in Sinhalese and that I could arrange a  
 30 translator to help. That was in 1954. Shortly before these two witnesses gave evidence.

Q. In 1954 you were writing to him to audit the accounts of 1947-1948 ?

A. I had to get some losses of an earlier audit. I sent this letter P14.

Q. Who drafted the letter ?

A. There was a person at the petrol shed who was typing letters.

Q. Even before the question was translated you gave your answer which meant that you understand English ?

No. 9  
 Defendant's  
 Evidence—  
*Continued*

Evidence of  
 R. W. Pathi-  
 rana  
 Cross-  
 examination  
 —*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—Continued

A. (No answer).

Q. You have written to him to audit the accounts that you have to prepare accounts for the previous year ?

A. Yes.

Q. The books of accounts were kept in Sinhalese ?

A. Yes.

Q. And you knew that he does not understand Sinhalese ?

A. Even previously these accounts were taken to Jaffna.

Q. But for this audit 47-48 you wanted him to come to Kurunegala ?

10

A. Yes.

Q. And you offered to place the services of a translator ?

A. May be.

Q. This was while litigation was actually going on between you and the plaintiff in the other cases ?

A. May be.

Q. You wanted an audit because up to that point of time there was another audit of accounts for years 47-48 ?

A. Because I had some suspicion about the accounts.

I do not know Mr. Ebert Fernando. I do not know whether he 20 is an accountant.

Q. In your list there is a person by the name of Ebert Fernando, an accountant from Colombo ?

A. May be. I do not know.

Q. There was no Ebert Fernando who audited the accounts for you ?

A. I cannot remember.

(Mr. Wickremanayake moves to mark P15 a certified copy of the list of witnesses by the defendant filed on 7th June, 1949 ?)

Mr. Senaratne is an accountant of Messrs. Tudor Perera & Co. 30 On behalf of Tudor Perera & Co. Senaratne audited my accounts. The 1946 accounts were in 1947 and so on.

Q. Thereafter you filed a further list bringing in Selvanayakam ?

A. I cannot remember.

(Mr. Wickremanayake moves to mark as P16 the additional list of witnesses).

Q. After that you filed the name of Waduvel as a witness ?

(Mr. Wickremanayake moves to mark as P17 the additional list of witnesses).

(Shows cheques).

Q. These cheques are drawn by you on the partnership account and they bear the name R. W. & A. Pathirana, Kurunegala, and signed by you as partner ?

A. Yes.

10 Q. The 1st cheque is a cash cheque to the Greenline Omnibus Co. ?

A. Yes.

Q. Of which you are a shareholder ?

A. No.

Q. Did you make any purchases from Greenline ?

A. I did not have any connection with Greenline.

Q. You had shares in a bus company yourself ?

A. No.

Q. Who is Don Peiris Weerasinghe ?

A. I do not know. I cannot recollect.

20 Q. Did you give a cash cheque to Don Peiris Weerasinghe ?

A. May have.

Sometimes people pay cash and get a cheque from me.

Q. To send it to your account ?

A. To send it to somebody.

I cannot remember sending a cheque to Don Peiris Weerasinghe.

Q. Who is V. A. Ranasinghe ?

A. I cannot remember.

Q. Who is D. E. Ranasinghe ?

A. I cannot remember.

30 Q. You have given him a cheque for Rs. 45/- ?

A. I may have given.

Q. All these cheques are drawn on partnership account ?

A. Yes.

Q. Did you draw cheques in your favour and put cash into the business ?

A. I cannot remember that.

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—*Continued*

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Cross-  
examination  
—Continued

Q. You had your own personal account ?

A. Yes.

Q. When you gave your cheques you did not draw on your personal account ?

A. Sometimes I have given from that as well.

Q. (Shown a cheque). This is a cheque drawn by you as a partner of the firm R. W. & A. Pathirana in favour of R. W. Pathirana being yourself, for Rs. 1,500/- ?

A. I had put in some money earlier which I had withdrawn.

Q. That went to the credit of your No. 2 account ? 10

A. Yes, I had taken from No. 1 and No. 2. I can show several instances like that.

Q. This action was first filed in August, 1949 ?

A. May be.

1946, 1947 and 1948 accounts were audited together. That does not mean that I had given them year by year.

Q. Did you not expressly tell Court that you gave 1946 accounts in 1947 and so on ?

A. I said 46, 47 and 48 accounts were given and were audited at the end of 1948. 20

To Court :

Q. Are you sure of that ?

A. That is what I remember.

Q. So when this action was filed you had already the audited statements between two periods ?

A. I cannot say.

Q. Can you say anything correctly ?

A. I cannot remember these things now.

Q. I put it to you that for the first time you got your accounts audited was in 1954 ? 30

A. No.

He is not the person who audited the accounts from 1942. I am not calling Selvaratnam.

Q. Instead you are calling Senaratne ?

A. Senaratne is the person who audited after that.

Q. I put it to you that your accounts for 46, 47 and 48 have not been seen by anybody else ?

A. I have gone with the plaintiff year by year and given the accounts to be audited.

At the last case I had given all the documents signed by the plaintiff. He used to come on the 31st March every year and take a stock. Sometimes I used to accompany him and give the books to Selvaratnam. Selvaratnam gave evidence in the last case.

No. 9  
Defendant's  
Evidence—  
*Continued*

Q. He said that he knew nothing at all about the accounts ?

A. May be.

Q. You filed answer in this case stating that it was the plaintiff who owed you money ?

A. Yes. He had to give me money.

10 Q. At the end of the year you knew how much he had to pay ?

A. Yes.

Q. So that at any point of time you could say how much was due from the plaintiff ?

A. Yes.

Q. And all these documents were available to you ?

A. Only the cash books that I had prepared in Sinhalese.

Q. That book was available to the auditors ?

A. Yes.

Q. What about the balance that was due by the plaintiff ?

20 A. I had written to him over a thousand times.

Q. You filed the first answer in November, 1949, through Messrs. Ratnayake & Perera, which was settled by Mr. C. E. Jayawardena and N. E. Weerasooriya, Q.C. ?

A. Yes.

Q. You wanted to show the statements of account showing the amount due from the plaintiff ?

A. Yes. I may have.

Q. And you gave details to your proctors ?

A. Yes.

30 (Mr. Wickremanayake draws attention of Court to the fact that there is no amount mentioned in para 8(b) of the answer filed).

Q. On 17th December, you filed amended answer ?

A. Yes.

Q. Claiming in reconvention of a sum of Rs. 8,500/- ?

A. Yes.

Q. That Rs. 8,500/- was the amount showing from the books of account due from the plaintiff to the business ?

A. Yes.

Evidence of  
R. W. Pathi-  
rama  
Cross-  
examination  
—*Continued*

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rama  
Cross-  
examination  
—*Continued*

Q. Thereafter you have been generous enough to waive the Rs. 8,500/- and bringing into Court a sum of Rs. 208/- as being due to the plaintiff ?

A. Yes. For the 3 months Rs. 208/-.

Q. Rs. 208/- is the amount due to the plaintiff ?

(Mr. Kottegoda states that it should be Rs. 280/-. Mr. Wikremayake accepts).

Q. You said that Rs. 280/- was due to the plaintiff and you had brought Rs. 280/- to Court ?

A. Yes.

10

Q. That is the amount shown in the books of account as due to the plaintiff ?

A. Yes.

Q. Up to the period of the termination of the partnership ?

A. Yes.

Q. That is from audited statements ?

A. Yes.

Q. The statements were audited only once at the end of the year 1949 for that year ?

A. May be.

20

Q. Is it from the same books or from a different set of books that you got the figure Rs. 8,500/- as due to you, which you claimed in the earlier answer ?

A. Not from those books.

Q. The figure Rs. 8,500/- was also taken from some books of account ?

A. Yes, from the same books.

Q. Or was it that 2 different auditors found the different sums ?

A. No. I had taken into account the accounts after that earlier case.

30

Q. But the other case is for an accounting for 3 years, 45 to 48 ?

A. Yes.

(Sgd.) .....

*District Judge.*

8.7.58.

Adjourned for lunch.

Resumed after lunch.

R. W. PATHIRANA, affirmed, recalled.

*Re-examined* by Mr. Kottegoda.

This Selvaratnam from Jaffna was engaged by the plaintiff. That was from 1942. I had nothing to do with the engagement of Selvaratnam from Jaffna. I sent the books to Jaffna.

*Q.* With regard to the cheques and documents produced they were the subject-matter of the other action ?

10 *A.* They were produced in case No. 5029.

*Q.* Then this present action was also pending and it was at the trial stage ?

*A.* Yes.

*Q.* After that you filed amended answer in this action after the trial in that case ?

*A.* Yes.

The amended answer was in fact filed on 15th October, 1957.

*Q.* According to your agreement you are entitled to draw certain sums of money each month.

20 *A.* Yes, Rs. 50.

*Q.* Who took money to Caltex Co. for the purpose of bringing oil, etc. ?

*A.* I.

During the whole time the plaintiff was either in Colombo, Anuradhapura or Jaffna. Sometimes he is in India too. For the partnership agreement the plaintiff paid in Rs. 2,000/-. The records from Caltex Co. are available to him up to the end of 1948. Whenever he comes to Kurunegala he goes through the accounts. I have kept the cash books and the ledger with regard to the partnership business.  
30 I showed them to Mr. Senaratne of Tudor Perera & Co. On the basis of their accounts I brought a sum of Rs. 250/- to Court.

(Mr. Wikremanayake states that prosecuting Counsel is leading the examination quite contrary to the evidence in examination-in-chief).

The agreement is renewed every year.

I have been a member of the Municipal Council for 15 years, when it was an Urban Council. In 1949 contest the plaintiff worked against me and I put in a notice and withdrew from the contest. The plaintiff used to draw various sums of money. These are already  
40 in the books of account.

No. 9  
Defendant's  
Evidence—  
*Continued*

Evidence of  
R. W. Pathi-  
rana  
Re-examination

No. 9  
Defendant's  
Evidence—  
Continued

Evidence of  
R. W. Pathi-  
rana  
Re-examination  
—Continued

*Q.* You had given accommodation cheques for that purpose ?

*A.* We had only Rs. 4,000/- in the business. Whenever we had to get things ordered for more than, say, about Rs. 8,000/- we had to borrow the money from here and there and give cheques in return.

The petrol load itself would be 1,200 gallons and for these purposes we have to borrow money. I used to borrow from Greenline Bus Co., K.M.D. Co., General Stores and other persons in the town. On a promissory note from the Bank of Ceylon I have taken Rs. 2,000/- and both the plaintiff and I signed that. The plaintiff had borrowed from Mr. A. M. Lairis Appuhamy a sum of Rs. 2,000/- 10 and I had to pay that money. These are shown in my accounts.

(Sgd.) .....

*District Judge.*

8.7.58.

Evidence of  
S. A. Senaratne  
Examination

S. A. SENARATNE, affirmed, 60, Audit Examiner, Panadura, presently at Kurunegala.

I am in the firm of Tudor A. Perera & Co. Mr. Tudor Perera is dead now. I have had occasion to audit the accounts of Messrs. R. W. & A. Pathirana. Thereafter I had audited the accounts for the defendant. I produce the profit and loss account for the 7 months 20 ended 31st October, 1948 (marked D15). This has been prepared by me. I prepared this account from an analysis of the cash books and the statements from the petrol Company.

*Q.* You also produce Mr. A. Pathirana's account according to the books ?

*A.* No. This is not according to the books, but on statements made by the defendant to me. I verified these statements from the books. (That account is produced marked D16—A. Pathirana's account).

(Shown another document).

30

This shows how his profit of Rs. 1,819.70 was accounted by the defendant (marked D17).

(Shown the left hand corner of D15).

(Counsel also refers to the left hand corner in the account and the witness reads out the expenses).

The amount Rs. 1,819.70 is also shown in D17. D16 shows the entries and the payment of Rs. 2,360/- by the defendant on account of a promissory note by the plaintiff. The capital account shows his Rs. 2,000/-. There is an excess of Rs. 80.01 on the amount due to the defendant.

40

*Cross-examined* by Mr. Wikremanayake.

Q. When did you first see any accounts kept by the firm of Pathirana & Pathirana ?

A. About a year from the date I have prepared the accounts.

Q. There is no date on any of these accounts ?

A. In D15 there is.

Q. The date on the document is 18th September, 1954 ?

A. It was in September, 1954, that I first had access to the books of R. W. & A. Pathirana.

- 10 I did not know that at that time there was litigation between the two partners. In 1954 he produced certain books asking me to make a profit and loss account. I also had the statements of Caltex Co. and the amounts of commodities supplied, like petrol, kerosene, lubricants. I also had available the Caltex Co's figures showing the amount of commission. To that the defendant gave me certain statements of expenditure contained in a book. I do not know who wrote that book. Some of the vouchers in proof of the expenses were available and some were not. Regarding some I took his statements. These statements are in conjunction with the entries in the cash book.
- 20 On that basis I prepared a profit and loss account for 7 months, showing the net profit of the business at Rs. 3,639/-. That will amount to about Rs. 5,000/- a year. That is taking the figures of Caltex Company and accepting his own figures.

Q. With regard to D16—a half share of loan due to the Bank of Ceylon on a promissory note—now where did you get half share of the loan ?

A. According to the bank statement there was outstanding that amount.

- I cannot personally say whether it was paid by the partnership
- 30 account. The bank accounts showed the amount due. The defendant also told me that he personally settled it. If the defendant had paid by the partnership that would have been reflected in the cash account. The books were in his charge. The plaintiff had no access to the accounts at the time of my audit. And no questions were asked by him.

- He also produced certain chits which showed that money had been drawn on chits. It was signed by one Pathirana. He told me they were chits given by the plaintiff and I accepted that and put it down. That is how I got to prepare the account of the plaintiff.
- 40 They were entered in the cash book.

D16 shows the amount that A. Pathirana had borrowed from Mr. Lairis Appuhamy. Mr. R. W. Pathirana told me that. I did

No. 9  
Defendant's  
Evidence  
*Continued*

Evidence of  
S. A. Senaratne  
Cross-  
examination

No. 9  
Defendant's  
Evidence—  
*Continued*

not see any document in support of that. On that basis I worked out the figures. He also told me that Mr. A. Pathirana had affixed the seal of the business on the promissory note. But I did not see it.

Evidence of  
S. A. Senaratne  
Cross-  
examination  
—*Continued*

*Q.* Mr. R. W. Pathirana has told us that the firm of Tudor Perera & Co. audited the books of R. W. & A. Pathirana from 47 upwards—that is not true?

*A.* No.

When we audited in 1954 we prepared only statement of the previous years that was produced. I am an Audit Examiner of Tudor Perera & Co. 10

*Q.* These 3 documents have not been done by you as an employee of Tudor Perera & Co.?

*A.* No.

*Q.* And you have done that in your personal capacity?

*A.* Yes.

*Q.* Your directors do not know about this work?

*A.* No.

*Q.* This was not done on behalf of them?

*A.* No.

Evidence of  
S. A. Senaratne  
Re-examination

*Re-examined* by Mr. Kottegoda. 20

The accounts in 1954 were done by Tudor Perera & Co. They prepared this statement. I was not shown the promissory note from the bank. I was not shown the promissory note given to Lairis Appuhamy. The discharge of the promissory note to Lairis Appuhamy was entered in the books. The Bank of Ceylon note was not there. The loan by the Bank of Ceylon was reflected by the repayment was not.

(Sgd.) .....

*District Judge.*

8.7.58. 30

Defence closed reading in evidence D1 to D17. Mr. Wikremayake reads further in evidence documents up to P17.

No. 10  
Addresses to  
Court

### No. 10 Addresses to Court

Mr. Kottegoda addresses :—

“ Except paragraphs 6 and 7 in the plaint have been the subject-matter in that other case. None of the accounts he has undertaken to produce have been produced. On the other hand, the

defence has pleaded the reasons why the partnership could not continue. Answer was filed on 21st September, 1948, in the earlier case with issues 1 to 54. We have given due notice under the agreement. The Caltex Company had the right to give the agency to anybody else and they used that right.

No. 10  
Addresses to  
Court  
Continued

Cites chapter 39, 53 and 54 "Queen Victoria Partnership Act. Section 26. The defence admits that we have given notice of termination. Plaintiff has not produced his accounts. On the question of whether the defendant got the rights fraudulently—cites 27 N.L.R. at page 353. The defendant went openly to the Caltex Co. to get the contract in his name. The documents D8, D9 and D10 will disclose what actually took place. The main reasons for terminating the partnership was (a) by Caltex exercising their right; (b) by the right vested in either partner; (c) it was done openly. Cites 39 N.L.R. at page 573 and page 575. The plaintiff has not proved what he alleged in the plaint. Vol. 24 Halsbury, Sections 968, 969, 971 at page 508. We have shown the profits of this business and how it has been expanded. There has been nothing to the contrary."

Mr. Wikramanayake addresses—"Under the partnership agreement the plaintiff is entitled to an account from year to year. The plaint in that case is for an accounting in that case for a period of time ending 31st March, 1948. The plaint sets out that the partnership still subsists. He gave notice of termination after that action was filed. We now ask for an accounting for the period 1946-47; 48-49. In D23 there should be a closing stock of 3,232 which should be carried on as assets of the firm for the following year. I contented to accept the figures of the defendant. I am not producing the cheques to discredit the evidence of the witness. The earlier case was not for a dissolution of the partnership. On the defendant's own showing the partnership was terminated only in November, 1948. According to the agreement the defendant can terminate the partnership, but he should by arbitration or by agreement paid the money to the plaintiff. I say that the defendant has made profits and that is why he is not producing the books. Cites Pollock on Partnership, p. 112. There is also the option of claiming 5 per cent interest."

The Caltex man said that it was represented to Caltex that an injunction had been obtained and that business had stopped. The documents explain what steps were taken and the reason for withdrawing that application because of the termination. The agency was stopped without the knowledge of the plaintiff.

The plaintiff cannot be expected to produce the books kept by the defendant. The accounts produced by the defendant show a profit of Rs. 6,000/- for 7 months. Even on the basis of Rs. 4,500/- the plaintiff is entitled to his capital in the business which is deposited there until the date of repayment, and an amount of Rs. 4,500/- per

No. 10  
Addresses to  
Court -  
*Continued*

annum. The defendant has still got the plaintiff's money in the business. For 10 years the amount would work to Rs. 4,500/-. After the termination he did not even call the plaintiff for an arbitration on the amount due. In 1954 he wrote to Selvaratnam to do the accounts that will be produced by the defendant.

Originally the defendant said that no money was due but in the amended answers he admits that Rs. 280/- is due. Refers to Section 42 of the Partnership Act ; Lindley on partnership at page 636. The law says if the plaintiff does not produce the accounts it cannot be presumed that it is not proved. The defendant has obviously not produced his books because that would have showed a much more profit. Cites 27 N.L.R. Pollock on Partnership, Section 29(2). A certain amount of partnership amount may be derived by the skill of a partner. Then the other partner would be entitled to that. In this case it would not afford that difficulty because from the beginning the defendant was running the business. Section 60 is very clear. If the defendant pays the capital back then there is no case. Until he pays the capital the plaintiff is entitled to the profits derived."

The Vol. Halsbury, Vol. 22, which is in the library pages 192, 196 are the same. 20

(Sgd.) .....  
*District Judge.*  
8.7.58.

Judgment on 31.7.58.

(Intd.) .....  
*District Judge.*

No. 11  
Judgment of  
the District  
Court  
31.7.58

**No. 11**  
**Judgment of the District Court**

D.C. 5810/M.

31.7.58.

**JUDGMENT**

30

The plaintiff sues the defendant for an accounting, for the assets and for the amount due from the defendant for carrying on the business without returning his capital on the dissolution of the partnership.

It is admitted that the plaintiff and the defendant carried on business in partnership for the sale of Caltex petrol, kerosene oil and lubricants. They entered into a partnership agreement in December, 1942, but the business was carried on from 1st of May, 1942. Each party had put in Rs. 2,000/- as capital for the business. Trouble

started between them somewhere in 1945-1946 when it was alleged that the defendant did not give the accounts to the plaintiff. Thereafter plaintiff instituted on 18.8.48 case No. 5029 of this Court. The plaintiff in that case was produced marked P2. In that case the plaintiff asked for an accounting up to 31.3.48 and for an injunction asking the defendant not to draw money and to have access to the books of accounts of the partnership by the plaintiff.

No. 11  
Judgment of  
the District  
Court  
31.7.58 -  
*Continued*

It is clear from that case that the plaintiff did not ask for a dissolution of the partnership. When that case was pending the defendant sent, through his Proctor letter P7 of 10.9.48 giving notice of the termination of the partnership after 3 months from that date. It is clear that on this notice P7, the partnership can be dissolved. Hence it is not necessary for me to consider the effect of the case No. 5029 of this Court as to the subsistence of the partnership which could be dissolved and which has been dissolved.

The defendant wrote on 21.9.48 to the Managing Director of the Caltex Ceylon Ltd., letter D13. In that letter it is very clear that the defendant was anxious to see that the Caltex Co. terminated their agreement with the partnership firm and the defendant was anxious to get the agency in his own name. Now this letter D13 is clearly written without notice to the plaintiff, although it was written after the defendant had sent notice of termination of the partnership to the plaintiff. Thus it is not open to the defendant to say that the partnership was dissolved as a result of the Caltex Co. refusing to have anything to do with the partnership. There is also the evidence of L. E. de Silva, the Sales Supervisor of Caltex Ltd., that the Caltex Co. was not interested in the differences between the two partners. Although this evidence is there, the Caltex Co. would be interested to see that the sales of their products increased and that Caltex would not suffer as a result of the disputes between the partners. Thus the defendant carried on the business.

The allegation of the plaintiff is that his capital was not returned to him. Further a portion of the profits due to him had been capitalised. Thus he is entitled to either a 5 per cent interest on his capital or a share of the profits under the partnership agreement at his option. It is clear that he is entitled to these amounts in law.

The defendant gave evidence and most of that evidence was led to show that the partnership was dissolved more as a result of the plaintiff than as a result of the acts of the defendant. But at whose instance this partnership came to an end is of no matter in this case. The only question is whether the business was carried on by the defendant and whether the capital of the plaintiff had been returned by the defendant. It is clear that the business was carried on. The business was to sell Caltex products. As far as this was concerned

No. 11  
 Judgment of  
 the District  
 Court  
 31.7.58--  
 Continued

the defendant did not suffer in the business whether it had been carried on in partnership or otherwise. Most probably defendant did not suffer in the sale as well as most of his customers have continued to get their supplies of petrol, etc., from the defendant. It is true the defendant states that because of the injunction served in the earlier case that he had to close down the business for 3 days. Except his bare word this has not been substantiated by any other evidence. The journal entries produced in the earlier case show that the plaintiff withdrew the injunction since he had received notice of termination of the partnership. Even if the defendant had suffered damages as 10 a result of the injunction it could have been shown by the books of accounts if they had been produced by the defendant. But these books of accounts were not produced before Court. Instead the defendant called one Senaratne who claimed himself to be the Audit Examiner of the firm of Tudor A. Perera & Co. Now it is alleged by the defendant that he gave the books of accounts for the respective years at the end of the years to this witness. But later again he said that they were given much later in 1954. The latter seems to be correct. The defendant produced D15 which showed a nett profit of Rs. 3,639 .40 for the 7 months ending October, 1948. He also produced the account 20 of the plaintiff marked D16. It showed on 31st October to his credit a sum of Rs. 2,080 .01 as the half share of the loan made by the firm had been paid. So that according to the Auditor the share of the profits of the plaintiff was Rs. 1,819 .70. But in the earlier case Court decreed the defendant to pay the plaintiff a sum of Rs. 10,550/-. These were profits up to 1948. That decreed amount is much more than the profits as assessed by Mr. Senaratne. In the absence of the books it is difficult to say whether the Auditor has come to the correct assessment of the profits. On that calculation the nett profit for the year would be round about Rs. 6,000/-. On that plaintiff would be 30 entitled to a  $\frac{1}{2}$  share of that sum, viz., Rs. 3,000/-.

Under the partnership agreement although the defendant was to be the Managing Partner and plaintiff was not expected to do anything he himself undertook to interview the Caltex people at various times and work would have been done by him if the partnership continued. I therefore do not think that the plaintiff should be given a  $\frac{1}{2}$  share of the profits from the date of the dissolution of the partnership. In my opinion a  $\frac{1}{3}$ rd share of the profits would be ample.

I answer the issues as follows :—

- (1) The amount due up to March, 1948, was fixed by the decree 40 in the earlier case at Rs. 10,550/-. The profits due to end of October was Rs. 3,600/-. The profits up to end of 1948 would be the above amount, plus another Rs. 1,000/-.

- (2) 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/-.
- (3) (a) Yes.
- (3) (b) Yes.
- (3) (2) Yes.
- (4) (a) Yes.
- (4) (b) Yes.
- 10 (5) The defendant is liable to account to the plaintiff until the assets are distributed between the parties.
- (6) 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.
- (7) (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.
- (7) (d) The evidence is that Messrs. Caltex Ltd. terminated their contract with the partnership at the instance of the defendant.
- 20 (8) Yes.
- (9) 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) It is *res judicata* as regards the matter which was dealt with in case No. 5029. These matters are the profits up to 31st March, 1948. The profits claimed in this case clearly are not barred by that action.
- (11) No.
- 30 (12) (a) The claim in this action did not arise in that case as at the date of the institution of that case the partnership had not been terminated and according to the plaintiff the partnership continued to go on. Further, the partnership was terminated at the instance of the defendant.
- (12) (b) No.
- (c), (d) and (e). The claim clearly is not barred as the issues in this case are not the same as the issues in the last case. The plaintiff could not make the present claim in that case as it had not arisen at that time.

No. 11  
Judgment of  
the District  
Court  
31.7.58—  
*Continued*

(13) Rs. 2,000/-.

I therefore enter judgment for plaintiff at the rate of Rs. 2,000/- per year from 31st March, 1948, up to date of payment of his capital and costs.

(Sgd.) PERCY A. SENARATNE,  
*District Judge, 31.7.58.*

No. 12  
Decree of the  
District Court  
31.7.58

**No. 12**  
**Decree of the District Court**

DECREE

No. 5810. 10

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala . . . . . *Plaintiff*  
*vs.*

Robert Watte Pathirana of Kurunegala . . . . . *Defendant.*

This action coming on for final disposal before P. A. De S. Senaratne, Esquire, District Judge of Kurunegala, on the 31st day of July, 1958, in the presence of Mr. E. G. Wikramanayake, Q.C., with Mr. Advocate Pathirana instructed by Mr. K. N. S. Nadarajah, Proctor, on the part of the plaintiff and of Mr. Advocate Kottegoda instructed by Mr. D. A. B. Ratnayake on the part of the defendant. 20

It is ordered and decreed that the defendant do pay the plaintiff, profits at the rate of Rs. 2,000/- per year from 31st March, 1948, up to date of payment of his capital and costs of action as taxed by the officer of this Court.

(Sgd.) . . . . .  
*District Judge.*

This 31st day of July, 1958.

No. 13  
Plaintiff's Lists  
of Witnesses

**No. 13**  
**Plaintiff's Lists of Witnesses (3)**

IN THE DISTRICT COURT OF KURUNEGALA

30

No. 5810.

PLAINTIFF'S LIST OF WITNESSES

1. Mr. N. S. Selvaratnam, Accountant, Jaffna.
2. The Manager, Caltex Ceylon Limited, Colombo, to give evidence and to produce or cause to be produced :—

- (a) Statements of commission paid to Messrs. R. W. & A. Pathirana, Kurunegala, for the years 1.4.45 to 31.3.46, 1.4.46 to 31.3.47, 1.4.47 to 31.3.48 and 1.4.48 to 31.3.51.
- (b) Original of letter marked confidential from the plaintiff to the Manager, Caltex Ceylon Ltd., Colombo, dated 15.7.48 ; and
- (c) copies of agreement of Kurunegala agency for the years 1948 and 1949.
3. The Agent, Bank of Ceylon, Kurunegala, to produce or cause to be produced :—
- (a) Cheque Nos. 55501 dated 11.4.47.  
55506 dated 25.4.47.  
55513 dated 10.5.47.  
55520 dated 26.5.47.  
55524 dated 5.6.47.  
55527 dated 7.6.47.  
55538 dated 4th July, 1947.  
55547 dated 11th July, 47.  
08656 dated 22nd August, 47.  
08659 dated 30th August, 47.  
08663 dated 2nd September, 47.  
08868 dated 8th September, 1947.  
08670 dated 12th September, 1947.  
08673 dated 18th September, 1947.  
57764 dated 15th October, 1947.  
57769 dated 29th October, 1947.  
57771 dated 30th October, 1947.  
57773 dated 30th October, 1947.  
57774 dated 30th September, 1947.  
57780 dated 14th November, 1947.  
57785 dated 2nd December, 1947.  
57800 dated 6th January, 1948.  
01407 dated 10th January, 1948.  
01411 dated 20th January, 1948.  
01403 dated 22nd January, 1948.  
01428 dated 24th January, 1948.  
01434 dated 3rd March, 1948.  
01440 dated 16th March, 1948.  
01439 dated 12th March, 1948.  
01447 dated 1st April, 1948.  
01450 dated 3rd May, 1948.

No. 13  
 Plaintiff's Lists  
 of Witnesses  
*Continued*

4. Sergeant Arthur Perera, Crime Branch, Kurunegala Police, to produce copy of the statement made by the plaintiff on 15.7.48 regarding the alleged embezzlement of the funds of the firm by the defendant in respect of the partnership business of Messrs. E. W. & A. Pathirana of Kurunegala.
5. Mr. Ratnam, Agent, Shell Co., Ltd., Kurunegala.
6. B. K. J. Perera of Tittawela, Kurunegala.
7. R. B. Perera of Bulupitiya.
8. R. M. Edwin Singho, Caltex Petrol Service Station, Kurunegala.
9. Rodrigo, Pumper, Caltex Petrol Service Station, Kurunegala. 10
10. R. W. Pathirana, the defendant to produce the following documents: (1) Private Ledger, (2) Cash Book, (3) Sales Ledger, (4) Purchasers Ldger, (5) Stock Book, (6) Bank Statements of the firm, current account with the Bank of Ceylon, Kurunegala, since the opening of the account, (7) Counterfoils of all Cheques drawn on the firm's account since the opening of the account, (8) Receipts for all cash transactions and payments made by the defendant on behalf of the firm during the period 1.4.45 to 31.3.48, (9) All receipts given by the plaintiff for cash drawn by him for the partnership business, (10) Statement 20 of accounts for petrol sold to plaintiff on credit from 1.4.45 to 31.3.48, (11) Duplicates of the Firm's daily reports for the period 1.4.45 to 31.3.46, 1.4.46 to 31.3.47, 1.4.47 to 31.3.48, (12) Original of letters from the plaintiff to the defendant dated (a) 21.2.48, (b) 6.3.48, (c) 22.3.48, (d) 8.4.48, (e) 30.4.48, (f) 3.5.48, (g) 6.5.48, (h) 22.5.48; (13) Copy of letter from defendant to plaintiff dated 24.4.48, (14) Original of letter sent by Messrs. Tambirajah and Kandiah Proctors under instructions from plaintiff to the defendant dated 3.7.48, (15) Balance Sheet of the firm for the 3 years 1.4.45 to 31.3.46, 30 1.4.46 to 31.3.47 and 1.4.47 to 31.3.48, (16) Statement showing amount drawn by the plaintiff from the funds of the firm during the period of 1.4.45 to 31.3.48 to be supported by receipts of acknowledgments given by the plaintiff, (17) Balance Sheet of the firm for the years ending 31.3.43, 31.3.44 and 31.3.45, (18) The Agency Agreement between R. W. & A. Pathirana and Caltex Ceylon Ltd. for the years 1947 and 1948, (19) Agency Agreement between R. W. Pathirana and Caltex Ceylon Limited for the years 1948, 1949 1950 and 1951, (20) Letter of defendant to plaintiff dated 40 24.4.48, (21) Original of letter dated 13.6.49 written by Messrs. Thambirajah and Kandiah, Proctors on instruction by plaintiff, (22) Original of letter of plaintiff to defendant dated 16.8.49, (23) Original of telegram dated 24.8.49 from plaintiff to defendant.

11. Mr. A. M. Lairis Appu, Managing Director, Green Line Bus Co., Ltd., Kurunegala.
12. Mr. A. G. Piyadasa, General Secretary, Green Line Bus Co., Ltd., Kurunegala, to produce cheque counterfoils of cheques drawn in favour of R. W. & A. Pathirana, Kurunegala.
13. Mr. M. B. Perera, Oxford Furnishing Company, Kurunegala.
14. Mr. C. J. M. Everts, No. 22, Kandy Road, Kurunegala.
15. The Manager, P. A. Hamid & Co., Handawa, Polgahawela, to produce account folio of Messrs. R. W. & A. Pathirana of Kurunegala, (2) Cheques issued in favour of Messrs. R. W. & A. Pathirana and returned to drawer.
16. Mr. W. Leo Perera presently of Kiragama Estate, Kurunegala.
17. Messrs. Satchithananda, Schokman & de Silva, Chartered Accountants, Colombo, to give evidence and to produce or cause to be produced the audit report filed in Court and also the commission issued to you and all connected papers therein.
18. Mr. V. Rajaratnam, Fernando Road, Colombo.
19. Mr. E. P. Macintyre, Examiner of questioned documents and finger prints experts, Harmer's Avenue, Wellawatta.
20. Mr. T. Najendram, Government Examiner of questioned documents of Colombo.

No. 13  
Plaintiff's Lists  
of Witnesses  
*Continued*

Kurunegala, 27th April, 1951.

(Sgd.) THAMBIRAJAH & KANDIAH,

*Proctors for Plaintiff.*

Received a copy.

(Sgd.) .....

*Proctors for Defendant.*

## IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

30

### PLAINTIFF'S LIST OF WITNESSES

1. The Manager, Caltex Ceylon Limited, Fort, Colombo, to give evidence and to produce or cause to be produced (a) Statements of commission and allowances paid to Messrs. R. W. & A. Pathirana and or Mr. R. W. Pathirana for the period of 1.4.48 to 31st March, 1957 (b) The Agency Agreements between Messrs. Caltex Ceylon Limited and Messrs R. W. & A. Pathirana for the years 1947 and 1948 (c) The Agency Agreements between Messrs. Caltex Ceylon Limited and Mr. R. W. Pathirana for the years 1948 to 1957.
- 40 2. M. Selvaratnam, Auditor, Main Street, Jaffna.

No. 13  
Plaintiff's List  
of Witnesses—  
*Continued*

3. R. W. Pathirana of Dambulla Road, Kurunegala, to give evidence and to produce copies of his Income Tax returns for the years 1948 to 1957.
4. The Secretary, District Court of Kurunegala, to produce or cause to be produced case No. 5029 of the District Court of Kurunegala.

Kurunegala, 4th April, 1957.

(Sgd.) .....

*Proctor for Plaintiff.*

Received a copy.

(Sgd.) D. A. B. RATNAYAKE,

*Proctor for Defendant.*

10

IN THE DISTRICT COURT OF KURUNEGALA

PLAINTIFF'S ADDITIONAL LIST OF WITNESSES

No. 5810.

1. The Manager, Caltex Ceylon Limited, Fort, Colombo, to give evidence and to produce or cause to be produced (a) Statements of commission and allowances paid to Messrs. R. W. & A. Pathirana and or Mr. R. W. Pathirana for the period of 1.4.1947 to 31st March, 1958. 20
- (b) The Agency Agreement between Messrs. Caltex Ceylon Limited and Messrs. R. W. & A. Pathirana for the years 1947 and 1948, (c) The Agency Agreements between Messrs. Caltex Ceylon Limited and Mr. R. W. Pathirana for the years 1948 to 1958.
2. M. Selvaratnam, Auditor, Main Street, Jaffna, to give evidence and to produce balance sheets of Messrs. R. W. & A. Pathirana.
3. R. W. Pathirana of Dambulla Road, Kurunegala, to give evidence and to produce copies of his Income Tax returns for the years 1948 to 1958 and all correspondence re. termination of partnership between plaintiff and defendant. 30
4. The Secretary, District Court of Kurunegala, to produce or cause to be produced case No. 5029 of the District Court of Kurunegala.

Kurunegala, 7th May, 1958.

(Sgd.) .....

*Proctor for Plaintiff.*

Received notice with copy.

(Sgd.) .....

*Proctor for Defendant.*

40

**No. 14**  
**Plaintiff's Lists of Documents (5)**

No. 14  
Plaintiff's Lists  
of Documents

IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

PLAINTIFF'S LIST OF DOCUMENTS

1. Balance Sheet of Messrs. R. W. & A. Pathirana, Kurunegala, as at 31st March, 1945.
2. Copies of letters sent by plaintiff to defendant dated :—
  - (a) 21st February, 1948.
  - 10 (b) 6th March, 1948.
  - (c) 22nd March, 1948.
  - (d) 8th April, 1948.
  - (e) 30th April, 1948.
  - (f) 3rd May, 1948.
  - (g) 6th May, 1948.
  - (h) 25th May, 1948.
3. Letter from defendant to plaintiff dated 24th April, 1948.
4. Copy of letter sent to the defendant by Messrs. Thambirajah and Kandiah, Proctors, dated 3rd July, 1948.
5. Daily reports of the firm for period 1.4.48 to 30.5.48.
- 20 6. Statements of commission paid to Messrs. R. W. & A. Pathirana for the years 1.4.45, 31.3.46, 1.4.46 to 31.3.47 to 31.3.48 and 1.4.48 to 31.3.51 by Caltex Ceylon, Ltd., Colombo.
7. Original of letter marked confidential from the plaintiff to the Manager, Caltex Ltd., Colombo, dated 15.7.48.
8. Copies of agreement of Kurunegala Agency for the years 1948 and 1949.
10. All cheques drawn by the defendant on the current account of Messrs. R. W. & A. Pathirana, Kurunegala, since the opening of the firm's account.
- 30 11. Ledger folios of the firm's account since the opening of the account.
12. Statement made by plaintiff to Police, Kurunegala, dated 15.7.48 regarding the alleged funds of the firm of Messrs. R. W. & A. Pathirana.
13. (a) Private ledger, (b) cash book, (c) sales ledger and purchase ledger, (d) stock book, (e) bank statements of the firm of

- current account with the Bank of Ceylon, Kurunegala, since of the opening of the account, (f) counterfoils of all cheques drawn on the firm account since the opening of the account, (g) receipts for all cash transactions and payments made by the defendant on behalf of the firm during the period 1.4.45 to 31.3.48, (h) all receipts given by plaintiff for cash drawn by him for the partnership business, (i) a statement of account for petrol sold to plaintiff on credit from 1.4.45 to 31.3.48, (j) duplicates of firm's daily reports for the periods 1.4.45, 31.3.46, 1.4.46 to 31.3.47, 1.4.47 to 31.3.48, (k) original of 10 letters from the plaintiff to the defendants, (l) copies of letters from the defendant to plaintiff, (m) original of letter sent by Messrs. Thambirajah and Kandiah, Proctors, under instructions from plaintiff to the defendant dated 3.7.48, (n) Balance Sheet of the firm for three years 1.4.45 to 31.3.48 to be supported by receipts of acknowledgments given by the plaintiff, (o) cheques drawn by R. W. & A. Pathirana from Green Line Bus Company Limited, Kurunegala, and counterfoils of cheques, (p) account folios of Messrs. R. W. & A. Pathirana and cheques issued to them and returned to drawer by P. A. Hamid & Co., Polgaha-20 wela, (q) audit reports of Messrs. Satchithananda Schokman & de Silva led in Court and also commission issued to them and all connected papers therewith.
14. Certificate of business registration No. 1855 issued by B.N., N.W.P.
  15. Copy of the statement of the complaint made by plaintiff against defendant to Kurunegala Police on 15.7.48, 16.7.48.
  16. Partnership deed No. 285 dated attested by M. O. M. Thahir, Notary Public.
  17. Original of letter from Mr. Leo Perera to plaintiff. 30

Kurunegala, 27th April, 1951.

(Sgd.) THAMBIRAJAH & KANDIAH,  
*Proctors for Plaintiff.*

Received a copy.

(Sgd.) .....  
*Proctors for Defendant.*

## IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

## PLAINTIFF'S ADDITIONAL LIST OF DOCUMENTS

Copy of letter from Messrs. Thambirajah and Kandiah, Proctors, under instructions from plaintiff to the defendant dated 13th June, 1949.

Kurunegala, 9th May, 1951.

(Sgd.) .....

*Proctors for Plaintiff.*

10 Received a copy.

(Sgd.) .....

*Proctors for Defendant.*

## IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

## PLAINTIFF'S ADDITIONAL LIST OF DOCUMENTS

1. Certified copy of proceedings in case No. 5029 District Court, Kurunegala.
2. The Agency Agreement between Messrs. Caltex Ceylon Limited and Mr. R. W. Pathirana for the years 1948 to 1957.

20

Kurunegala, 10th June, 1957.

(Sgd.) .....

*Proctors for Plaintiff.*

Received a copy.

(Sgd.) .....

*Proctor for Defendant.*

## IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

Money.

## PLAINTIFF'S LIST OF DOCUMENTS

- 30 1. Deed of Partnership No. 285 attested by Mr. M. O. M. Thahir, Proctor and Notary Public.
2. Certificate of Business Registration of R. W. & A. Pathirana.
3. Balance Sheet of R. W. & A. Pathirana as at 31.3.43.
4. Balance Sheet of R. W. & A. Pathirana as at 31.3.44.
5. Balance Sheet of R. W. & A. Pathirana as at 31.3.45.

No. 14  
Plaintiff's Lists  
of Documents—  
*Continued*

6. Statements of commissions paid to Messrs. R. W. & A. Pathirana by Messrs. Caltex Ceylon Limited.
7. Statements of commissions paid to Mr. R. W. Pathirana by Messrs. Caltex Ceylon Limited, from 1947 to 31.3.58.
8. Correspondence and copies of correspondence between plaintiff and defendant between the years 1946 and 1949.
9. Income Tax Returns of defendant from 1947 to date.
10. Case record of D. C. 5029, Kurunegala, and judgment.
11. Letters from plaintiff and defendant to Auditor N. Selvaratnam. 10
12. Agency Agreements between Caltex Ceylon Ltd. and Messrs. R. W. & A. Pathirana.
13. Agency Agreements between Caltex Ceylon Ltd., and Mr. R. W. Pathirana.
14. Letters and copies of letters sent to defendant by plaintiff's Proctors.
15. Letters and copies of letters sent to plaintiff by defendant's Proctors.

Kurunegala, 13th May, 1958.

(Sgd.) ..... 20  
*Proctor for Plaintiff.*

Received notice with copy.

(Sgd.) D. A. B. RATNAYAKE,  
*Proctor for Defendant.*

IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

Ariya Pathirana of Kurunegala.....*Plaintiff*

*vs.*

Robert Watte Pathirana of Kurunegala.....*Defendant.*

I file plaintiff's list of documents produced at the trial in the 30 above case :—

1. Certified copy of Partnership Agreement No. 285 attested by M. O. M. Thahir, Notary Public marked .. .. P1
2. Certified copy of plaint in D.C. Kurunegala Case No. 5029 marked .. .. P2

3. Certified copy of answer in D.C. Kurunegala Case No. 5029 marked .. .. . P3
4. Certified copy of the issues framed in D.C. Kurunegala 5029 on 14.5.61 marked .. .. . P4
5. Certified copy of the issues framed in D.C. Kurunegala 5029 on 19.9.1949 marked .. .. . P4A
6. Certified copy of the issues framed in D.C. Kurunegala 5029 on 1.2.1954 marked .. .. . P4B
- 10 7. Certified copy of extract of the judgment in D.C. Kurunegala 5029 marked.. .. . P5
8. Certified copy of decree in D.C. Kurunegala 5029 marked.. P6
9. Letter dated 10th September, 1948, sent by the defendant's proctor to the plaintiff giving notice of termination of partnership marked .. .. . P7
10. Certified copy of journal dated 3.2.49 in D.C. Kurunegala case No. 5029 marked .. .. . P8
11. Letter dated 13th June, 1949, sent by plaintiff's proctor to defendant marked .. .. . P9
12. Letter dated 16.8.49 from plaintiff to defendant marked.. P10
- 20 13. Copy of telegram sent by plaintiff to defendant marked .. P11
14. Receipt attached to telegram sent on 24.8.49 marked .. P11A
15. Letter sent by defendant to plaintiff dated 26.8.49 marked P12
16. Registered letter envelope of 26.8.49 marked .. .. P12A
17. Extract from evidence given Mr. R. E. Rughasse on 5th November, 1948, in D.C. Kurunegala case No. 5029 marked .. .. . P13
18. Certified copy of letter sent by defendant to Mr. N. Selvaratnam, Accountant, Jaffna (P46 in D.C. 5029) marked P14
- 30 19. Certified copy of defendant's list of witnesses of 7.6.49 in D.C. Kurunegala case No. 5029 marked .. .. P15
20. Certified copy of defendant's list of witnesses of 9.9.49 in D.C. Kurunegala case No. 5029 marked .. .. P16
21. Certified copy of defendant's list of witnesses of 26.4.51 in D.C. Kurunegala case No. 5029 marked .. .. P17

Kurunegala, 17th July, 1958.

(Sgd.) .....  
Proctor for Plaintiff.

**No. 15**  
**Defendant's List of Witnesses**

IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

DEFENDANT'S LIST OF WITNESSES

1. Secretary of the District Court of Kurunegala to cause to be produced Records in D.C. Kurunegala case No. 5029 and D.C. 4239/M.
2. The Manager, Caltex Ceylon Limited, Chartered Bank Building, Colombo Fort to give evidence and to produce the letters **10** written by Messrs. Caltex Ceylon Ltd. to defendant ;
  - (a) from 4.9.1948 to January, 1949.
  - (b) Agreements No. 5, No. 8, No. 16, No. 127, No. 128, No. 18 and No. 42 all of 1948.
3. Mr. Senaratne of Kurunegala, Audit Clerk to Messrs. Tudor Perera & Company Ltd. to give evidence and to produce their Audited Accounts of R. W. Pathirana of Kurunegala of 1947, 1948.
4. Agent, Bank of Ceylon, Kurunegala, to cause to be produced letter written by defendant to the Bank dated 22.3.1948 and **20** other letters relating to the loan taken by Ariya Pathirana and R. W. Pathirana on 8th April, 1947, copy of letter written by Bank to defendant dated 5th May, 1941, and copies of other letters relating to the above loan.
5. Ariya Pathirana of Kurunegala (plaintiff) to produce originals of letters written by the defendant to plaintiff dated 8.2.1948, 24.4.1948, 7.6.1948, 3.7.1948, 26.8.1948 and 10.9.1948.

Kurunegala 6th May, 1958.

(Sgd.) .....  
*Proctor for Defendant.* **30**

Received a copy.  
 Copy served.  
*Proctors for Plaintiff.*

**No. 16**  
**Defendant's List of Documents**

No. 16  
Defendant's  
List of  
Documents

IN THE DISTRICT COURT OF KURUNEGALA

No. 5810.

I file defendant's list of documents produced at the trial of the above case :—

- |        |   |     |
|--------|---|-----|
| 1.     | Service Station Licence Agreement dated 20.4.1942<br>marked .. .. .               | D1  |
| 2.     | Equipment Loan Agreement dated 8.7.1946 marked ..                                 | D2  |
| 10 3.  | Letter dated 5th January, 1948, marked .. ..                                      | D3  |
| 4.     | Promissory Note dated 8th April, 1947, marked ..                                  | D4  |
| 5.     | Letter from Messrs. Thambirajah & Kandiah No. 5794<br>of 27.9.1948 marked .. .. . | D5  |
| 6.     | Letter dated 21.2.1948 from Ariya Pathirana marked ..                             | D6  |
| 7.     | Letter dated 22.3.1948 marked .. .. .   | D7  |
| 8.     | Letter dated 23.9.1948 marked .. .. .   | D8  |
| 9.     | Letter dated 23.9.48 marked .. .. .   | D9  |
| 10.    | Letter dated 23.9.1948 marked .. .. .   | D10 |
| 11.    | Letter No. 172 dated 11.2.1949 marked .. ..                                       | D11 |
| 20 12. | Letter dated 5th May, 1949, marked .. .. .  | D12 |
| 13.    | Letter dated 21st September, 1948, marked .. ..                                   | D13 |
| 14.    | Petrol Dealer Agreement No. 8 marked .. ..  | D14 |
| 15.    | Kerosene Agency Agreement No. 16 marked .. ..                                     | D15 |
| 16.    | Accounts for the seven months ended 31.10.1948 marked                             | D15 |
| 17.    | Account of Mr. A. Pathirana marked .. .. .  | D16 |
| 18.    | Account of Mr. A. Pathirana marked .. .. .  | D17 |

Kurunegala, 9th July, 1958.

(Sgd.) .....  
*Proctor for Defendant.*

No. 17  
Petition of  
Appeal to the  
Supreme Court  
9.8.58

**No. 17**  
**Petition of Appeal to the Supreme Court**

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala . . . . . *Plaintiff*  
No. 5810. *vs.*  
Robert Watte Pathirana of Kurunegala . . . . . *Defendant.*

To :

The Hon. The Chief Justice and the other Hon. Justices of the  
Hon. The Supreme Court of Ceylon.

Ariya Pathirana of Kurunegala . . . . . *Plaintiff-Respondent 10*  
No. S. C. 351/58 F *and*  
Robert Watte Pathirana of Kurunegala . . . . .  
. . . . . *Defendant-Appellant.*

This 9th day of August, 1958.

The humble petition of appeal of the appellant abovenamed appearing by his Proctors Damian Adrian Ratnayake Assistant Kirthi Tissa Wettewe states as follows :—

1. The plaintiff sued the defendant in this case in terms of a partnership which the plaintiff pleaded stood dissolved as on 10th December, 1948. The plaintiff further pleaded that thereafter since 20 the 11th December, 1948, the defendant under the Agency rights obtained in his name fraudulently and wrongfully is carrying on the business of the sale of Caltex Petrol and Caltex Key brand kerosene oil in the Kurunegala District. On that the defendant has to account to the partnership for all profits thus obtained by him. The plaintiff further pleaded: (a) that the accounts of the said partnership be taken by Court, (b) assets thereof inclusive of goodwill be realised, (c) that each party be ordered to pay into Court any balance due from him upon such partnership account, (d) that all debts and liabilities of the said partnership be paid and discharged, (e) that the 30 balance remaining of such assets after such payment and discharge be divided between plaintiff and defendant equally.

2. The defendant by his answer of 15th October, 1957, denied *inter-alia* that he had fraudulently and wrongfully obtained any Agency rights in his own name as alleged by the plaintiff. The defendant also denied *inter-alia* that he has to account to the plaintiff for any profits or that there was any legally binding or proper partnership liable to receive or account for profits from the business carried on by the defendant on his own and that Caltex Co., Ltd., had the right to appoint whomsoever they wanted.

3. The defendant also pleaded *inter-alia* that the plaintiff could not in view of an earlier action No. 5029 in the same Court now sue the defendant in this action in respect of the claim now made.

4. The defendant further accounted for his profits in case of liability and brought to Court a sum of Rs. 280/- without prejudice to his rights and defences.

5. The case went to trial on 19.5.58 and subsequent dates on the following issues :—

- 10 (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 ?
- (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 ?
- (3) 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 ?
- (4) Did the defendant in carrying on the agency make use of
- 20 (a) the capital ?
- (b) the goodwill, of the partnership ?
- (5) If issues 3 and 4 are answered in the affirmative is the defendant liable to account to the plaintiff how the annual assets are distributed between the parties ?
- (6) If so what sum is due to the plaintiff by way of profits?
- (a) up to date hereof ?
- (b) as annual profits up to date of the division of the assets ?
- (7) Was the partnership dissolved : (a) with due notice given on the 10th September, 1948, by the defendant ?
- 30 (b) by certain circumstances which arose between the plaintiff and 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 ?
- (8) Was the agreement between the partnership and Messrs. Caltex & Co. cancelled by the said Company under the agreement ?

No. 17  
 Petition of  
 Appeal to the  
 Supreme Court  
 9.8.58—  
*Continued*

- (9) Did the defendant lawfully obtain a subsequent agreement in his own name ?
- (10) Is judgment and decree in D.C. Kurunegala case No. 5029 *res-judicata* between the plaintiff and the defendant up to 23rd April, 1948 ?
- (11) Does the judgment and decree in D.C. 5029 create an Estoppel against the plaintiff from maintaining this action with regard to matters that arose in D.C. action No. 5029 ?
- (12) Can the plaintiff sue the defendant in this action—
- (a) as he had not included the whole of the claim in 10 action No. 5029 of this Court ?
- (b) as he omitted in the said action to sue in respect of the profits claimed in the present cause of action ?
- (c) as he has split up his cause of action ?
- (d) as he has not obtained leave of Court to omit the cause of action that arose when he brought action No. 5029 ?
- (e) as he has not obtained leave of Court to relinquish any portion of this cause of action and or reserved in the said action the present claim sued upon ? 20
- (13) What are the profits of the said business from 23rd August up to dissolution on 10th December, 1948 ?

6. The learned trial judge gave judgment on 31.7.1958 answering the issues as follows :—

- (1) The amount due up to March, 1948, was fixed by the decree in the earlier case at Rs. 10,550/-. The profits due to end of October was Rs. 5,000/-. The profits up to end of 1948 would be the above amount plus another Rs. 1,000/.
- (2) Barring the amount decreed in the earlier case the amount due to the plaintiff at the date of the dissolution of the 30 partnership would be Rs. 2,300/-.
- (3) (a) Yes.
- (3) (b) Yes.
- (3) (2) Yes.
- (4) (a) Yes.
- (4) (b) Yes.
- (5) The defendant is liable to account to the plaintiff until the assets are distributed between the parties.

- (6) As the account books are not produced I assess the plaintiff is entitled to Rs. 2,000/- per year as his share of the profits from the business up to date of dissolution.
- (7) (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.
- (7) (d) The evidence is that Messrs. Caltex Ltd., terminated their contract with the partnership at the instance of the defendant.
- 10 (8) Yes.
- (9) Defendant obtained a contract with Messrs. Caltex Co. at his own instance. The grounds on which he had asked for that agency are known by D13. The allegation made by the defendant in D13 are clearly untrue.
- (10) It is *res judicata* as regards the matter which was dealt with in case No. 5029. These matters are the profits up to 31st March, 1948. The profits claimed in this case are clearly not barred by that action.
- (11) No.
- 20 (12) (a) The claim in this action did not arise in that case as at the date of the institution of that case the partnership had not been terminated and according to the plaintiff the partnership was terminated at the instance of the defendant.
- (12) (b) No.
- (c), (d) and (e) The claim clearly is not barred as the issues in this case are not the same as the issues in the last case. The plaintiff could not make the present claim in that case as it had not arisen at that time.
- 30 7. The learned District Judge entered judgment and decree for the plaintiff at the rate of Rs. 2,000/- per year from 31st March, 1948, up to date of payment of the plaintiff's capital and costs.
8. Being aggrieved by the said judgment and decree the defendant begs to appeal therefrom to Your Lordship's Court on the following among other grounds that may be urged by counsel at the hearing of this appeal :—
- (a) The said judgment and decree are contrary to law and against the weight of evidence led in the case.
- (b) The plaintiff has failed to prove that there was any capital  
 40 of the partnership left or utilised by the defendant in his

No. 17  
 Petition of  
 Appeal to the  
 Supreme Court  
 9.8.58—  
*Continued*

business. On the contrary the defendant has proved that such capital as had been brought in by the plaintiff had long been exhausted before the partnership was dissolved.

- (c) The plaintiff is in law not entitled to on the partnership or to claim any profits from the defendant's business or otherwise in terms of the said partnership.
- (d) In any event the plaintiff cannot be given an award on the footing on which the learned District Judge had made his award. 10
- (e) It is submitted that the plaintiff cannot sue the defendant in the present action.
- (f) In any event the amount awarded is not borne out by the evidence and cannot exceed the amount shown by the defendant.
- (g) As the agreements with Caltex Co. were renewable from year to year plaintiff in any event is not entitled to more than a maximum of one year's profits and return of capital if any.
- (h) The learned District Judge has failed to direct himself 20 properly on the rights the Company reserved in their agreements to cancel same with the partnership without any grounds on 24 hours notice.

Wherefore Your Lordships' appellant humbly prays :—

- (a) that the judgment and decree appealed from be set aside with costs ;
- (b) for costs in this behalf incurred ;
- (c) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) D. A. B. RATNAYAKE, 30  
*Proctor for Defendant-Appellant.*

Drawn by :

COLVIN R. de SILVA,  
 H. A. KOTTEGODA,  
*Advocates.*

**No. 18**  
**Judgment of the Supreme Court**

No. 18  
Judgment of  
the Supreme  
Court  
25.7.61

S.C. 351/58 (F)

D.C. Kurunegala No. 5810/M.

Ariya Pathirana of Kurunegala . . . . . *Plaintiff-Respondent**vs.*Robert Watte Pathirana of Kurunegala . . . . .  
. . . . . *Defendant-Appellant.**Present :* Gunasekara, J. and Sinnetamby, J.

*Counsel :* H. W. Jayawardene, Q.C., with N. R. M. Daluwatte for  
10 the defendant-appellant, and E. B. Wickremanayake,  
Q.C., with T. W. Rajaratnam for the plaintiff-  
respondent.

*Argued on :* 3rd June, 1961.*Decided on :* 25th July, 1961.

SINNETAMBY, J. :

The plaintiff and defendant were partners and carried on a business under a partnership agreement marked P1 bearing No. 285, dated 30th December, 1942. The nature of their business involved the sale of petrol and other products of Caltex (Ceylon) Ltd. in premises belonging to the Caltex Company. They were permitted to use the equipment provided by the Company on payment of a nominal hire and were subject to the conditions set out in the agreements entered into between the partnership and Caltex (Ceylon) Ltd. embodied in the documents D1, D3 and D14. The partners were, for the purpose of this business, regarded as the business agents of the Caltex Company, though in point of fact, they were not agents in the legal sense. Differences appear to have arisen between the partners and the plaintiff had instituted an action against the defendant in the District Court of Kurunegala on 18th August, 1948, claiming 30 profits for the three years ended 31st March, 1948. He obtained a decree in November, 1954, in a sum of Rs. 10,550/- on account of his claim for his share of the profits. In the meantime, on 10th September, 1948, the defendant gave the plaintiff, in terms of the partnership agreement P1, three months notice terminating the partnership as from 10th December, 1948.

The present action was instituted prior to the decree in that case on 25th August, 1949, averring the dissolution of the partnership and asking that the accounts of the partnership be taken. The plaintiff also asked for distribution of the assets and for division of profits.

40 The defendant, according to the partnership agreement, was the managing partner and it is not denied that he kept books ; indeed, in

No. 18  
 Judgment of  
 the Supreme  
 Court  
 25.7.61—  
*Continued*

the earlier action he produced his books to a firm of Chartered Accountants who reported on them to the Court. Even in the present action he called as a witness a gentleman employed in a firm of accountants and submitted a statement prepared by him. The plaintiff averred that the defendant had failed to render a true and correct account of the partnership from 1st April, 1945. Article 7 of the partnership agreement P1 requires that on the 31st of March each year a balance sheet should be prepared showing the assets and liabilities and each partner's share of the capital and profits. Article 9 provides that these accounts should be audited by a recognised 10 auditor. Article 11 further provides that neither partner shall draw a sum exceeding Rs. 150/- per month except with the consent of the other partner. The need for an annual balance sheet and a profit and loss account was thus imperative. Each partner contributed a sum of Rs. 2,000/- to the business as capital. They also appear to have borrowed money from the bank to finance the business and this had been subsequently liquidated. Although the defendant said he had liquidated this loan out of his personal funds he has not established it by satisfactory evidence and the learned judge has, in my view, rightly rejected his contention. 20

The plaintiff also averred that prior to the notice of termination of the partnership the defendant fraudulently obtained from the Caltex Company an agreement for the sale of their products in the same premises in his own name after inducing them to cancel the agreement with the partnership. This, under the agreements, they could have done at short notice. The plaintiff claimed the profits made by the defendant in conducting the business in his own name from the date of the cancellation of the agreement with the Caltex Company up to the date on which assets are distributed. The defendant, in his answer denied that he failed to render accounts from 1st April, 30 1945, and stated that only a sum of Rs. 280/- was due as plaintiff's share of the profits. On the trial date, several issues were framed but 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 on various matters which need not have been gone into if the correct procedure had been followed.

Sitting in appeal, I have noticed that in several partnership cases in which the plaintiff has asked for the dissolution of partnership and 40 for an order directing accounts to be taken, some trial courts have not followed the correct procedure and do not appear to have a proper appreciation of the steps that should be taken in the course of such proceedings. Where the plaintiff states that accounts have not been rendered and asks for the taking of accounts, the Court should first consider what defence the defendant has put up in regard to that

claim. If his defence is that accounts have been rendered, then the first question the Court must determine is whether in fact accounts had been rendered and if so up to what date. It should then make an order directing accounts to be rendered from the date from which it finds they have not been rendered. Section 508 of the Civil Procedure Code expressly provides that in actions of accounts, the Court may adjudicate piece-meal upon the matters in issue and in such adjudications make interlocutory orders of a final character. Having decided this issue the Court should then call upon the defendant if

10 he is the accounting party to file a statement of accounts for such period as it considers necessary. In rendering his accounts the accounting party must comply with the provisions of Section 511; it should be verified on oath or affirmation. Thereafter, a date should be fixed for the opposite party to falsify and surcharge. When that has been done, the trial should be confined only to those items in the accounts in respect of which there are disputes. Section 513 provides for the procedure to be followed when the accounting party makes default. The hearing of the main issues in the case should be adjourned until after the accounts are taken in terms of Section 513.

20 There are, of course, several other defences also open to the accounting party when the plaintiff asks the Court for an order calling on the defendant to file accounts. If such defences are taken they should first be adjudicated upon before an order is made. In the case of partnerships Section 202 expressly provides that accounts shall be taken before a decree for dissolution is made. Ordinarily, in partnership 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. If after accounts are filed the Court thinks it requires the services of an accountant, it

30 may issue a commission in terms of Sections 430 and 431 of the Civil Procedure Code, to an accountant to examine and report on the accounts. This should only be done if the Court considers such a reference necessary and should not be done solely on the initiative of either or both parties—*Seneviratne vs. Kariawasan*<sup>(1)</sup>. If courts of first instance would only follow these provisions of the Civil Procedure Code in taking partnership accounts much time would be saved and the issue narrowed to a smaller compass.

In the present case, the defendant was not called upon to submit an account and, indeed, he did not submit one which was supported

40 by books, but several issues were framed and the main ones with which the appeal was concerned and in respect of which argument was addressed to us were issues 1, 2, 3(1), 3(2), 4, 5 and 6. After trial the learned judge entered judgment for the plaintiff for profits at the rate of Rs. 2,000/- per year from 31st March, 1948, up to the date of payment of his "capital and costs." There was no express direction in the judgment or in the decree specifying what

amount had to be paid on account of capital, but, in answer to issue 2, the learned judge fixed the amount due to the plaintiff on account of his share of the assets and goodwill at Rs. 2,300/-. Against the judgment of the learned District Judge, the defendant preferred the present appeal.

The defendant, as stated earlier, failed to submit any accounts to the Court; he only called an accountant who submitted a statement unsupported by any books. The Court was accordingly entitled to draw inferences adverse to the accounting party. Lindley in his book on partnership refers to the effect of non-production of books 10 in the following terms :—

“ If a partner has books or accounts in his possession, and he will not produce them, an account may, nevertheless, be arrived at by presuming everything against him. Thus in a case where an account was directed at the suit of the representatives of a deceased partner against the surviving partner, and the latter would not produce the books necessary to enable the Master to take the accounts, the Master estimated the nett profits at £10 per cent. on the capital employed, and the Court, on exception to his report, confirmed it, adding that if he had 20 set the nett profits down at £20 per cent. his report would have been equally confirmed.”

In the present case, therefore, the failure of the defendant to produce the account books entitles the Court to draw every adverse inference against him but the Court had material upon which it could have proceeded. In the earlier action to which I have referred, a firm of Chartered Accountants audited the books and prepared and submitted a statement of the profits disclosed up to the end of March, 1948. They were fixed at Rs. 10,550/- after deduction of drawings. The learned judge assessed the profits for the subsequent period on 30 that basis, and it was not argued in appeal that his method of assessment was wrong. I think it was perfectly open to him to proceed on that basis. Indeed, the learned judge has been very considerate to the defendant for on that basis he should have allowed profits to be fixed at about Rs. 3,000/- per annum but having regard to the fact that it was the defendant who managed the business the learned judge has allowed Rs. 1,000/- per year to be deducted on that account and assessed the profits at Rs. 2,000/- per year, despite the fact that the remuneration allowed for his services in the partnership agreement was only Rs. 50/- per month. The plaintiff did not in appeal contest 40 the correctness of this award. It is not clear how the learned judge arrived at the value of the capital contributed and the assets and goodwill at Rs. 2,300/- but this figure too was not seriously contested. What the defendant did contest, however, was that the plaintiff was not entitled to claim any profits after the Caltex Company had terminated

its agreement with the partnership. This was done by letter D9 addressed by the Caltex Company to the partners dated 23rd September, 1948, terminating the petrol agreement by giving a month's notice. In regard to kerosene, a new agreement with the defendant was entered into as from 1st October, 1948.

No. 18  
Judgment of  
the Supreme  
Court  
25.7.61 —  
*Continued*

The notice of termination by the Caltex Company was, as would appear from D8, made in consequence of a letter written by the defendant to the Caltex Company dated 21st September, 1948, which has been produced marked D13. Obviously, in D13, there are  
10 misrepresentations upon which the Company appears to have acted. For instance, in it the defendant says that the plaintiff had withdrawn his capital of Rs. 2,000/-. This was in September, 1948, and is totally inconsistent with the decree entered in the earlier case No. D.C. 5029 in which judgment was only for the profits and the assets fixed at Rs. 3,232.84 were directed to be carried forward to the next account. The defendant's accountant produced statements of account D15 and D16 which the judge has quite rightly rejected. In regard to profits not included in the partnership accounts made by a partner by utilising partnership assets before the termination of  
20 the partnership, Section 29 of the Partnership Act would apply. In my view it clearly applies to the profits made by the defendant after he secretly wrote letter D13 to the Caltex Company and thereby induced them to cancel the original agreement with the partners and to enter into a new agreement with him personally. This was done without the knowledge of and without notice to the plaintiff, and at a time when the partnership had not been terminated. Lindley refers to several cases where a partner who on the termination of the partnership, obtains renewal of a lease in his own name, was ordered to account to the partnership for the profits he thereby made. In  
30 my opinion, the defendant was liable to share with the plaintiff the profits he made by obtaining a renewal in his own name of the several agreements the partnership had made with the Caltex Company.

The learned Judge in his judgment has ordered that the defendant should pay the plaintiff profits as decreed till the date on which the payment is made of the capital and costs. The only question that now remains for decision is whether this order is right. The learned counsel who appeared for the respondent conceded that he was not entitled to ask for profits until the date of payment of capital and costs. This question is not easy to determine and would depend in  
40 each case upon the facts and circumstances established therein. The accounts of a partnership must be kept open even after the date of dissolution for the purpose of debiting and crediting the parties with monies payable by them and monies they are entitled to receive both in respect of new transactions as well as old transactions. The same will be the case with partnerships which continue to do business in

No. 18  
 Judgment of  
 the Supreme  
 Court  
 25.7.61  
*Continued*

the partnership name after dissolution. 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 in the profits till final distribution of the assets or in the alternative interest on the capital at the usual rate, whichever is higher.

In the present case, the partnership agreement expressly provides 10 that fresh capital brought in should carry interest at 6 per cent. but the profits were definitely larger. The plaintiff should, therefore, be entitled to recover profits so long as the business of the partnership continues. This is provided for by Section 42 of the Partnership Act, which, however, restricts the right of interest to 5 per cent. on the outgoing partner's share of the partnership assets. In this case, as assets had not been distributed at the time of the action, it seems to me that 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 20 said that the defendant was still carrying on the business utilising partnership assets. The plaintiff's rights in short have 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 interest on the aggregate sum found due to him.

I would accordingly vary the decree by directing that the defendant do pay to the plaintiff profits at the rate of Rs. 2,000/- per year from 31st March, 1948, up to the date of the decree and his share of the assets and goodwill amounting to Rs. 2,300/- and that 30 thereafter, he should pay legal interest on the aggregate amount till payment in full with costs of action. Subject to this variation, I would dismiss the appeal with costs.

(Sgd.) N. SINNETAMBY,  
*Puisne Justice.*

GUNASEKARA, J.,  
 I agree.

(Sgd.) E. H. T. GUNASEKARA,  
*Puisne Justice.*

**No. 19**  
**Decree of the Supreme Court**

No. 19  
Decree of the  
Supreme Court  
3.8.61

S.C. 351/58(F).

ELIZABETH THE SECOND, Queen of Ceylon and of  
Her Other Realms and Territories, Head of  
the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Ariya Pathirana of Kurunegala.....*Plaintiff*

*vs.*

10                    Robert Watte Pathirana of Kurunegala.....*Defendant.*

Robert Watte Pathirana of Kurunegala.....  
..... *Defendant-Appellant*  
*against*

Ariya Pathirana of Kurunegala.....*Plaintiff-Respondent.*

Action No. 5810.

District Court of Kurunegala.

This cause coming on for hearing and determination on the 3rd June and 25th July, 1961, and on this day, upon an appeal preferred by the defendant-appellant before the Hon. Edwin Herbert Theodore  
20 Gunasekara and the Hon. Nadaraja Sinnetamby, Puisne Justices of this Court, in the presence of Counsel for the defendant-appellant and plaintiff-respondent.

It is considered and adjudged that this appeal be and the same is hereby dismissed and the decree is varied by directing, that the defendant do pay to the plaintiff profits at the rate of Rs. 2,000/- per year from 31st March, 1948, up to the date of the decree and his share of the assets and goodwill amounting to Rs. 2,300/- and that thereafter, he do pay legal interest on the aggregate amount till payment in full with costs of action.

30                    It is ordered and decreed that the defendant-appellant do pay to the plaintiff-respondent the taxed costs of this Appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 3rd day of August in the year One Thousand Nine hundred and Sixty-One and of Our Reign the Tenth.

SEAL

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S.C.*

No. 20  
Application  
for Conditional  
Leave to  
Appeal to the  
Privy Council  
10.8.61

**No. 20**  
**Application for Conditional Leave to Appeal to the**  
**Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for conditional leave to appeal to Her Majesty the Queen-in-Council.

D.C. Kurunegala 5810/M. S.C. No. 351(F) of 1958.	. . . . .	<i>Defendant-Appellant-Petitioner</i>  <i>vs.</i> Ariya Pathirana of 30, Kandy Road, Kurunegala . . . . . <i>Plaintiff-Respondent.</i>	10
---	-----------	--	----

To :

The Honourable the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

On this 10th day of August, 1961.

The humble petition of Robert Watte Pathirana the defendant-appellant abovenamed appearing by his proctors Felix Charles Aloysius Domingo de Silva, John Samuel Paranavitana, Joseph Domingo Bertram Fernando, Maduwage Diananda de Silva and 20 Shelton Ernest Abeysuriya, practising in partnership in Colombo under the name style and firm of "De Silva & Mendis" and their assistants Shirley Mark Fernando and Joseph Bertram Puvimansinghe, states as follows :—

1. That feeling aggrieved by the judgment and order of this Honourable Court pronounced on the 25th day of July, 1961, in the above action, the defendant-appellant is desirous of appealing therefrom to Her Majesty the Queen-in-Council.

2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to or is of the value of Rs. 5,000/- 30 or upwards and/or the appeal involves directly or indirectly some claim or question to or respecting property amounting to or of the value of Rs. 5,000/- or upwards.

3. The defendant-appellant in terms of Rule 2 of the schedule to the Appeals (Privy Council) Ordinance has on the 28th day of July, 1961, given the following notice to the plaintiff-respondent of his intended application to this Court for leave to appeal to Her Majesty the Queen-in-Council :—

" Take notice that I, the undersigned Muhandiram R. W. Pathirana, the defendant-appellant in S.C. No. 351 (Final) of 1958 D.C. 40

Kurunegala No. 5810 intend appealing to Her Majesty the Queen-in-Council from the judgment of the Honourable the Supreme Court delivered on the 25th day of July, 1961, and will within 30 days from the 25th day of July, 1961, apply to the Honourable the Supreme Court for conditional leave to appeal to Her Majesty the Queen-in-Council."

No. 20  
Application  
for Conditional  
Leave to  
Appeal to the  
Privy Council  
10.8.61—  
*Continued*

4. The defendant-appellant has served the above notice on the plaintiff-respondent by sending copies of same by ordinary post with certificate of posting and by telegram. The defendant-appellant also delivered a copy of the said notice personally to the plaintiff-  
10 respondent. Notice was also sent to the plaintiff-respondent to his residence under registered cover and also care of his proctor Mr. K. N. S. Nadarajah, but both these notices were returned with endorsement on the envelopes by the postal authorities "refused" "addressee not here. I can't find out his whereabouts" respectively. The defendant-appellant files herewith receipts of ordinary post with certificate of posting marked "A" Postal Article registered receipts marked "B" and "C" and receipt for telegram marked "D".

Wherefore the defendant-appellant prays for conditional leave to appeal against the said judgment of this Honourable Court dated  
20 the 25th of July, 1961. to Her Majesty the Queen-in-Council and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) .....  
*Proctors for Defendant-Appellant-Petitioner.*

**No. 21**  
**Objections filed by the Plaintiff-Respondent**

No. 21  
Objections  
filed by the  
Plaintiff-  
Respondent  
26.10.61

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

30 In the matter of an application for conditional leave to appeal to Her Majesty the Queen-in-Council.

D.C. Kurunegala 5810/M. .... *Defendant-Appellant-Petitioner*  
S.C. No. 351(F) of 1958. .... *vs.*  
No. 387 of 1961. Ariya Pathirana of 30, Kandy Road,  
Kurunegala..... *Plaintiff-Respondent.*

I, Ariya Pathirana of 30, Kandy Road, Kurunegala, not being a Christian do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. I am the plaintiff-respondent abovenamed.

No. 21  
Objections  
filed by the  
Plaintiff-  
Respondent  
26.10.61—  
*Continued*

2. I have not received notice of the defendant-appellant-petitioner's intention to appeal to Her Majesty the Queen-in-Council as alleged by the defendant-appellant-petitioner, in his affidavit.

3. I specially deny the receipt of the notice alleged to have been sent by ordinary post.

4. I also deny that I received the said notice by telegram.

5. I further deny that a copy of the said notice was personally delivered to me by the defendant-appellant-petitioner in person.

The foregoing affidavit was affirmed  
to at Colombo on this 26th day of  
October, 1961.

10

Before me.

(Sgd.) .....  
*A Justice of the Peace.*

(Sgd.) ARIYA PATHIRANA.

No. 22  
Decree granting  
Conditional  
Leave to Appeal  
to the Privy  
Council  
4.1.62

**No. 22**  
**Decree granting Conditional Leave to Appeal to the  
Privy Council**

S.C. Application No. 387/61.

ELIZABETH THE SECOND, Queen of Ceylon and of Her  
Other Realms and Territories, Head of the Commonwealth

20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application by the  
defendant-appellant dated 10th August, 1961,  
for conditional leave to appeal to Her Majesty  
the Queen-in-Council against the judgment  
and decree of this Court dated 25th July,  
1961, in S.C. 351/58 (Final)—D.C. Kurunegala  
Case No. 5810/M.

Robert Watte Pathirana of Kurunegala .....  
..... *Defendant-Appellant-Petitioner* 30  
*against*

Ariya Pathirana of No. 30, Kandy Road,  
Kurunegala .....  
..... *Plaintiff-Respondent-Respondent.*

Action No. 5810/M.

District Court of Kurunegala.

This cause coming on for hearing and determination on the 21st  
day of December, 1961, before the Hon. Miliani Claude Sansoni, and

the Hon. Hugh Norman Gregory Fernando, Puisne Justices of this Court, in the presence of Counsel for the defendant-appellant-petitioner and plaintiff-respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000/- and hypothecate the same by bond or such other security as the Court in terms of Section 7(1) of the Appellate Procedure (Privy Council) Order, 1921 (Cap. 85) of the Subsidiary Legislation, shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of Section 8(a) of the said Appellate Procedure (Privy Council) Order, 1921, with the Registrar a sum of Rs. 300/- in respect of fees mentioned in Section 4(2)(b) and 4(2)(c) of the Appeals (Privy Council) Ordinance (Chapter 100).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

It is ordered and decreed that the Plaintiff-Respondent-Respondent do pay to the Defendant-Appellant-Petitioner the taxed costs of this application.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 4th day of January, in the year One thousand Nine hundred and Sixty-Two and of Our Reign the Tenth.

SEAL

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S.C.*

**No. 23**

**Application for Final Leave to Appeal to the Privy Council**  
**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for Final Leave to appeal to Her Majesty the Queen-in-Council.

No. 22  
Decree granting  
Conditional  
Leave to Appeal  
to the Privy  
Council  
4.1.62 —  
*Continued*

No. 23  
Application  
for Final Leave  
to Appeal to  
the Privy  
Council  
16.1.62

No. 23  
Application  
for Final Leave  
to Appeal to  
the Privy  
Council  
16.1.62  
*Continued*

S.C. Application

No. 387 of 1961

D.C. Kurunegala

5810/M. S.C. No. 351(F)  
of 1958.

Robert Watte Pathirana of Kurunegala...  
..... *Defendant-Appellant-Petitioner*

*vs.*

Ariya Pathirana of 30, Kandy Road, Kuru-  
negala..... *Plaintiff-Respondent.*

To :—

The Honourable the Chief Justice and the Other Judges of the  
Honourable the Supreme Court of the Island of Ceylon.

On this 16th day of January, 1962.

10

The humble petition of Robert Watte Pathirana the Defendant-Appellant-Petitioner abovenamed appearing by his proctors Felix Charles Aloysius Domingo de Silva, John Samuel Parनावитана, Joseph Domingo Bertram Fernando, Maduwage Diananda de Silva and Shelton Ernest Abeysuriya, practising in partnership in Colombo under the name, style and firm of “ De Silva & Mendis ” and their assistants Shirley Mark Fernando and Joseph Bertram Puvimasinghe, states as follows :—

1. That the defendant-appellant on the 21st day of December, 1961, obtained conditional leave from this Honourable Court to **20** appeal to Her Majesty the Queen-in-Council against the judgment of this Court pronounced on the 25th day of July, 1961.

2. That the defendant-appellant has in compliance with the conditions on which such leave was granted has deposited a sum of Rs. 3,000/- with the Registrar of the Supreme Court as security for costs of such appeal and has deposited a further sum of Rs. 300/- with the Registrar of the Supreme Court as his fees and the bond was duly signed on the 4th day of January, 1962. The security bond and stamps for the duty payable in respect of the Registrar's certificate in appeal to the Queen-in-Council were filed with the Registrar of the **30** Supreme Court on 4th January, 1962.

The defendant-appellant has given notice of this application with a copy of the petition to the respondent by registered post. Registered postal article receipt is annexed hereto.

Wherefore the defendant-appellant prays that he may be granted Final Leave to appeal against the said judgment of this Court dated 25th July, 1961, to Her Majesty the Queen-in-Council and for such other and further relief as to Your Honourable Court shall seem meet.

(Sgd.) De SILVA & MENDIS, **40**  
*Proctors for Defendant-Appellant.*

No. 24

Decree granting Final Leave to Appeal to the Privy Council

No. 24  
Decree  
granting Final  
Leave to Appeal  
to the Privy  
Council  
4.4.62

S.C. Application No. 11/62.

ELIZABETH THE SECOND, Queen of Ceylon and of Her  
Other Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

In the matter of an application dated 16th January,  
1962, for Final Leave to Appeal to Her Majesty  
the Queen-in-Council by the Defendant-Appellant  
against the judgment and decree of this Court  
dated 25th July, 1961.

Robert Watte Pathirana of Kurunegala.....  
..... *Defendant-Appellant-Petitioner*  
*against*

Ariya Pathirana of No. 30, Kandy Road, Kurune-  
gala..... *Plaintiff-Respondent-Respondent.*

Action No. 5810/M (S.C. 351/58(F)).

District Court of Kurunegala.

This cause coming on for hearing and determination on the  
20 16th day of March, 1962, before the Hon. Hema Henry Basnayake,  
Q.C., Chief Justice and the Hon. Kingsley Herat, Puisne Justice of  
this Court, in the presence of Counsel for the defendant-appellant-  
petitioner.

It is considered and adjudged that the Application for Final  
Leave to Appeal to Her Majesty the Queen-in-Council be and the  
same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice  
at Colombo, the 4th day of April, in the year One thousand Nine  
hundred and Sixty-Two and of Our Reign the Eleventh.

30

SEAL.

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S.C.*



PART II

**EXHIBITS**



**PART II****D1****Service Station License Agreement**

No. 32.

CALTEX

CALTEX CEYLON LIMITED

*(Incorporated in Ceylon)***SERVICE STATION LICENSE AGREEMENT**

MEMORANDUM OF AGREEMENT made the Parties

10 Twentieth day of April, 1942, by and between CALTEX  
 CEYLON LIMITED, an incorporated Company duly  
 organized and existing under the laws of Ceylon and having  
 its Head Office at Colombo at Imperial Bank Building, 31,  
 Baillie Street, Colombo (hereinafter called "The Company"  
 which expression shall, unless inconsistent with the context  
 include its successors and assigns) of the one part AND  
 R. W. & A. Pathirana, a Partnership Firm carrying on  
 business under the firm, name, or style of R. W. & A.  
 Pathirana at Kurunegala (hereinafter called the "Licensees")

20 of the other part WHEREAS the Company in course of  
 its business in petrol appoints dealers for retail sale of its  
 products AND WHEREAS the Licensees have on Other  
Agreements  
 Twentieth April, 1942, entered into two Agreements with  
 the Company respectively known as the "Equipment Loan  
 Agreement" and the "Petrol Dealer Agreement" under  
 the terms of which the Licensees are permitted on the  
 terms and conditions mentioned therein to retail the  
 Company's petrol from the Company's Service Station to  
 be placed in their charge at Kurunegala AND WHEREAS

30 the Company is in possession of a Service Station at  
 Kurunegala which include the site, buildings erected  
 thereon, petrol pumps, storage tanks, pipes and fittings  
 and all other facilities at the site erected or set up for the  
 use of motorists (All of which are hereinafter referred to as  
 the "Service Station"). NOW THIS AGREEMENT Site to be  
occupied  
 WITNESSETH that the Company hereby grants license  
 to the Licensees aforesaid to resort to and have temporary  
 use of the Service Station during the currency of the  
 Equipment Loan Agreement dated April 20, 1942, and the

40 Petrol Dealer Agreement dated April 20, 1942, executed by  
 and between the parties hereto solely and entirely for the  
 purpose of carrying on business as a retailer of the  
 Company's products at The Service Station subject to the

D1  
 Service Station  
 License  
 Agreement  
 20.4.42

D1  
 Service Station  
 License  
 Agreement  
 20.4.42  
*Continued*

terms and conditions contained in the Equipment Loan Agreement and the Petrol Dealer Agreement and to such rules and laws as may be made from time to time by Government or by any local government or local authorities in this behalf and for no other purpose on the terms and conditions following :—

Station is  
 Company's  
 property

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 ; PROVIDED that the Licensees may make such additions and alterations as the Company may at its sole option permit and such additions and alterations can only be made by the Licensees on receipt of the Company's specific consent in writing, but the Licensees shall at the termination of the Agreement remove any addition so made by them and restore the Service Station to its original condition at their own cost. 10

Sell only the  
 Company's  
 products

2. The Licensees shall at all times sell the Company's Petroleum Products only and at the prices and on the conditions fixed by the Company from time to time at its discretion and faithfully carry out the instructions of the Company. The Licensees shall, however, be at the liberty to stock and market tyres and other non-petroleum motor accessories and equipment subject to the previous consent in writing of the Company. 20

Accessories to  
 be sold

Licensee's  
 account

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. 30

Terms of  
 payment

4. Payment of outstanding accounts are to be made by the Licensees in accordance with the Company's invoices within ten days after the date of issue of such invoices or should monthly payment be authorised by the Company, such payments must be received at the Company's Office on or before the 15th day of each month.

Licensee's staff

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. The Licensees also agree to provide English-speaking attendants if the Company deems it necessary and to accept full responsibility for, and indemnify the Company against all acts, neglects and defaults of the said employees. 40

6. The Licensees agree to maintain the Company's property, equipment, furniture, fixtures and stocks in good condition and to implicitly comply with instructions received from the Company or its officers from time to time, whether verbal or in writing in this connection.

Equipment  
MaintenanceD1  
Service Station  
License  
Agreement  
20.4.42  
*Continued*

7. The Licensees agree not to use the Company's funds in any way for private purposes and not to cash out of the Company's funds personal cheques for customers or other persons.

Use of  
Company's  
funds

10 8. The Licensees agree not to retain the amount of any remuneration due to the Licensees from the Company as a charge against funds or against any other property of the Company for which they are accountable.

Retention  
of funds

9. The Licensees agree to comply with all requirements of the local authorities in connection with the operation and maintenance of petrol filling and/or service stations with particular reference to Governmental, Municipal, Local and other regulations governing the storage and handling of dangerous goods.

Government  
Regulations

20 10. The Licensees agree to have all attendants dressed neatly and in a manner approved by the Company.

Dress of  
attendants

11. The Licensees agree to report promptly to the Company any defects in equipment. Failure to do so releases the Company of any obligations as to repairs and replacements which then are entirely for the Licensees' expense.

Failure of  
Equipment

12. 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.

Not to sub-let

30 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, such rental to be payable on the first day of each month, and shall further pay and discharge all rates, taxes, and other impositions whatsoever levied by the Municipality, Government or any other public bodies on the Service Station provided that the Company will pay the actual license fees payable to the Government for getting the necessary storage license on production of the said license by the licensees, provided  
40 further that the amount aforesaid payable by the Licensees to the Company in respect of the service station license may be increased at any time by the Company on giving unto the Licensees one month's notice of the Company's intention to do so. In the event of the Licensees' failure

Rental

D1  
Service Station  
License  
Agreement  
20.4.42 -  
Continued

to pay and discharge all rates, taxes and other impositions as aforesaid the Company shall be at liberty (but shall not be bound) to pay the same and deduct the amounts so paid from any commissions due to the Licensees by the Company.

No Smoking

14. It is agreed by the Licensees that no lights (other than electric) or fires of any kind and that no smoking shall be allowed on the station premises.

Advertising

15. No advertisements or notices pertaining to other companies shall be displayed by the Licensees in or about 10 the service station unless these have been approved by the Company in writing.

Breach of Agreement

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, accounts, stubs, etc., in good condition and 20 repair.

Termination of Agreement

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 Licensees may terminate this Agreement on giving one month's notice in writing to the Company.

Fulfillment of Obligation

18. In the event of the termination of this Agreement either by the Company or the Licensees, it is hereby agreed that the Licensees shall be responsible for the due 30 fulfilment of all obligations assumed by them under this agreement prior to the determination thereof.

Other Agreements

19. This Agreement shall automatically cease and 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. It is further agreed that in the case of the Equipment Loan and Petrol Dealer 40 Agreement and of any other Agreements between the Company and the Licensees in respect of other petrol pumps than those in the Service Station for the sale of Petrol, the Company may exercise and apply any of its rights and remedies under these or other Agreements for

any act of default on the part of the Licensees arising out of or under this Agreement. All such Agreements, with this indenture, shall in this respect be deemed to confer reciprocal rights on each other.

D1  
Service Station  
License  
Agreement  
20.4.42—  
*Continued*

20. The Licensees hereby agree to indemnify the Company in respect of all actions, claims and demands made against it by any person, body, company, Corporation or Government, Municipal or Local authorities in respect of accidents or injury including without prejudice to the foregoing generality claims by workmen or employees of the Licensees under the Workmen's Compensation Act or otherwise caused by the pumps or other equipment during the continuance of this Agreement.

Claims

21. The Licensees agree to pay for all electricity charges incurred in the proper lighting and operation of the Service Station except in so far as the Company may decide at its sole discretion to grant an allowance to meet these expenses.

Electricity  
payment

22. Agreement shall not be construed as creating any right or tenancy in favour of the Licensees in respect of the Service Station aforesaid and the possession of the Service Station shall all along vest in the Company, but without prejudice to the foregoing the Company, should it so desire, shall be entitled to install a servant or servants on, in or at the Service Station to ensure its possession and to see that it is not used by the Licensees in any other way than for the purpose of which the Agreement is made.

Tenancy right

23. All sums payable by the Licensees to the Company under this agreement shall be due and payable to the Company at the Company's Office in Imperial Bank Building, 31, Baillie Street, Fort, Colombo.

Payment

24. The Licensees admit the validity of the copyright, trade marks and names belonging to the Company in the said Products, even if not herein listed, including the script words "CALTEX", "TEXACO", and "CALTEX CEYLON LIMITED", the Trade Mark consisting of a Star with the word "CALTEX", across its face and the Trade Mark consisting of a Star with a superimposed T contained in a Black Circle and containing the word Texaco, and all other trade names and Marks. The Licensees also admit the Company's exclusive right to the trade use of the names "CALTEX", "TEXACO", and "CALTEX CEYLON LIMITED", and the Trade Mark containing of a Star with the word "CALTEX", across its face, and the Trade Mark consisting of a Star

Trade Marks.

D1  
Service Station  
License  
Agreement  
20.4.42—  
*Continued*

with a superimposed T contained in a Black Circle and containing the word "TEXACO", or any other Trade Marks or brand names owned or used by the Company. The Licensees shall not use any of the said copyrights, Trade Marks and Trade Names except by the consent of the Company and such use so consented to shall be by way of license only and such license shall determine with the determination of this Agreement.

**Courts** 25. The parties hereby agree that any suit to enforce the rights of either party under this agreement shall be 10 instituted in and tried by the courts of ordinary original civil jurisdiction in the City of Colombo and the Licensees expressly agree to submit to the jurisdiction of such courts.

**Litigation** 26. It is hereby further agreed that in case litigation results from Licensees' failure to fulfil the terms of this Agreement, all court costs, fees and expenses as between attorney and client shall be borne by the said Licensees.

**Marginal Notes** 27. The marginal notes hereto shall not affect the construction of this Agreement. 20

**Word Reference** 28. The words "they", "them" and "their" when used in this agreement with reference to the Licensees shall if the Licensees be an individual be read as "he", "him" and "his" respectively and if the Licensees be a Company as "it", "it" and "its" respectively. Where the Licensees are a firm that term shall mean and include all the present members of the firm and the survivors of them as may die and also all future members and their legal representatives. IN WITNESS WHEREOF the parties hereto have signed these presents the day and year above 30 written.

For Licensees.

R. W. & A. PATHIRANA,  
(Sgd.) ARIYA PATHIRANA  
*Witness.* (Sgd.) R. W. PATHIRANA,  
*Signature.*

April 20th, 1942,  
*Date.*

April 20th, 1942,  
*Date.*

For the Company.

CALTEX CEYLON LIMITED. 40  
(Sgd.) Illegibly,  
*Witness.* (Sgd.) Illegibly,  
*Manager.*

April 20th, 1942,  
*Date.* April 20th, 1942,  
*Date.*

**P1****Partnership Agreement, No. 285****PARTNERSHIP AGREEMENT**

No. 285

P1  
Partnership  
Agreement,  
No. 285  
30.11.42

This indenture made at Kurunegala on this Thirtieth day of November One thousand Nine hundred and Forty-Two between Ariya Pathirana of the one part and Robert Watte Pathirana of the other part.

Witnesseth whereas we the said parties of the first and  
10 second part have been carrying on the business of being the sole agent of Kurunegala District for the sale of Caltex Petrol and Caltex Key Brand Kerosene Oil in partnership from the first day of May One thousand Nine hundred and Forty-Two and have invested the sum of Rupees Two thousand only each in the said business we the said parties do hereby mutually covenant and agree to continue the business as partners upon and subject to the following conditions and stipulations, namely :—

1. The partnership shall be deemed to have commenced  
20 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.

2. The name of the firm shall be “ R. W. & A. Pathirana and the business shall be carried on at Kurunegala or at such other place or places as the partners shall from time to time agree upon.

3. The capital of the firm shall be Rupees Four thousand only (Rs. 4,000/-) which sum has been already contributed  
30 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.

4. Each partner shall obtain and keep a receipt for the capital contributed by him from the other partner. If any partner invests more than the aforesaid sum of Rupees Two thousand in the said business he shall obtain and hold a receipt from the other partner for the additional sum so invested and shall be entitled to an interest of Six per cent per annum on the sum so invested. After paying the interest on any

P1  
Partnership  
Agreement,  
No. 285  
30.11.42—  
*Continued*

additional sum so invested as aforesaid the profits and losses of the said business shall be divided in equal shares.

5. The bankers if any of the business shall be "The Bank of Ceylon."

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 commencement of the said business as long as he shall hold such office.

7. The proper accounts shall be kept of all partnership Transactions and on the thirty-first of March every year or 10 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.

8. All cheques shall be signed by both partners but each partner is hereby authorised to sign receipts for payment receipts and for correspondence and other documents necessary in the ordinary course of business to be signed "for R. W. & A. Pathirana."

9. The accounts of the firm shall be annually audited 20 by an auditor recognised by the Government.

10. Each partner shall not under any circumstance whatsoever incur any liability on behalf of the said business exceeding Rupees Two hundred without the written consent of the other partner.

11. Each of the aforesaid partner shall be entitled to draw a sum not exceeding Rupees One hundred and Fifty per mensem but maximum amount to be so drawn by each partner shall be increased if necessary by mutual consent of the parties. 30

12. All employees shall be employed with the mutual consent of both parties.

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.

14. All matters in difference in relation to the partnership affairs shall be referred to the arbitration of two indifferent persons. One to be appointed by each party or to an umpire to be chosen by the arbitrators before entering on the Consideration of the matters referred to them.

PI  
Partnership  
Agreement,  
No. 285  
30.11.42—  
*Continued*

15. The said parties do hereby agree that either or both of them shall be at liberty to and do hereby authorise to sign proxies for the purpose of instituting and depending civil action wherein the firm shall be plaintiff or defendant or  
10 respondent and either of them is hereby authorised by the other to sign all the receipts, discharges, settlements and all other matters relating to the civil proceeding in Court and the same shall bind both parties.

16. All matters, transaction and things not contained herein relation to the partnership business shall be made, done or performed with the mutual consent of both parties.

In Witness Whereof We the said ARIYA PATHIRANA & R. W. PATHIRANA have to these presents and to two others of the same tenor and date as these presents set our  
20 respective hands at Kurunegala on the day of the month and the year first above mentioned.

(Sgd.) ARIYA PATHIRANA,  
(Sgd.) Illegibly in English.

*Witnesses :*

(Sgd.) M. M. PIYADASA.  
(Sgd.) A. H. ABBAS.

(Sgd.) M. O. M. THAHIR,  
*Notary Public.*

I, Mohamed Omer Mohamed Thahir of Kurunegala, in the  
30 Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been read over and explained by me the said Notary to the executants within-named who are known to me in the presence of Mohoti Mudi-yanselage Piyadasa and Abdul Hameed Abbas both of Kurunegala the attesting witnesses thereto both of whom are known to me the same was signed by the said executants and the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same at Kurunegala on this Thirtieth day of November, One  
40 thousand Nine hundred and Forty-Two the said executants signing the former as "Ariya Pathirana" and the latter illegibly in English and the said witnesses the first as "M. M. Piyadasa" and the second as "A. H. Abbas" respectively.

P1  
Partnership  
Agreement,  
No. 285  
30.11.42—  
*Continued*

And I further certify and attest that the Duplicate of this instrument bears 1 stamp of the aggregate value of 50 cts. that the said stamps was supplied by me, and that before the foregoing instrument was read over and signed as aforesaid in the Duplicate page 1, line 15, the words "and Stipulations were all interpolated at page 2, lines 16, 18 and 28 the letters n, e, aw," were typed over others with red ink in the original at page 1, line 22, the letters "ala" in the word "Kurunegala" were typed over others and the same page line 31 the word "more" was struck off and in page 2, line 9, the word "of" 10 were interpolated.

(Sgd.) M. O. M. THAHIR,  
*Notary Public.*

Date of attestation.

30th day of December, 1942.

SEAL.

True Copy.

(Sgd.) Illegibly in English.

*Notary Public.*

D2  
Equipment  
Loan  
Agreement  
8.7.46

D2

20

**Equipment Loan Agreement**

**CALTEX CEYLON LIMITED**

*(Incorporated in Ceylon)*

**EQUIPMENT LOAN AGREEMENT**

Parties

MEMORANDUM OF AGREEMENT made the eighth day of July, 1946, by and between CALTEX CEYLON LIMITED, an incorporated Company duly organized and existing under the laws of Ceylon and having its Head Office at Colombo, Imperial Bank Buildings, 31, Baillie Street, Fort (hereinafter called the Company which 30 expression shall unless inconsistent with the context include its successors and assigns) of the one part AND R. W. & A. Pathirana

**A Partnership Firm**

carrying on business under the firm, name, or style of R. W. & A. Pathirana at Kurunegala (hereinafter called the "Second Party") of the other part WHEREAS the Second party is now purchasing Petroleum products from the Company and has requested the Company to loan the Second Party equipment, tools and other articles as 40

described in the schedule attached hereto, all hereinafter referred to as the "equipment."

D2  
Equipment  
Loan  
Agreement  
8.7.46—  
*Continued*

NOW THIS AGREEMENT WITNESSETH that the Company in consideration of the purchase of Petroleum products by the Second party agrees to furnish and loan to the Second party the equipment to be used by them for the storage and distribution of Petroleum products purchased from the Company AND IT IS HEREBY AGREED AS FOLLOWS :—

Use of  
equipment

10 1. That the equipment and all the appliances connected therewith or used in connection with same shall at all times be used by the Second Party only for the purpose of holding, storing or distribution of Petroleum products purchased from the Company and if the Second Party shall at any time cease to purchase Petroleum products from the Company or shall use the equipment for the holding, storage or distribution of Petroleum products purchased from any other person, firm or company or for any other purpose, the Company shall be entitled  
20 without any notice to the Second Party to enter the premises of the Second Party and remove therefrom the equipment and all appliances connected therewith or used in connection with same, without recourse to any legal proceedings for that purpose.

2. The Second Party agree to pay to the Company a monthly rental of Rupees . . . as per attached schedule on the first of every month for the use of the equipment.

Equipment  
rental

3. The Second Party agrees that in the event of any Government, Local or Municipal taxes or other assessments  
30 being levied upon the operation of or upon the equipment loaned the same will be payable by the Second Party.

Taxes

4. The Second Party shall take all reasonable precautions to keep the equipment in a clean and satisfactory condition, but no repairs to the equipment shall be done by the Second Party who shall not interfere with or attempt to adjust such equipment or any part thereof, but the Second Party shall be responsible for notifying the Company immediately of the necessity of any repair or adjustments thereby ensuring that the equipment is in  
40 proper working order and delivering full and proper measure and shall not operate or attempt to operate the equipment if out of order. The Second Party will reimburse the Company for the cost of all repairs or renewals to the equipment rendered necessary by carelessness, negligence or default of the Second Party, or of those

Equipment  
Maintenance

D2  
Equipment  
Loan  
Agreement  
8.7.46—  
Continued

for whom he is responsible. The Second Party shall not allow the equipment to be operated by any incompetent person or any person not in the direct employ of the Second Party.

Assignment

5. The equipment and any other equipment at any time furnished hereunder and also all tools, drawings, prints and written descriptions and instruments supplied by the Company shall be and remain the sole and exclusive property of the Company. The Second Party shall not assign this Agreement to any person, firm or Company 10 without the written consent of the Company first had and obtained. The Second Party shall not sell, dispose of, mortgage, pledge, hypothecate, transfer, hire, let or sub-let nor part with possession of the equipment or any part thereof. The Second Party shall take all necessary steps to keep the equipment and the premises wherein it is kept free from any levy, execution, seizure or other process of law which would in any way involve the Company in making or contesting any claim to the equipment and shall indemnify the Company against all loss, damage, costs, 20 charges and expenses in connection therewith. The Second Party shall not remove the equipment from their said address in Kurunegala without the previous consent in writing of the Company nor shall the Second Party remove or obscure any of the Company's name plates from the equipment.

Risk

6. The equipment shall at all times during installation and during the continuance of this Agreement and until delivery thereof to the Company as herein provided be held at the sole risk of the Second Party. The Second 30 Party shall indemnify the Company against all loss by reason of loss or damage to the equipment or any part thereof and all costs, charges and expenses incurred by the Company in connection with such loss.

Securities

7. The Second Party shall on or before the execution hereof deposit with the Company (duly transferred and endorsed to the name of the Company where necessary) securities acceptable in nature to the Company of the cash value of Rs. NIL which sum may be increased or decreased from time to time as the Company may require. Such 40 security deposits as aforesaid shall be held and dealt with by the Company as security for the due observance and performance by the Second Party of the stipulations herein contained. In the event of the cash value of the said securities at any time being less than Rs. NIL or such

increased sum as aforesaid the Second Party will forthwith at the request of the Company deposit with the Company (duly transferred and endorsed as aforesaid where necessary) such further security acceptable in nature to the Company so that the cash value of the security deposited with the Company shall at all times be Rs. NIL or such increased sum as aforesaid. In case defaults shall at any time happen to be made in the observance or performance of the stipulations herein contained or on the termination of  
 10 this agreement, it shall and may be lawful for the Company to appropriate, pay and apply the securities deposited by the Second Party with the Company as aforesaid or any of them or any part thereof in or towards the payment, satisfaction or discharge of all such sum or sums of money, damages, cost, charges and expenses as by reason of such default or otherwise (whether due under this agreement or not) shall or may be or become due or owing or be incurred by the Company, and for such purpose to sell,  
 20 realise and dispose of the said securities or any of them or any part thereof by private contract or otherwise at any price that can or may at the time be sold or gotten for the same at the discretion of the Company from time to time and when the same may in their opinion be necessary without being responsible for any loss in so doing and if and when this agreement shall be terminated to return the said securities or such of them (if any) as may not have been appropriated, applied or sold as aforesaid and such balance (if any) as may remain over out of the proceeds of such of the said securities as may have been so  
 30 sold, to the Second Party or as he shall direct.

Until such default or termination shall happen as aforesaid, the Company will permit and suffer the Second Party to receive from time to time when due the interest or income (if any) of the said securities or such of them as shall not have been appropriated, applied or sold under the terms therein.

8. The Second Party shall permit the Company and its authorized agent to have access to the Second Party's premises at all reasonable hours for the purpose from time  
 40 to time of inspecting, testing, repairing and painting the equipment and shall afford the Company full opportunity of making such alterations to the adjustments and repairs of the equipment as the Company thinks necessary or desirable.

9. The Company shall not be responsible for any break-down or failure in the equipment for any want of

D2  
 Equipment  
 Loan  
 Agreement  
 8.7.46—  
*Continued*

Equipment  
 Inspection

Liability

D2  
 Equipment  
 Loan  
 Agreement  
 8.7.46—  
 Continued

repair or adjustment or otherwise howsoever or for any loss or damage to any person or property arising from any such break-down or failure or out of the working of the equipment and the Second Party will indemnify the Company against any liability for injury to any workman of the Second Party or any other person whom the Second Party may direct to assist in the handling or working of the equipment and from any and all liability for any and all loss, damage, injury or other casualty to any person or property caused or occasioned by any leakage, 10  
 fire or explosion resulting from the negligence or default of the Second Party or of any such workman or other person or from the working or use of the equipment.

Termination

10. This agreement shall *ipso facto* determine without any period of notice (save and so far as concerns the rights and remedies of the Company) upon the termination for any reason of the existing petrol dealer agreement entered into between the Company and the Second Party dated April 20th, 1942, and without prejudice to the foregoing may be determined at any time by the Company without 20  
 any period of notice or by the Second Party giving one calendar month's notice in writing to that effect to the Company. Any notice for the purpose of this clause shall be deemed to be duly given if sent by the Second Party by registered post to the Head Office of the Company and if sent by the Company to the address of the Second Party.

Possession

11. Upon the expiration or termination of this Agreement the Company shall immediately be entitled to possession of the equipment free from any claims or demands whatsoever and the Second Party shall permit 30  
 the Company to dismantle the equipment and shall forthwith at their own expense deliver the equipment complete and in the same condition as that in which the same shall have been delivered to the Second Party, reasonable wear and tear excepted, to the Company or its nominees and to enable the Company to recover possession of the equipment in case of default by the Second Party under the preceding part of this clause the Second Party grants to the Company and all persons authorised by the Company full and irrevocable license right, power and authority to 40  
 enter upon the premises where the equipment may for the time being be situated and into every part thereof where the equipment or any part thereof may be and to take possession of the equipment and to remove the same. The Second Party shall not be entitled to make any claim for damage on account of such removal or otherwise and

the Second Party shall hold and save harmless the Company from and against any and all claims or damages by any parties whatsoever on account of such removal.

D2  
Equipment  
Loan  
Agreement  
8.7.46—  
*Continued*

12. The expiration or determination of this Agreement shall be without prejudice to the rights of the Company to receive the payment of the said rent or the balance thereof for the time being remaining unpaid and any other claim of the Company in respect of any matter or thing up to the date of such expiration or determination.

Rental  
Payment

10 13. All sums payable by the Second Party to the Company under this Agreement shall be due and payable to the Company at the Company's Office in Colombo.

Payments

14. The parties hereby agree that any suit to enforce the right of either party under this Agreement shall be instituted in and tried by the Courts of ordinary original civil jurisdiction in the City of Colombo and the Second Party expressly agree to submit to the jurisdiction of such courts.

Courts

15. It is hereby further agreed that in case litigation results from the Second Party's failure to fulfil the terms of this Agreement, all Court costs, fees and expenses as between attorney and client shall be borne by the Second Party.

Litigation

16. The marginal notes hereto shall not affect the construction of this Agreement.

Marginal Notes

17. The words "they", "them" and "their" when used in this Agreement with reference to the Second Party shall if the Second Party be an individual be read as "he", "him" and "his" respectively and if the Second Party be a Company as "it", "it" and "its" respectively.  
30 When the Second Party is a firm that term shall mean and include all the present members of the firm and the survivors of them and the legal representatives of such of them as may die and also all future members and their legal representatives.

Word  
Reference

IN WITNESS whereof the parties hereto have signed these presents the day and year above written.

For the Second Party.

(Sgd.) .....

R. W. & A. PATHIRANA.  
(Sgd.) R. W. PATHIRANA.

40 *Witness.*  
17th July, 1946.  
Date.

17th July, 1946.  
Date.

D2  
Equipment  
Loan  
Agreement  
8.7.46—  
Continued

For the Company.

CALTEX CEYLON LIMITED.

(Sgd.) .....

(Sgd.) .....

Witness.

Manager.

July 22, 1946.

July 22, 1946.

Date.

Date.

D14  
Petrol Dealer  
Agreement,  
No. 8  
29.10.46

**D14**  
**Petrol Dealer Agreement, No. 8**

CALTEX  
CALTEX CEYLON LIMITED  
*(Incorporated in Ceylon)*

10

**PETROL DEALER AGREEMENT No. 8**

Parties

MEMORANDUM OF AGREEMENT made the TWENTY-NINTH day of OCTOBER, 1946, by and between CALTEX CEYLON LIMITED an incorporated Company duly organized and existing under the laws of Ceylon and having its Head Office at Colombo, Imperial Bank Buildings, 31, Baillie Street, Colombo (hereinafter called "The Company" which expression shall unless in consistent with the context include its successors and assigns) of the one part AND ROBERT WATTE PATHIRANA AND ARIYA PATHIRANA

**A PARTNERSHIP FIRM**

carrying on business under the firm, name, or style of R. W. & A. PATHIRANA at Kurunegala (hereinafter called the "Dealer") of the other part WHEREAS the Company has at the request of the Dealer agreed to supply Petrol to the Dealer at Kurunegala upon the terms and conditions hereinafter mentioned, NOW IT IS HEREBY AGREED as follows:—

30

Partner's  
liability

1. The above partners and the partners for the time being of the Dealer's firm shall be jointly and severally liable in respect of all matters hereunder and each person above-named as a partner or becoming a partner in the Dealer's firm shall be and remain liable hereunder notwithstanding he has ceased to be a partner unless and until written notice of that fact shall have been received by the Company at its Head Office at Colombo and the Company shall have agreed to relieve him of his responsibility.

2. The Company will from time to time supply to the Dealer such quantities of the Company's products as the Dealer may order and the Company in its absolute discretion sees fit to supply. No liability shall attach to the Company for failure or refusal to supply.

Stock supplies

D14  
Petrol Dealer  
Agreement,  
No. 8  
29.10.46—  
*Continued*

3. The Company will make delivery either against payment in cash or on such other terms as the Company may from time to time decide. The Dealer will settle bills with the Company as and when from time to time required  
10 by the Company and in accordance with any regulations laid down by the Company.

Delivery terms

4. The Company may elect from time to time to grant the Dealer petroleum products on the consignment in which case the Dealer shall render to the Company full reports of all sales made of such products in the manner and at such intervals as required by the Company, and make prompt remittance to the Company of such funds derived from the sale of said products. Until such remittance is made the proceeds of sales will be held by the  
20 Dealer as a fund in trust for the Company.

Consignment  
stock

5. The Company agrees in consideration of the Dealer faithfully observing the stipulations on his part to be observed of this Agreement to allow the Dealer the terms of rebate and allowances current from time to time, on the account shown in the Company's books with the Dealer which shall be taken as correct and final. The terms of rebate and allowances now current are set forth in the attached Schedule and the Company hereby reserves the right to alter these terms as and when it may deem fit and  
30 proper.

Allowances

6. The Dealer will pay for receptacles at the same time as payment is made for products at rates from time to time fixed by the Company, but the Company will refund the amount so paid on all receptacles returned to the Company in sound condition within one month from date of delivery to the Dealer.

Payment of  
Packages

7. The Dealer shall be responsible for all loss or damage to receptacles or their contents and for shortage whether partial or entire and no claim will be entertained  
40 by the Company for shortage under any circumstances except as provided for in Clause 13 hereof.

Loss  
Responsibility

8. The Dealer shall take every reasonable precaution against contamination of the Company's products by water,

Safeguard  
against  
contamination

D14  
 Petrol Dealer  
 Agreement,  
 No. 8  
 29.10.46—  
*Continued*

dirt, impurities or other matter or things injurious to their quality and shall not in any way directly or indirectly adulterate or alter the Company's standard quality of products as delivered.

Facilities

9. The Dealer shall allow and afford to the Company when supplying petrol so ordered, adequate facilities for delivering the same.

Sale of  
 Company  
 products only

10. The Dealer will not during the currency of this Agreement sell or be in any way concerned in selling the products of any other Company or producer without the 10 previous consent in writing of the Company.

Prices

11. The Dealer shall sell Petrol at the rates fixed by the Company from time to time. In the event of the Company being satisfied that the Dealer has sold Petrol at rates other than those fixed by the Company or otherwise committed a breach of any of the covenants and conditions herein, the Company reserves the right to forthwith stop all supplies to the Dealer for such period as the Company may decide. The exercise of this right shall not affect or prejudice the other rights and remedies 20 of the Company in respect to terminating this Agreement or otherwise. Furthermore, the Company shall be the sole judge as to whether a breach has occurred or not.

Restriction of  
 delivery

12. The Dealer shall not supply Petrol to any petrol dealer or dealers whose supplies have been stopped by the Company or by any other petrol distributing Company in India or Ceylon or to any Dealer unless being so authorised by the Company in writing.

Claim for losses

13. The Dealer shall accept all responsibility for Petrol packages and for the contents of packages and/or 30 the tanks of the Company's bulk delivery vehicles as soon as delivery has been taken from the Company. No claim for losses or shortages will be admitted or entertained by the Company after delivery of products except in cases where the Company is satisfied that the loss arose from leakage, from underground tanks or pipes which the Dealer could not reasonably discover and about which the Dealer gave immediate notice to the Company.

Credit

14. The Dealer shall usually sell for cash. The grant of credit by the Dealer to customers shall be at the Dealer's 40 risk and shall not affect the Dealer's liability to the Company.

- |  |                                 |   |
|--|---------------------------------|---|
| 15. The Dealer shall bear all expenses in connection with or incidental to storage, handling, sale and distribution of the Company's products.   | Handling                        | D14<br>Petrol Dealer Agreement,<br>No. 8<br>29.10.46—<br><i>Continued</i> |
| 16. The Dealer shall not assign this Agreement or part with his rights hereunder or any part thereof.  | Assignment                      |   |
| 17. The Dealer will at all times fully indemnify the Company from and against all losses, damages, claims, suits and otherwise arising from or in connection with injury to persons or property, short deliveries or otherwise<br>10 howsoever in connection with matters covered by this Agreement.   | Third party claim               |   |
| 18. The Dealer undertakes that he and his servants and agents will observe and perform the provisions of the Ceylon Petroleum Ordinance of 1887 and all rules and regulations made thereunder and all other Government or municipal, local or such like acts, laws, regulations and bye-laws, as may be enforced from time to time.  | Ceylon Petroleum Ordinance      |   |
| 19. The Dealer undertakes faithfully and promptly to carry out, observe and perform all directions and orders<br>20 or rules made from time to time by the Company or its representative for the proper carrying out of the Company's business. The accounts of the Dealer in respect to his dealings in the various departments of the Company are all kept and collected in one account in the name of the Dealer in each branch where he has an account and any credit or deposit in any account or department will be placed to the general account with the Company, to the intent that same may be utilized to adjust any debit in any department or branch office of the Company. | Faithful performance            |   |
| 30 20. The Dealer will settle in the event of the termination of this Agreement for any reason, all accounts within seven days of such determination and in the event of the dealer declining or neglecting or failing to settle accounts within such period an account certified by one of the Company's Managers shall be absolutely final and conclusive for all purposes.  | Settlement of accounts          |   |
| 40 21. The Dealer will immediately upon termination of this agreement deliver to the Company or as the Company may direct all stocks and all property of the Company then in his possession or power and will make up and settle all accounts within seven days of being called upon by the Company to do so.  | Surrender of Company's property |   |
| 22. This Agreement may be terminated by either party on giving the other party one month's previous  | Cancellation                    |   |

D14  
 Petrol Dealer  
 Agreement,  
 No. 8  
 29.10.46—  
 Continued

notice in writing to that effect, and the Company is under no obligation to assign any reason whatsoever for terminating this Agreement. In the event of any notice of termination of this Agreement being given or in the event of any act being done or omitted to be done by the Dealer entitling the Company to terminate this Agreement the supply of Petrol to the Dealer in the meantime pending the expiry of the notice of termination or after the act or omission on the Dealer's behalf has become known to the Company, shall not in any way prejudice or affect the right of the 10  
 Company to enforce the termination of the said Agreement under the said notice or after the act or omission has become known as aforesaid.

Act of  
 Insolvency

23. It is hereby further agreed that if any member of the Dealer's firm shall become insolvent or commit any act of insolvency or compound with his creditors or upon a distress for rent being levied or execution placed upon the goods of the Dealer or upon the Dealer violating any of the conditions and stipulations herein contained and on their part to be observed and performed then and in any 20  
 or either of these events happening the Company shall have the right to forthwith put an end to this Agreement without any period of notice and thereupon the Agreement shall immediately cease and be determined. In the event of the Dealer being an incorporated Company and going into liquidation voluntary or compulsory (except for the purpose of reconstruction) during the currency hereof this Agreement shall be deemed to have terminated as from the date of such liquidation.

Death of  
 Partner

24. In the event of the death of any partner in the 30  
 Dealer's firm any act done or receipt for any such moneys due to the Dealer's firm hereunder given by any of the surviving partners shall be a complete and effectual discharge to the Company in respect thereof.

Removal of  
 the Company's  
 Property

25. Upon the termination of this Agreement the Company's products in the possession of the Dealer whether belonging to the Company or the Dealer shall automatically become vested in the Company who shall be at liberty to remove or deal with the same in any manner they think fit and the Company shall reimburse the Dealers 40  
 at cost for the products belonging to and paid for by him so transferred and take over by the Company.

Other  
 Agreements

26. In the event of there being two or more Agreements with the Dealer and the Company relating to the sale of Petrol or hire of Petrol Pumps the Company may

exercise and apply any of its rights and remedies under this Agreement for any act or default on the Dealer's part arising out of or under the other Agreement or Agreements. Each Agreement shall in this respect be deemed to confer reciprocal rights to each other.

D14  
Petrol Dealer  
Agreement,  
No. 8  
29.10.46  
*Continued*

27. The Dealer shall on or before execution hereof deposit with the Company (duly transferred to and endorsed in the name of the Company where necessary) securities acceptable in nature to the Company of the cash value of 10 Rs. NIL, which sum may be increased or decreased from time to time as the Company may require. The said securities deposited as aforesaid shall be held and dealt with by the Company as security for the due observance and performance by the Dealer of the stipulations herein contained. In the event of the cash value of the said securities at any time being less than Rs. NIL or such increased sum as aforesaid the Dealer will forthwith at the request of the Company deposit with the Company (duly transferred and endorsed as aforesaid where necessary) such further 20 securities acceptable in nature to the Company so that the cash value of the securities deposited with the Company shall at all times be at least Rs. NIL or such increased sum as aforesaid.

IN case default shall at any time happen to be made in the observance and performance of the stipulations herein contained or on termination of this agreement it shall and may be lawful for the Company to appropriate pay and apply the securities deposited by the Dealer with the Company as aforesaid or any of them or any 30 part thereof in or towards the payment, satisfaction or discharge of all such sum or sums of money, damages, costs, charges and expenses as by reason of such default or otherwise (whether due under this Agreement or not) shall or may be or become due or owing to or be incurred by the Company and for such purpose to sell, realise and dispose of the said securities or any of them or any part thereof by private contract or otherwise at any price that can or may at the time be had or gotten for the same at the discretion of the Company and from 40 time to time and when the same may in their opinion be necessary without being responsible for any loss in so doing and if and when this Agreement shall be terminated to return the said securities or such of them (if any) as may not have been appropriated, applied or sold as aforesaid and pay such balance (if any) as may remain

D14  
 Petrol Dealer  
 Agreement,  
 No. 8  
 29.10.46  
*Continued*

over out of the proceeds of the said securities as may have been so sold, to the Dealer or as he shall direct.

UNTIL any such default or termination shall happen as aforesaid the Company shall permit and suffer the Dealer to receive from time to time when due the interest or income (if any) of the said securities or such of them as shall not have been appropriated, applied or sold under the terms hereof.

Trade Marks

28. The Dealer admits the validity of the copyright, trade marks and names belonging to the Company in the said products, even, if not herein listed including the script words "CALTEX", "TEXACO" and "CALTEX CEYLON LIMITED" the Trade Mark consisting of a star with the word "CALTEX" across its face and the Trade Mark consisting of a star with a superimposed "T" contained in a Black Circle and containing the word "TEXACO" and all other Trade Names and Marks. The Dealer also admits the Company's exclusive right to the trade use of the names "CALTEX", "TEXACO" and "CALTEX CEYLON LIMITED" and the Trade Mark consisting of a star with the word "CALTEX" across its face and the Trade Mark consisting of a star with a superimposed "T" contained in a Black Circle and containing the word "TEXACO" or any other Trade Marks or Brand Names owned or used by the Company. The Dealer shall not use any of the said copyrights, Trade Marks and Trade Names except by the consent of the Company and such use so consented to shall be by way of license only and such license shall determine with the termination of the Agreement.

30

Payments

29. All sums payable by the Dealer to the Company or by the Company to the Dealer under this Agreement shall be due and payable at the Company's Office in Colombo.

Courts

30. The parties hereby agree that any suit to enforce the rights of either party under this Agreement shall be instituted in and tried by the courts of ordinary, original civil jurisdiction in the City of Colombo and the Dealer expressly agrees to submit to the jurisdiction of such courts.

40

Litigation

31. It is hereby further agreed that in case litigation results from the Dealer's failure to fulfil the terms of this Agreement, all court costs and expenses as between attorney and client shall be borne by the said Dealer.

32. The marginal notes hereto shall not affect the construction of this Agreement.

Marginal Notes

D14  
Petrol Dealer  
Agreement,  
No. 8  
29.10.46 --  
Continued

33. The words " he ", " him " and " his " when used in this Agreement with reference to the Dealer shall if the Dealer be two or more persons or a firm be read as " they ", " them " and " their " respectively and if the Dealer be a Company as " it ", " it " and " its " respectively. Where the Dealer is a firm that shall mean and include all the present members of the firm and the survivors of them and the legal representatives of such of them as may die and also all future members and their legal representatives.

IN WITNESS WHEREOF the said parties have hereunto set their hands the day and year above written.

For Dealer.

R. W. & A. PATHIRANA.

(Sgd.) .....  
*Witness.*

(Sgd.) R. W. PATHIRANA,  
*Signature.*

28.11.46.  
20 *Date.*

28th November, 1946.  
*Date.*

For the Company.

CALTEX CEYLON LIMITED.

(Sgd.) .....  
*Witness.*

(Sgd.) .....  
*Manager.*

December 5, 1946  
*Date.*

5.12.46.  
*Date.*

**D4**  
**PROMISSORY NOTE**

Form No. 79  
Kurunegala, 8th April, 1947.

Rs. 5,000/-

Capital Sum Borrowed  
Rs. 5,000/-

Interest premium or charges  
deducted or paid in advance

NIL

Rate of interest per centum  
per annum.

SIX

On demand we the undersigned Robert Watte Pathirana and Ariya Pathirana, partners of Messrs. R. W. & A. Pathirana of Esplanade Street, Kurunegala, promise to pay Abesiri Munasinghe Lairis Appu, "Shanti", Kandy Road, Kurunegala, or order at the office of the Bank of Ceylon, Kurunegala, the sum of Rupees Five thousand only, currency for value received with interest thereon at the rate of SIX per centum per annum from the date hereof.

මෙම කියවීමේ බලය නොමැතිව ගෙවනු ලබනු ලැබේ.

R. W. & A. PATHIRANA.  
(Sgd.) R. W. PATHIRANA.

8.4.47.  
(Sgd.) ARIYA PATHIRANA,  
*Partners.*

(On a six cents stamp).

*Witnesses :*

(Sgd.) Illegibly.

(Sgd.) ”

(Intld.) R. W. P.  
(Sgd.) ARIYA PATHIRANA.

**D3**  
**Letter written by the Plaintiff**

D3  
 Letter written  
 by the  
 Plaintiff  
 5.1.48

Y.M.C.A.  
 Colombo.  
 5th January, 1948.

My dear Mr. Pathirana,

Please do not fail to hand over to the bearer Mr. Evarts the following :—

All daily reports from 1st April, 1946—31st March, 1947.

10 All receipts for cash purchases issued by Caltex during the period, and the delivery order notes.

He will give you a receipt on my behalf for these documents.

I have asked Mr. Evarts to be at you to get these immediately.

Thanking you,

Yours sincerely,  
 (Sgd.) ARIYA PATHIRANA.

Give him the Proxy form

obtained from Mr. Thalagama, to post the same to me for signature.

---

**D6**

**Letter sent to the Defendant by the Plaintiff**

20

Ariya Pathirana.

D6  
 Letter sent  
 to the  
 Defendant by  
 the Plaintiff  
 21.2.48

91, Chatham Street,  
 Colombo.  
 21st February, 1948.

My dear Mr. Pathirana,

As you may be aware already, I now reside in Colombo.

In future you need not trouble yourself to come to Colombo to see Caltex. I can attend to everything at this end. It is only

D6  
Letter sent  
to the  
Defendant by  
the Plaintiff  
21.2.48  
*Continued*

necessary for you to send a letter by express delivery (Cost 26 cts. stamp) setting out briefly what you wish to be done.

Address such letters to :

Ariya Pathirana,  
Upstairs,  
91, Chatham Street,  
Colombo 1.

Telephone No. 2344 (by night).  
3166 (by day).

Telegrams between 9 a.m. and 4. p.m.  
"SARAJEEP COLOMBO".

10

I hope this is clear to you.

*Daily Reports*

I shall be obliged if you will instruct the Storekeeper to see that the original of the Daily Reports are daily posted to me as from Monday.

Stamped Envelopes are sent herewith for the purpose.

Please acknowledge the receipt of this letter and oblige.

With kind regards,

Yours sincerely,  
(Sgd.) ARIYA PATHIRANA. 20

Mr. R. W. Pathirana,  
Caltex Petrol Service Station,  
Kurunegala.

---

**D7**

**Letter sent to the Agent, Bank of Ceylon, Kurunegala, by  
the Plaintiff**

D7  
Letter sent to  
the Agent,  
Bank of Ceylon,  
Kurunegala, by  
the Plaintiff  
22.3.48

Ariya Pathirana  
*Manufacturers' Representative*  
*and*  
*Commission Agent.*

20, Kandy Road,  
Kurunegala.

30

The Agent,  
Bank of Ceylon,  
Kurunegala.

91, Chatham Street,  
Colombo.  
22nd March, 1948.

Messrs. R. W. & A. Pathirana

Dear Sir,

I have to request you that as from 1st April, 1948, to honour all cheques drawn on the above account in your Bank only provided the

cheques are signed both by Mr. R. W. Pathirana and Mr. Ariya Pathirana, viz., both partners of the business.

No cheque with a signature from a single partner should be honoured.

Kindly make a note of this instruction and inform me accordingly.

Thanking you,

Yours faithfully,  
(Sgd.) ARIYA PATHIRANA,  
*Partner, Messrs. R. W. & A. Pathirana.*

117  
Letter sent to  
the Agent,  
Bank of Ceylon,  
Kurunegala, by  
the Plaintiff  
22.3.48—  
*Continued.*

10 Copy to :—

Mr. R. W. Pathirana,  
R. W. & A. Pathirana,  
Caltex Agents,  
Kurunegala.

**P2**

**Plaint of the Plaintiff in D.C. Kurunegala Case No. 5029**

**IN THE DISTRICT COURT OF KURUNEGALA**

Ariya Pathirana of Kurunegala.....*Plaintiff*

No. 5029.

*vs.*

20

Robert Watte Pathirana of Kurunegala.....*Defendant.*

On this 18th day of August, 1948.

The plaintiff of the plaintiff appearing by his proctors Ponnooswamy Thambirajah and Sinniah Dharmalingam practising in partnership under the name, style and firm of " Thambirajah & Kandiah " states as follows :—

1. The defendant resides and the cause of action herein set out arose within the jurisdiction of this Court.

2. At all times material to this action the plaintiff and the defendant were and still are partners in the business of being the sole  
30 Agents in the Kurunegala District for the sale of Caltex Petrol and Caltex Key Brand Kerosene Oil, carrying on the business under the name and style of " H. W. & A. Pathirana " and the manner and conditions under which the said business was to be carried on were embodied in the deed of partnership No. 285 dated 30th November, 1942, attested by M. O. M. Thahir, Notary Public, a certified copy of which is filed herewith, marked P1 and pleaded as part and parcel of this plaintiff.

P2  
Plaint of the  
Plaintiff in  
D.C.  
Kurunegala  
Case No. 5029  
18.8.48

P2  
 Plaintiff of the  
 Plaintiff in  
 D.C.  
 Kurunegala  
 Case No. 5029  
 18.8.48.—  
*Continued*

3. By the said Deed of Partnership it was agreed by and between the said parties, *inter alia*—

- (a) That the profits and losses of the business were to be divided equally between the plaintiff and the defendant.
- (b) That the management of the business was to be in the hands of the defendant who was to get an allowance of Rs. 50/- per mensem as long as he held such office.
- (c) Proper accounts were to be maintained of all partnership transactions and on the 31st day of March of every or soon afterwards as possible a balance sheet was to be made out showing the assets and liabilities of the Firm and what belongs and is due to each partner as capital and share of the profits. 10
- (d) The accounts of the Firm should be annually audited by an Auditor recognised by the Government.
- (e) That each partner shall not under any circumstances whatsoever incur any liability on behalf of the said business exceeding Rs. 200/- without the written consent of the other partner.
- (f) That each partner shall be entitled to draw a sum not exceeding Rs. 150/- per month; but the maximum sum to be so drawn by each partner shall be increased if necessary by the mutual consent of both parties. 20
- (g) That all transactions and things not contained in the said deed of partnership in relation to the said business shall be made, done or performed with the mutual consent of both parties.

4. That the defendant kept accounts and maintained the Firm's balance sheets in accordance with the terms of the said Deed of Partnership up to the period ending 31st March, 1945; but there- after the defendant has acted contrary to the terms of the partnership agreement and his duties as a partner, particulars whereof are as follows :— 30

- (i) The defendant has withheld from the plaintiff and denied to the plaintiff access to the books of accounts and other documents relating to the said business, though repeatedly asked for by the plaintiff to make same available for his inspection.
- (ii) The defendant has failed to make out the balance sheets for any of the three years ending 31st March, 1948. If any such balance sheets were made out the defendant has refused to make them available for the plaintiff's 40

inspection or to furnish copies thereof though repeatedly requested by the plaintiff to do so.

(iii) The defendant failed to render to plaintiff a proper account showing the profits due to the plaintiff.

(iv) The accounts of the said business have not been audited in terms of the deed of partnership during the three years ending 31st March, 1948.

(v) The defendant has paid monies belonging to the said Firm into his personal Banking account.

10 (vi) The defendant has for sometime past adopted an attitude towards the plaintiff calculated to harass and annoy the plaintiff with a view to forcing the plaintiff to seek a dissolution of the partnership.

5. The plaintiff estimates his share of the nett profits of the said business during the three years ending 31st March, 1948, at Rs. 18,000/-.

6. In the premises a cause of action has accrued to the plaintiff to sue the defendant for the relief hereinafter set out.

Wherefore the plaintiff prays—

20 (a) For a declaration that the plaintiff is entitled to a sum of Rs. 18,000/- as his share of the nett profits of the business carried on by the plaintiff and the defendant under the said Deed of Partnership during the three years ending 31st March, 1948.

Or in the alternative

That the Court be pleased to take as accounting of the transactions of the said partnership business during the said three years and declare what sum is due to the plaintiff as his share of the nett profits during the three years ending 31st March, 1948.

30

(b) That the defendant be restrained by Injunction

(i) from preventing the plaintiff the exercise of his rights as a partner in the said business, to have access to and liberty to examine and copy out or take extracts from any books and writings of the partnership business ;

(ii) from applying or banking any of the funds of the partnership into defendant's personal and private accounts.

40

(c) That the defendant be ordered by Injunction—

(i) to forthwith withdraw all sums of money belonging to the partnership business which have been deposited in the defendant's personal and private

P2  
 Plaintiff of the  
 Plaintiff in  
 D.C.  
 Kurunegala  
 Case No. 5029  
 18.8.48—  
*Continued*

accounts and immediately bank same to the credit of the partnership banking account.

(ii) to produce forthwith in Court all account books, viz., the private Ledger, Cash book, Sales and Purchase Ledgers, Stock books, Bank Statements, Counterfoils of cheques, receipts for all cash transactions and payments and all other books and writings of the partnership.

(iii) to produce forthwith in Court the Balance sheets, the partnership accounts for the three years ending 10 31st March, 1948, duly certified by an Auditor recognised by the Government.

(d) For costs of suit, and

(e) For such other and further relief as to this Court shall seem meet.

(Sgd.) THAMBIRAJAH & KANDIAH,  
*Proctors for Plaintiff.*

Perused and settled by :

J. PATHIRANA,  
*Advocate.*

20

True copy of plaint filed in D.C. Kurunegala 5029.

(Sgd.) .....  
*Secretary, District Court, Kurunegala.*

P7  
 Notice of  
 Termination  
 of Partnership  
 given to the  
 Plaintiff  
 10.9.48

P7

### Notice of Termination of Partnership given to the Plaintiff

RATNAYAKE & PERERA  
*Proctors and Notaries.*

*Office :*

D. A. B. Ratnayake, J.P., U.M.,  
*Crown Proctor.*  
 R. Victor Perera.

No. 46, Negombo Road, 30  
 Kurunegala, 10th Sept., 1948.

Ariya Pathirana, Esqr.,  
 The Dental Surgery,  
 Kandy Road,  
 Kurunegala.

Dear Sir,

We are instructed by Mr. R. W. Pathirana Mohandiram to give you three months' notice of the determination of the partnership

business carried on by him and you under the name and style of R. W. & A. Pathirana at Kurunegala, in terms of the provisions contained in the deed of partnership No. 285 of 30.12.1942. This notice is without prejudice to either party in case No. 5029 pending in the District Court of Kurunegala.

P7  
Notice of  
Termination  
of Partnership  
given to the  
Plaintiff  
10.9.48-  
*Continued*

Yours faithfully,  
(Sgd.) RATNAYAKE & PERERA.

**P3**

**Answer of the Defendant in D.C. Kurunegala Case No. 5029**

P3  
Answer of the  
Defendant in  
D.C.  
Kurunegala  
Case No. 5029  
21.9.48

10 IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala . . . . . *Plaintiff*  
No. 5029. *vs.*  
Robert Watte Pathirana of Kurunegala . . . . . *Defendant.*

On this 21st day of September, 1948.

The answer of the defendant abovenamed appearing by Damian Adrian Bernard Ratnayake and Rochus Victor Perera practising in partnership under the name, style and firm of Ratnayake & Perera, his proctors, states as follows :—

1. The defendant admits residence within the limits of the local  
20 jurisdiction of this Court, but denies that a cause of action had accrued to plaintiff to seek any of the reliefs claimed in the plaint.

2. Further answering the said paragraph the defendant states that the partnership Deed No. 285 pleaded in the plaint provided *inter alia* that “ all matters in difference in relation to the partnership affairs should be referred to the arbitration of two indifferent persons, one to be appointed by each party or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them”, and the defendant submits as a matter of law that  
30 this Court has no jurisdiction to entertain the plaint or to hear and determine this action in view of the said provision in the said partnership deed.

3. The defendant admits the averments in paragraph 2 of the plaint, but states that without prejudice to the rights of parties in this action the defendant has by notice dated 10th September, 1948, given notice to plaintiff of determination of the partnership pleaded in the plaint.

P3  
 Answer of the  
 Defendant in  
 D.C.  
 Kurunegala  
 Case No. 5029  
 21.9.48  
*Continued*

4. While admitting the averments in paragraph 3 of the plaint the defendant states that the said deed of partnership provided further, *inter alia* :—

- (a) that each partner should contribute Rs. 2,000/- as his share of initial capital,
- (b) that neither partner shall without the consent of the other incur any liability on behalf of the partnership business in excess of Rs. 200/-.

5. Answering to paragraph 4 of the plaint the defendant denies that he has acted contrary to the terms of the partnership business 10 in the manner set out in the said paragraph or in any other manner soever and states that contrary to the terms of the said partnership agreement and his duties as a partner the plaintiff :—

- (a) withdrew in 1942 itself Rs. 1,000/- out of the sum of Rs. 2,000/- contributed by him as his share of the initial capital,
- (b) pledged the credit of the partnership for a loan of Rs. 2,000/- obtained by him,
- (c) overdrew his share of capital and thereby embarrassed the partnership business, 20
- (d) Ran high credit bills for petrol at the service station of the partnership business.

6. Further answering the said paragraph the defendant states that from 1942 to 1947 the partnership business had no bank account and defendant was obliged to operate on his private account and to deposit partnership moneys in the said account and that this was done with the consent of plaintiff. In 1947 a loan of Rs. 5,000/- was obtained from the Bank of Ceylon, Kurunegala, by the partnership business and a Bank account opened by it but the fund was not sufficient and the plaintiff failed and neglected to contribute to the 30 augmenting of the fund though requested and as a result the plaintiff was obliged to revert to the original system of operating on his personal Bank account, as he had to advance his personal funds in order to maintain the partnership business.

7. Still further answering the said paragraph the defendant states that up to 31st March, 1945, the plaintiff himself drew up the balance sheets and thereafter up to 31st March, 1947, the plaintiff was supplied with copies of the account and balance sheets and had access to all books and documents. Thereafter the plaintiff sought to remove to Jaffna the books of account and other documents relating 40 to the partnership business to which defendant objected and the plaintiff thereupon adopted an attitude towards defendant calculated

to harass and annoy him. The books and documents have always been and are available to the plaintiff at the place of the partnership business, and the way bills have been regularly submitted to plaintiff up to 30th April, 1948.

8. The defendant specially denies that a sum of Rs. 18,000 is due and owing to plaintiff as his share of the business ending 31st March, 1948.

9. The defendant denies the averments in paragraph 6 of the plaint.

10 Wherefore the defendant prays :—

- (a) that the plaintiff's action be dismissed with costs,  
 (b) for such other and further relief as to this Court shall seem meet.

(Sgd.) RATNAYAKE & PERERA,  
*Proctors for Defendant.*

True copy of Answer filed in District Court, Kurunegala, No. 5029.

(Sgd.) .....  
*Secretary,*  
 District Court, Kurunegala.

20

D13

**Letter sent to Caltex Ceylon, Ltd., by the Defendant**

21st September—48

The Managing Director,  
 Caltex Ceylon, Limited,  
 Colombo.

Dear Sir,

As you are aware I took over the Agency at Kurunegala in April, 1942. At this time I enlisted the assistance of Mr. Ariya Pathirana as I wanted clerical assistance in English. On an agreement he also became a partner. His investment was Rs. 2,000/- which he took back within three months of the commencement of the business. In fact the position today is that he has overdrawn money from the business. He failed in his obligations by the business and also did not render the active co-operation and assistance I expected. I am carrying on the business on my sole capital and all transactions are through my personal account.

30

P3

Answer of the  
 Defendant in  
 D.C.  
 Kurunegala  
 Case No. 5029  
 21.9.48—  
*Continued*

D13

Letter sent to  
 Caltex Ceylon,  
 Limited, by  
 the Defendant  
 21.9.48

D13  
 Letter sent to  
 Caltex Ceylon,  
 Limited, by  
 the Defendant  
 21.9.48—  
*Continued*

I have served the annexed notice on him in terms of the agreement terminating his association as a partner in this business. I also annex a copy of the notice published in the Press informing the public regarding the business complications.

I am unable to develop this business and bring it to a better footing owing to this joint association of Mr. Ariya Pathirana. Therefore I shall be much grateful if you will kindly alter the name and style of this Agency from 1st October to "R. W. Pathirana" instead of the present style "R. W. & A. Pathirana."

Knowing as you do the good work I have done in building up 10 the business and my efforts and endeavour in the matter I trust you will help me in this matter.

Yours faithfully,  
 (Intld) R. W. P.  
 21.9.48.

D8  
 Letter sent to  
 the Defendant  
 by Caltex  
 Ceylon,  
 Limited,  
 23.9.48

**D8**  
**Letter sent to the Defendant by Caltex Ceylon, Ltd.**

CALTEX CEYLON LTD.  
 (Incorporated in Ceylon)

Petroleum Products

20

September 23, 1948.

R. W. Pathirana, Esqr.,  
 Caltex Service Station,  
 Kurunegala.

Dear Sir,

*Kerosene and Petrol Dealer Agreements*

We have for reference your letter of 21st September on this subject and we wish to advise that effective 1st October, we shall enter into a new Kerosene Agreement with yourself to replace the old agreement with your partnership. As far as petrol is concerned 30 a new agreement will be entered into in one month.

Yours very truly,  
 CALTEX CEYLON LIMITED,  
 H. D. DENNIS,  
*Managing Director.*  
 By (Sgd.) .....

139

**D9**

**Letter sent to Messrs. R. W. & A. Pathirana by Caltex  
Ceylon, Ltd.**

**CALTEX CEYLON LIMITED**  
(Incorporated in Ceylon)  
Petroleum Products

D9

Letter sent to  
Messrs. R. W.  
& A. Pathi-  
rana by Caltex  
Ceylon,  
Limited,  
23.9.48

REGISTERED

September 23, 1948.

Messrs. R. W. & A. Pathirana,  
Caltex Service Station,  
10 Kurunegala.

Dear Sirs,

*Petrol Dealer Agreement Cancellation*

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

Yours very truly,  
CALTEX CEYLON, LIMITED,  
H. D. DENNIS,  
*Managing Director.*

By (Sgd.) .....

20

**D10**

**Letter sent to Messrs. R. W. & A. Pathirana by Caltex  
Ceylon, Ltd.**

**CALTEX CEYLON, LIMITED**  
(Incorporated in Ceylon)  
Petroleum Products

D10

Letter sent to  
Messrs. R. W.  
& A. Pathi-  
rana by Caltex  
Ceylon,  
Limited,  
23.9.48

REGISTERED

September 23, 1948.

Messrs. R. W. & A. Pathirana,  
Caltex Service Station,  
30 Dear Sirs,  
Kurunegala.

Dear Sirs,

*Kerosene Agency Agreement Cancellation*

This is to inform you that we are invoking Clause 36 of Kerosene  
Agency Agreement No. 16 and we shall regard it as being terminated  
as of 1st October, 1948.

Yours very truly,  
CALTEX CEYLON, LIMITED,  
H. D. DENNIS,  
*Managing Director.*

By (Sgd.) .....

**D15**  
**Kerosene Agency Agreement, No. 16**

**CALTEX**  
**CALTEX CEYLON LIMITED**

*(Incorporated in Ceylon)*

**KEROSENE AGENCY AGREEMENT No. 16**

Parties

**MEMORANDUM OF AGREEMENT** made the **TWENTY-THIRD** day of September, 1948, by and between **CALTEX CEYLON LIMITED**, an incorporated Company duly organised and existing under the laws of 10 Ceylon and having its Head Office at Colombo, Chartered Bank Building, 17, Queen Street, Colombo (hereinafter called "The Company" which expression shall unless inconsistent with the context include its successors and assigns) of the one part AND **ROBERT WATTE PATHIRANA** an Individual carrying on business under the firm, name, or style of **R. W. PATHIRANA** at **KURUNEGALA** (hereinafter called the "Kerosene Agent") of the other part WHEREAS the Company has agreed to appoint the Kerosene Agent as Kerosene Agent 20 of the Company in the town of Kurunegala and such other points as may from time to time be authorized by the Company only for the sale of the Company's Kerosene oil in bulk and/or in drums, and/or in cases and/or in tins on the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED AS FOLLOWS:—**

Sell only  
Company's  
products

1. The Kerosene Agent will during the continuance of this agreement act as Kerosene Agent of the Company for the sale within the area or territory specified in the schedule attached hereto of Kerosene oil whether manufac- 30 tured by or under the instructions of the Company or not, which may from time to time be consigned by or under the instructions of the Company to the Kerosene Agent either in tins, in drums, in barrels, in bulk or in cases and the Kerosene Agent will accept and take into his charge and trust all Kerosene oil of every description which shall be so consigned to him from time to time by the Company and will use his best endeavours to sell and dispose of the same. The Kerosene Agent undertakes to further the sales of oils so consigned to him to the utmost of his ability 40 and will use his utmost endeavours to extend the business. The Kerosene Agent shall not during the continuance of this agreement be either directly or indirectly interested

in or concerned with the petroleum products of any other person, firm or Company, other than those petroleum products which may from time to time be consigned to the Kerosene Agent by or under the instructions of the Company.

2. No failure or omission to carry out or observe any of the stipulations or conditions of this agreement shall give rise to any claim against the Company or be deemed a breach of this agreement if the same shall arise  
 10 from any of the following causes, viz., the imposition of restrictions or onerous regulations on the marine transport or landing of petroleum in bulk, the acts of God, the enemies of the Sovereign of Great Britain or the United States Government, or the Sheikh of Bahrein or of the Kingdom of Saudi Arabia, insurrection, pirates, war, strikes, lock-outs or combination of workmen, epidemics, frosts, accident caused by inundations of workings, decrease in production of crude petroleum at the sources of production where the Company is at present drawing its supplies,  
 20 stoppage of wells, refineries or other works at the source of production (such stoppage not being wilfully caused by the Company) or of railways or shortage of railway wagons, accidents to steamers or machinery, eruptions, landslips, fire, arrest or restraint of Princes of Governments or of peoples, all dangers or accidents of the seas, canals or rivers and the navigation of steamers or vessels of whatsoever nature and cancellation of charter parties through any cause whatever, losses of steamers or vessels, detention and requisitioning of steamers or vessels by the United Kingdom,  
 30 American, or the Sheikh of Bahrein, or the Kingdom of Saudi Arabia and/or other Governments.

3. The Company shall not be bound to execute any order transmitted through the Kerosene Agent nor shall the Company be bound to supply to the Kerosene Agent any particular kind or quality of oil or any oil at all but shall have an absolute discretion at all times regarding supplies.

4. Subject to the provisions of clause 5 hereof the Kerosene Agent shall take proper care of all oil and/or  
 40 other goods consigned to him or committed to his care or charge and shall take into stock and show in his stock report all quantities advised by the Company as having been despatched to him or on his account.

5. The Kerosene Agent shall exercise due and proper care and attention for the protection of all property

D15  
 Kerosene  
 Agency  
 Agreement  
 No. 16  
 23.9.48--  
*Continued*

Force Majeure

Oil Supplied

Care of stock

Fire and loss

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
Continued

equipment and/or stocks committed to his care and the Company's interest in general, and shall subject to *force majeure* and to fire (not caused through the act, neglect or default of the Kerosene Agent or his agents or servants) be responsible for any loss or injury or damage to any oil, tanks, drums, barrels, tins, tank carts, cases, fittings, and appliances and/or other property equipment and/or stocks entrusted to him by the Company from time to time and shall forthwith on demand pay to the Company at Colombo the value of any articles entrusted to him which 10 may be lost, broken, damaged or depreciated or used for purposes other than those for which they were supplied, subject always to *force majeure* and fire as aforesaid and otherwise than by fair wear and tear (of which the Company is to be the sole judge) and on demand shall also deliver up in the same good order in which they were received all such articles as may have been entrusted to his care, due allowance being made by the Company for fair wear and tear (of which the Company is to be the sole judge as aforesaid) and for any loss, injury, or damage due to 20 *force majeure* or fire as aforesaid. The Kerosene Agent shall at all times when required submit to the Company at Colombo a signed inventory of all such property equipment and/or stocks and the Company by its officers, representatives or servants shall be at liberty at all times to inspect such property equipment and/or stocks. The Company and/or its officers, representatives or servants shall have at all times and in any circumstances free and unrestricted access to the premises used in connection with the business to be done hereunder and to inspect and take account of 30 stocks, carts, fittings and/or other property entrusted to the Kerosene Agent.

Agent to  
provide storage  
facilities

6. The Kerosene Agent undertakes to provide and maintain good and sufficient godown accommodation to the satisfaction of the Company. It shall, however, be at the discretion of the Company to allow him a monthly rent for any such godown duly licensed by Government for a quantity exceeding 5,000 gallons, at a rental to be determined by the Company. The Kerosene Agent shall see that the Company's name is kept prominently and 40 clearly displayed on all depots, godowns, or other premises wherein any of the goods and property of the Company are stored, and further shall place upon any such premises and also upon any premises in which the business of the Kerosene Agency is being carried on an inscription notifying to the public as conspicuously as possible the fact

that he is acting as Kerosene Agent of the Company. If the Kerosene Agent be allowed the use of the Company's depot at Kurunegala he shall not thereby acquire any rights or interests whatsoever therein, and will vacate the same whenever required so to do by the Company whether this Agreement shall have been terminated or not.

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

The Company shall also have the right of installing a watchman or watchmen on any premises in which the business of the Kerosene Agency is being carried on or  
10 doing any other act or acts which it may consider advisable, to make it clear and apparent that the goods then stored therein are in the Company's possession and under its control.

7. It is agreed by the Kerosene Agent that no lights or fires of any kind, and no smoking be allowed within the premises where the stocks of the Company are stored. In case of a loss through a breach of these conditions, the Company will look to the Kerosene Agent for reimbursement and the Kerosene Agent shall immediately pay the  
20 Company in full for all damages sustained.

No smoking

8. The Kerosene Agent undertakes to make all necessary arrangements to take delivery of all such oil and/or goods which the Company may from time to time despatch or deliver or cause to be despatched or delivered to him and to discharge the Railway wagons, tank wagons, boats or other conveyances immediately on arrival and have them ready for the return journey in accordance with the rules of the Railway or other carrying Company or authority. The Kerosene Agent shall be responsible for  
30 and shall pay any demurrage or other claims arising through failure of the Kerosene Agent to comply with the provisions of this clause. The Kerosene Agent shall not be entitled to make any claim for an allowance or otherwise either in regard to the quality, quantity, state, condition or fitness of the products or on the ground that the products delivered or tendered for delivery are not in accordance with the contract unless notice in writing of the Kerosene Agent's intention to make such a claim shall have been given to the Company within five days after  
40 the products arrive at destination. In default of such notice the products sold hereunder shall be deemed to be in all respects in accordance with the contract.

Deliveries

9. The Company may in its sole discretion grant to the Kerosene Agent allowances for leakage from goods consigned to him whilst in transit between Main Port

Leakage

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

Installation and destination, as laid down in the attached schedule, which may, however, be varied by the Company from time to time. No leakage allowance shall be granted in the case of goods delivered to the Kerosene Agent by local depot of the Company. All leakage allowances which may be granted by the Company are so granted purely as a matter of grace and at the Company's sole discretion, and the Company may refuse to grant allowances at any time without ascribing any reason therefor. Under no circumstances will leakage allowance be granted if the Kerosene 10 Agent's remittances are not remitted regularly and up to date.

Profits on  
Sales

10. The Kerosene Agent undertakes and declares that he will not make profit from the business in any way other than by receiving the commission and allowances hereinafter specified.

Declaration of  
trust of  
property of  
Company

11. The Kerosene Agent hereby declares and acknowledges that all oil, drums, barrels, cases, tins, furniture, fittings, machinery, books, depots, tanks, godowns, build- 20 ings, tank-carts, plant, appliances, and/or any other stocks or property from time to time during the continuance of this agreement despatched to him or entrusted to his custody and/or property of any description covered by this agreement are not the property of the Kerosene Agent but are held by him as trustee for and on behalf of the Company and the Kerosene Agent undertakes and agrees to pay all proceeds of sale of oil to the Company at Colombo as hereinafter provided.

12. The Company shall supply to the Kerosene Agent stocks in quantities sufficient to meet the normal 30 requirements of its trade, in accordance with marketing plan or policy of the Company, but no claim may be made by the Kerosene Agent arising through delay in delivery of stocks under this agreement by reason of unforeseen and unavoidable causes. Also the Company may at any time suspend delivery of stocks in case the Kerosene Agent shall fail to fulfil any of the provisions of this agreement. Nor shall any claim be made by the Kerosene Agent for expenses (other than as provided in paragraph 30) unless same shall have been approved in writing by the 40 Company.

13. It is definitely agreed and understood that the Kerosene Agent has no lien and shall have no lien of any sort on any goods or property entrusted to him hereunder or the sales proceeds thereof.

14. The Kerosene Agent undertakes to hand over to the Company at any time on demand or to any of the Company's Officers or representatives or to any person duly authorized by the Company, all or any of the goods or property of the Company for the time being in his custody under this agreement. The Kerosene Agent shall have no lien or right to retain possession of the said goods or property by reason of any account outstanding between him and the Company, and shall not be entitled to retain possession  
10 of the said goods or property or any part thereof for any cause or reason whatsoever.

Surrender of  
Company's  
PropertyD15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

15. The Company reserves the right at all times during the continuance of this agreement, to make direct sales to any person, concern or company or government, municipality, railway, military or other bodies and authorities, provided that the Company will avoid such direct sales of Kerosene as far as possible if delivery is to be given in the Agent's area or territory specified in schedule attached. But unless the Company otherwise agrees in  
20 writing, the Kerosene Agent shall not be entitled to any Commission or allowance in respect of any direct sales made by the Company.

Company  
Reserves  
selling right

16. The Kerosene Agent will during the continuance of this Agreement confine himself in selling strictly to the area or territory specified in schedule attached and such other points as may from time to time be authorized by the Company, and will not directly or indirectly sell to or solicit any person, firm or company who shall not reside or carry on business within the said area or territory, and  
30 will not interfere with the business of the Company's already existing agents or such new agents as the Company may cause to be appointed from time to time. In particular the Kerosene Agent will not enter into any contract for the sale of Kerosene oil except on written authorization by the Company to do so beforehand, and will not make any deliveries outside the said area or territory PROVIDED ALWAYS that the Company may from time to time and at any time at its absolute discretion increase, reduce, restrict or otherwise alter the said area or territory  
40 referred to in the said schedule hereto, and nothing herein contained will be deemed to restrict the right of the Company to appoint additional agents for the whole or part of the said area or territory in schedule hereto attached.

Selling area

17. The Kerosene Agent shall make no contracts in the name of or on behalf of the Company.

Contracts

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48--  
*Continued*

Sell spot Stock

18. The Kerosene Agent undertakes to make sales of spot stocks only and to make no forward sales of oil to be received or to arrive without first obtaining the written permission therefor from the Company. All oil sold by the Kerosene Agent shall be removed from the Kerosene Agent's godown and/or Company's godown or depot on the day of sale. All oil or oils removed by the Kerosene Agent from the Kerosene Agent's godown and/or the Company's godown or depot shall therefore on the day of removal be duly reported to the Company as sales in 10 accordance with clauses 23, 24 and 25 of this agreement, with the exception of oils removed on specific and written instructions to the Kerosene Agent from the Company, for purposes other than sales which will be reported by the Kerosene Agent to the Company as stocks transferred.

Prices

19. The Kerosene Agent shall at all times sell Kerosene of the Company at the prices fixed by the Company and shall faithfully carry out the directions and instructions of the Company.

Full Measure

20. The Kerosene Agent undertakes to deliver to 20 buyers full measure of all oil, whether sold in bulk, drums, barrels, tins or cases. If any receptacle shall contain short measure, the contents shall be sold by actual measure, and not as a drum, barrel, tin, or case, unless the Kerosene Agent shall previously to the sale and delivery make up the contents to complete measure by the addition of the necessary amount of oil at his own expense.

Extension of credit

21. The Kerosene Agent may at his own risk allow such credit to any buyer as may be reasonable and customary in the locality, but all allowance of such credit 30 shall be entirely at the risk of the Kerosene Agent who shall, notwithstanding any such allowance, pay to the Company at its office in Colombo when required by the Company all moneys due to the Company on account of sales, whether such moneys shall then have been received by the Kerosene Agent or not.

Sales under false Description

22. The Kerosene Agent agrees to hold himself responsible for passing off or selling oil under false description either by himself or his servants or agents for any breach of local or other acts, laws or regulations that may 40 be in force from time to time.

Rendition of report

23. The Kerosene Agent will submit to the Company at its office in Colombo daily correct reports in writing in the English language of all sales effected during the day irrespective of whether they were made on a cash or

credit basis, and in addition, will submit such periodical summaries of sales as the Company may require from time to time. In the case of credit sales, the Kerosene Agent will keep full details of the names of the buyers, their addresses, the quantity sold, sale price and date when sold and delivered and the Kerosene Agent undertakes to produce for inspection of the Company and its officers, representatives or servants and, if called upon, to submit to the Company at its office in Colombo copies of these  
 10 details, also copies of his Day Book and or Cash Book authenticated by his signature, and such returns, reports, stock lists, as and when the Company require the same.

24. The Kerosene Agent shall keep proper accounts, Sales Accounts shall be available for inspection by the authorized representatives of the Company and by them only, and shall render to the Company true reports of such sales in the manner and at such times as may be required by the Company, also such other reports as may be necessary  
 20 to the successful operation of the Company's business.

25. The Company will render to the Kerosene Agent, or at their discretion may instruct the Kerosene Agent to submit to the Company at its office in Colombo such statements of account in duplicate at such intervals as the Company may decide but in no case less frequently than once in each calendar month. One copy of all accounts so submitted by the Company shall be returned to the Company by the Kerosene Agent duly signed in token of his acceptance of the account. If the Kerosene Agent  
 30 shall neglect to return any account within 7 days from the date on which the account was submitted, he shall not have any right to question the accuracy of such account or to re-open enquiries into or raise any dispute about any of the accounts between the Company and him prior to the date of last submitted account.

26. The Kerosene Agent undertakes to hold all proceeds of sales as the property of the Company and to pay to the Company and on account of the Company all sale proceeds of oil at such times after sales are effected as may  
 40 be directed by the Company from time to time.

All moneys payable to the Kerosene Agent are payable at the office of the Company in Colombo or as directed by the Company, and unless and until otherwise authorized by the Company all sums of credits due to the Kerosene Agent from the Company in respect of leakage, commis-

D15  
 Kerosene  
 Agency  
 Agreement  
 No. 16  
 23.9.48—  
*Continued*

Sales  
Accounts

Statement  
of Account

Sale Proceeds

Moneys  
payable at the  
Company's  
office

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

sions, rents, postages, allowances or of any other description will be credited to his account with the Company in Colombo.

Accounts to  
be rendered  
and settled at  
Company's  
office

27. It is understood and agreed that all accounts are to be rendered, explained and settled and returns made and all moneys are to be paid and all disputes and claims are to be settled at the office of the Company in Colombo provided that the Company may at any time require accounts to be rendered, explained and settled and returns made, and all moneys paid, and all disputes and claims to 10  
be settled elsewhere at the Company's sole discretion without in any way waiving any of its rights hereunder.

Due payments

28. Should the Kerosene Agent fail to make due payment in full as aforesaid, then, and in every such event, the Company may in its discretion, charge the legal rate of interest on amounts due from the Kerosene Agent until such amounts are paid.

Credit for  
remittance

29. The Kerosene Agents shall not claim or be entitled to credit for any remittance until same is received, realised and acknowledged by the Company. 20

Allowances

30. In consideration for the service to be rendered by the Kerosene Agent under this Agreement, the Company shall pay to the Kerosene Agent commission on the sale made by the Kerosene Agent, or allowances, or both, the amount of said commission or allowance to be determined and stipulated in writing from time to time by the Company. Save and except as aforesaid, the commissions shall cover all other charges whatsoever other than any charges which the Company may allow in writing in special circumstances. 30

Security

31. The Kerosene Agent shall on or before the execution hereof deposit with the Company (duly transferred to and endorsed in the name of the Company where necessary) securities acceptable in nature to the Company of the cash value of Rs. Nil, which sum may be increased or decreased from time to time as the Company may require. The said securities deposited as aforesaid shall be held and dealt with by the Company as security for the due observance and performance by the Kerosene Agent of the stipulations herein contained. In the event of the 40  
cash value of the said securities at any time being less than Rs. Nil or such increased sum as aforesaid the Kerosene Agent will forthwith at the request of the

Company deposit with the Company: (duly transferred and endorsed as aforesaid where necessary) such further securities acceptable in nature to the Company so that the cash value of the securities deposited with the Company shall at all times be at least Rs. Nil or such increased sum as aforesaid in case default shall at any time happen to be made in the observance and performance of the stipulations herein contained, or on termination of this agreement, it shall and may be lawful for the Company

10 to appropriate pay and apply the securities deposited by the Kerosene Agent with the Company as aforesaid or any of them or any part thereof in or towards the payment, satisfaction or discharge of all such sum or sums of money, damages, costs, charges and expenses as by reason of such default or otherwise (whether due under this agreement or not) shall or may be or become due or owing to or be incurred by the Company and for such purpose to sell, realise and dispose of the said securities or any of them or any part thereof by private contract or otherwise at any

20 price that can or may at the time be had or gotten for the same at the discretion of the Company and from time to time and when the same may in their opinion be necessary without being responsible for any loss in so doing and if and when this agreement shall be terminated to return the said securities or such of them (if any) as may not have been appropriated, applied or sold as aforesaid and pay such balance (if any) as may remain over out of the proceeds of such of the said securities as may have been so sold, to the Kerosene Agent or as he shall direct.

30 Until any such default or termination shall happen as aforesaid, the Company shall permit and suffer the Kerosene Agent to receive from time to time when due the interest or income (if any) of the said securities or such of them as shall not have been appropriated, applied or sold under the terms hereof.

32. The Kerosene Agent shall not at any time hereafter without the consent in writing of the Company, assign, transfer or in any other manner make over this present contract or agreement to any other person or

40 persons whomsoever.

33. The Kerosene Agent undertakes faithfully and promptly to carry out, observe and perform all directions and orders given or rules, regulations or bye-laws made from time to time by the Company or their representatives for the proper carrying on of the Agencies of the Company.

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

Assignment of  
Agreement

Observation  
of Rules

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

Ceylon  
Petroleum  
Ordinance

34. The Kerosene Agent undertakes that he and his servants and agents will observe and perform the provisions of the Ceylon Petroleum Ordinance of 1887 and all rules and regulations made thereunder and all other Government or Municipal, local or such like acts, laws, regulations and bye-laws, as may be in force from time to time.

The attention of the Kerosene Agent is drawn to the following rules, failure to comply with which will render him solely responsible for all consequences: 10

Rules

- (a) The godown must be pucca built or of corrugated iron and must comply with the requirements of Government as set forth in the Ceylon Petroleum Ordinance of 1887.
- (b) No smoking or cooking is to be allowed within the depot.
- (c) No artificial light is to be used in the godown or within the enclosure wall of the depot.
- (d) No work of any kind in connection with the depot is to be carried on before sunrise or 20 after sunset.

Investment of  
Sales Proceeds

35. The Kerosene Agent undertakes not to invest the sale proceeds of any oil entrusted to him hereunder in any other account not to give any oil to his creditors in payment or satisfaction of his debts.

Cancellation of  
Agreement

36. The Company may at any time by notice in writing sent by registered post forthwith terminate this Agreement without any period of notice and without assigning any reasons therefore and thereupon this agreement and the Agency hereby created shall cease except 30 so far as concerns the right of either party in connection with acts or matters done, committed, omitted or suffered by either party before such termination. The Kerosene Agent may terminate this agreement by giving one calendar month's notice in writing to the Company of his desire so to terminate the same such notice not to take effect until the receipt of the same is duly acknowledged in writing by the Company.

Fulfilment of  
Obligations

37. In the event of termination of this Agreement by either the Company or the Kerosene Agent it is hereby 40 agreed that the Kerosene Agent shall be responsible for the due fulfilment of all obligations assumed by him under

this Agreement and the Kerosene Agent shall on the termination of this agreement as aforesaid hand over to the Company or its authorised agent all other property of the Company entrusted to him. Without prejudice to any other remedy the Company shall be at liberty forthwith by its officers, representatives or servants to enter upon any premises where the goods covered by this agreement may for the time being be stored and take possession thereof and remove the same without being liable for  
 10 trespass or otherwise.

D15  
 Kerosene  
 Agency  
 Agreement  
 No. 16  
 23.9.48 -  
*Continued*

38. In any event this agreement shall *ipso facto* determine if the Kerosene Agent or any member of the Kerosene Agent's firm shall be adjudicated insolvent or effect a composition with his creditors and shall be determined at the option of the Company if any execution is levied against the Kerosene Agent or a member of the Kerosene Agent's firm. In the event of the Agent being an incorporated Company and going into liquidation voluntary or compulsory (except for the purpose of  
 20 reconstruction) during the currency hereof this Agreement shall be deemed to have terminated as from the date of such liquidation.

Insolvency

39. On the death or the retirement of any partner of the Kerosene Agent's firm the Company may at its option at once determine this agreement and if the option shall not be exercised the agreement shall continue as between the Company and the surviving or continuing partners of the Kerosene Agent. The legal representatives of the deceased partner or the retiring partner shall  
 30 be liable for all obligations for the Kerosene Agent incurred up to the date of death or retirement, and shall not be entitled to claim from the Company any portion of the security deposit for which the Company shall account to the surviving or continuing partners or partner alone. The death or retirement of a partner shall be notified by the Kerosene Agent to the Company in writing within 24 hours of such death or retirement.

Death of  
 Partner

40. On the termination of this Agreement, whether by the Company or the Kerosene Agent or otherwise, the Kerosene Agent shall forthwith on demand by the Company vacate and hand over possession and charge of the Company's depot and of all packed and bulk oil still in his custody and all other property belonging to the Company, and, if he shall fail to give up such possession immediately upon any such demand being made, he shall

Agent to  
 vacate  
 Possession on  
 Termination

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

pay to the Company as ascertained and liquidated damage Rs. 500/- for every day and any part thereof during which he shall remain in wrongful possession or charge of the said depot or any property of the Company. It is further agreed that the Kerosene Agent will not endeavour by any means or upon any pretext whatsoever to regain possession or charge or control of the Company's depot.

Company's  
option to use  
Premises

41. For a period of six months from date of termination of this agreement or for such less period as the Company shall require, the Company shall be entitled at its option **10** to use and occupy the godown and premises used by the Kerosene Agent for the storage of Kerosene oil, together with a free space on all sides sufficient to entitle it to a license from the Government up to the full extent of the godown's capacity, at a rental not exceeding that paid by the Company immediately prior to the termination of this agreement. If the godowns and premises shall be rented or hired from a third party, the Kerosene Agent guarantees that the Company shall be entitled to occupy the same for the balance of his tenancy or such less period as shall be **20** required by the Company and the Company will only be liable to pay the actual rental payable by the Kerosene Agent at the termination of this agreement.

Marginal  
Notes

42. The marginal notes hereto shall not affect the construction of this agreement.

English  
Language

43. Anything other than the signatures and addresses of the Kerosene Agent written herein in any language other than English shall be null and void. All books and accounts kept by the Kerosene Agent and all statements, reports, accounts, and correspondence shall be written in **30** the English language.

Discharge of  
Company

44. Any moneys paid to any one of the partners of the Kerosene Agent (if a firm) and any receipt or document signed by any one of such partners shall be a full and effectual release and discharge to the Company in respect of any moneys due to the Kerosene Agent from the Company, and the Company shall not be concerned to enquire into the application of any moneys so paid by them.

Place of  
Payment

45. All sums payable by the Kerosene Agent to the Company under this agreement shall be due and payable **40** to the Company at the Company's office in Colombo.

46. The parties hereby agree that any suit to enforce the rights of either party under this agreement shall be instituted and tried by the courts of ordinary original civil jurisdiction in the City of Colombo and the Kerosene Agent expressly agrees to submit to the jurisdiction of such courts.

Court

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48—  
*Continued*

47. It is hereby further agreed that in case litigation results from the Kerosene Agent's failure to fulfil the terms of this agreement, all court costs, fees and expenses as  
10 between attorney and client shall be borne by the said Kerosene Agent.

Litigation

48. The words "he", "him" and "his" when used in this agreement with reference to the Kerosene Agent shall if the Kerosene Agent be a joint Hindu family, be read as "they", "them" and "their" respectively, and if the Kerosene Agent be a Company or a Partnership, Firm, as "it" "it" and "its" respectively. \*Where the Kerosene Agent is a Firm that term shall mean and include all the present members of the firm and the survivors of them and  
20 the legal representatives of such of them as may die and also all future members and their legal representatives.

Word  
Reference

\*Subject to the Company's option contained in para. 39.

49. The Kerosene Agent admits the validity of the copyright, trade marks and names belonging to the Company in the said products, even if not herein listed, including the script words "CALTEX", "TEXACO" and "CALTEX CEYLON, LIMITED", the Trade Mark consisting of a Star with the word "CALTEX" across its face and the Trade Mark consisting of a Star with a superimposed  
30 T contained in a black circle and containing the word TEXACO; and all other Trade Names and Marks. The Kerosene Agent also admits the Company's exclusive right to the trade use of the names "CALTEX", "TEXACO" and "CALTEX CEYLON, LIMITED", and the Trade Mark consisting of a Star with the word "CALTEX" across its face, and Trade Mark consisting of a Star with a superimposed T contained in a black circle and containing the word, "TEXACO", or any other Trade Marks or Brand  
40 Names owned or used by the Company. The Kerosene Agents shall not use any of the said copyrights, Trade Marks, and Trade Names except by the consent of the Company and such use so consented to shall be by way of license only and such license shall determine with the determination of this Agreement.

D15  
Kerosene  
Agency  
Agreement  
No. 16  
23.9.48.—  
*Continued*

IN WITNESS WHEREOF the parties hereto have signed these presents the day and year first above written.

For the Kerosene Agent, R. W. Pathirana.

(Sgd.).....

*Witness.*

29th September, 1948.

*Date.*

(Sgd.) R. W. PATHIRANA

*Signature.*

29th September, 1948.

*Date.*

For the Company Caltex Ceylon Limited.

(Sgd.).....

*Witness.*

29th September, 1948.

*Date.*

(Sgd.) H. D. DENNIS

*Managing Director.* 10

29th September, 1948.

*Date.*

D5  
Letter sent to  
the Defendant  
by the  
Plaintiff's  
Proctors  
27.9.48

**D5**

**Letter sent to the Defendant by the Plaintiff's Proctors**

No. 5794

TAMBIRAJA & KANDIAH  
*Proctors & Notaries.*

“Selvastan”,  
Kurunegala.  
27th September, 1948.

R. W. Pathirana, Esqr.,  
Managing Partner,  
Caltex Petrol Service Station,  
Kurunegala.

20

Dear Sir,

We are instructed by our client Mr. Ariya Pathirana of Messrs. R. W. Pathirana of Kurunegala to inform you that he has received a letter dated 24.9.48 from the Agent, Bank of Ceylon, Kurunegala, a copy of which is annexed hereto. The letter referred to is self-explanatory.

In view of the fact that you have, as Managing Partner, conducted yourself contrary to the terms and conditions of the Agreement and 30 in particular ceased to bank the funds of the Partnership into the current account of the Firm, our client regrets that he is unable to sign the application form for the renewal of the loan granted to the Firm.

We are further instructed by our client to call upon you forthwith pay up the balance amount of Rs. 1,600/- outstanding by the Firm to the Bank.

Copies of this letter are forwarded to your Proctors, Messrs. Ratnayake & Perera, to the Agent, Bank of Ceylon, and Mr. A. M. Lairis Appu.

40

This letter is without prejudice to our client's rights in D.C. No. 5029 Action (Ariya Pathirana vs. Yourself) now pending.

Yours faithfully,

(Sgd.) TAMBIRAJA & KANDIAH,  
*Proctors for Plaintiff.*

In District Court Kurunegala Case No. 5029.

D5  
Letter sent to  
the Defendant  
by the  
Plaintiff's  
Proctors  
27.9.48  
—Continued

**P13**

**Extract from the Evidence of R. E. Rughasse in District Court Kurunegala Case No. 5029**

10 5th November, 1948. Case No. 5029/M. District Court, Kurunegala.

R. E. RUGHASSE. Sworn, 28 years, Marketing Assistant, Messrs. Caltex (Ceylon) Ltd., Colombo.

*Re-examined.*

Our dealings were with the firm and not with Ariya Pathirana. My firm is not concerned about the transactions between the partners. Our firm has a record of the partnership. Before the original agreement was terminated the partners were R. W. Pathirana and Ariya Pathirana.

(Sgd.) S. RAJARATNAM.

20 True copy of Extract of proceedings of 5.11.48 of District Court Kurunegala 5029.

(Sgd.) .....  
*Secretary,*

District Court Kurunegala.

P13  
Extract from  
the Evidence  
of R. E.  
Rughasse in  
D.C.  
Kurunegala  
Case No. 5029  
5.11.48

**P8**

**Journal Entry in District Court Kurunegala Case No. 5029  
IN THE DISTRICT COURT OF KURUNEGALA**

No. 5029.

Ariya Pathirana of Kurunegala.....*Plaintiff*

30

*vs.*

Robert Watte Pathirana of Kurunegala.....*Defendant.*

**JOURNAL**

3.2.49.

In view of the fact that by notice dated 10th September, 1948, the defendant terminated the partnership, taking effect as from 31st

P8  
Journal Entry  
in D.C.  
Kurunegala  
Case No. 5029  
3.2.49

P8  
Journal Entry  
in D.C.  
Kurunegala  
Case No. 5029  
3.2.49  
—Continued

December, 1948, and since Messrs. Caltex Ceylon Ltd., has also terminated its agency with the firm of Messrs. R. W. & A. Pathirana, the plaintiff through his proctors moves to withdraw without costs his application for interim injunction as no purpose would now be served by obtaining the said injunction and to have the case fixed for trial on any date convenient to Court.

Messrs. Ratnayake & Perera for defendant have received notice with copy and consent, but on payment of full costs incurred.

Call in Court on 17.2.49.

(Intd.) S. R., 10  
D.J.

True copy of Extract from Journal Entry of District Court, Kurunegala, 5029.

(Sgd.) .....  
Secretary,

District Court, Kurunegala.

D11  
Letter sent to  
Messrs. R. W.  
& A. Pathirana  
by Bank of  
Ceylon,  
Kurunegala  
11.2.49

**D11**  
**Letter sent to Messrs. R. W. & A. Pathirana by Bank of  
Ceylon, Kurunegala**

**BANK OF CEYLON**  
Kurunegala

Form No. 172. 20

11.2.1949.

Messrs. R. W. & A. Pathirana,  
Esplanade Street,  
Kurunegala.

Dear Sirs,

*Loan A/c.*

We have today debited your current account with the sum of Rs. 200/- made up as follows:— 30

Instalment on your loan account .. .. .	..	Rs. 200.00
Interest on your loan account for the month of .. .. .	..	" —
		Rs. 200.00

Please send us your cheque in support of our debit.

Yours faithfully,  
(Sgd.) .....  
*Agent.*

**D12**

**Letter sent to the Defendant by Bank of Ceylon, Kurunegala**

**BANK OF CEYLON  
KURUNEGALA**

5th May, 1949.

D12  
Letter sent to  
the Defendant  
by Bank of  
Ceylon,  
Kurunegala  
5.5.49

R. W. Pathirana, Esqr.,  
Dambulla Road,  
Kurunegala.

Dear Sir,

10 We return herewith the demand Pro note signed by you and  
Mr. Pathirana as partners of Messrs. R. W. & A. Pathirana  
for the accommodation of Rs. 5,000/- granted the firm.

This Pro note is duly cancelled by us as the loan is now paid in  
full.

Yours faithfully,  
(Sgd.) .....  
*Agent.*

*P.S.*—The Guarantee bond signed by Mr. A. M. Lairis Appu in  
this connection has today been sent to him.

20 Copy sent to Mr. A. Pathirana.

---

**P15**

**Defendant's Additional List of Witnesses in District Court  
Kurunegala Case No. 5029**

**IN THE DISTRICT COURT OF KURUNEGALA  
No. 5029**

P15  
Defendant's  
Additional List  
of Witnesses  
in D.C.  
Kurunegala  
Case No. 5029  
7.6.49

Defendant's additional list of witnesses.

1. D. T. Karunasena of Kirindiwella, Gampaha.
2. Mr. Ebert Fernando, Accountant, Colombo.

Kurunegala, 7th June, 1949.  
(Sgd.) RATNAYAKE & PERERA,  
*Proctors for Defendant.*

30

Received a copy.  
(Sgd.) TAMBIRAJA & KANDIAH,  
*Proctors for Plaintiff.*

True copy of additional list of witnesses of defendant filed in  
District Court Kurunegala Case No. 5029.

(Sgd.) .....  
Secretary, District Court, Kurunegala.

P9  
 Letter sent to  
 the Defendant  
 by the Plain-  
 tiff's Proctors  
 13.6.49

P9

**Letter sent to the Defendant by the Plaintiff's Proctors**

**TAMBIRAJA & KANDIAH,**  
*Proctors & Notaries.*

No. 5989,  
 Kurunegala.  
 13th June, 1949.

*To :*  
 Muhandiram R. W. Pathirana,  
 Caltex Petrol Station,  
 Kurunegala.

10

Dear Sir,

We are instructed by our client Mr. Ariya Pathirana to request you to refer to your letter dated 10th September, 1948, terminating the partnership under the name and style of R. W. & A. Pathirana, local agents for Caltex (Ceylon) Ltd.

Up to date, in spite of repeated requests by our client you have failed to carry out the terms of clause 13 of the partnership Deed No. 285, drawn and attested by M. O. M. Thahir, Proctor and Notary Public dated 30th November, 1942.

20

On instructions from our client, we call upon you, as Managing Partner of the Firm, to carry out the Terms in the aforesaid clause.

We are further instructed by our client to request you to furnish a statement of the Profit and Loss Account of the Business of your being Agent for Caltex (Ceylon) Ltd., since the day that Messrs. Caltex (Ceylon) Ltd., terminated the agency with the firm of Messrs. R. W. & A. Pathirana for such period until the obligations of clause 13 are fulfilled by you.

In the event of your failing to do so within fourteen days, we are instructed by our client to sue you at Law for the recovery of such 30 sums as are due to him and also for the continuing profits of the business of the Agency of Caltex (Ceylon) Ltd., for the Kurunegala District.

Yours faithfully,

(Sgd.) TAMBIRAJA & KANDIAH,  
 Proctors for Mr. Ariya Pathirana.

**P10****Letter sent to the Defendant by the Plaintiff**

ARIYA PATHIRANA  
 C/o. PATHIRANA & SON,  
 Dental Prosthetic Laboratory  
 &  
 Optical Works.

P10  
 Letter sent to  
 the Defendant  
 by the  
 Plaintiff  
 16.8.49

10 *By Registered Post.*

27, Kandy Road,  
 Kurunegala.  
 (Ceylon).  
 16th August, 1949.

Muhandiram R. W. Pathirana,  
 Caltex Petrol Service Station,  
 Kurunegala.

Dear Mr. Pathirana,

I regret I had to file action No. 5029 in Court because you were not prepared to have the questions in dispute between us settled amicably in terms of the Indenture.

Litigation is very expensive and it will be great advantage to  
 20 both of us if we could settle matters outside Court.

You have not furnished me a true and correct account of the partnership for the period 1st April, 1945, to 19th December, 1948, and paid to me my nett share profits and assets of the partnership. Once again I would urge you to agree to settle our differences in terms of the Indenture.

You have fraudulently during the subsistence of the partnership obtained in your own name the sole agency rights of the Caltex Petrol and Kerosene business whereas it should have been obtained in the name of the partnership. After the determination of the  
 30 partnership you were carrying on the sale of Caltex Petrol and Kerosene under the sole agency rights obtained fraudulently and wrongfully. You have to render account to the said partnership for all profits thus earned by you.

Yours truly,  
 (Sgd.) ARIYA PATHIRANA.

160

P11  
Telegram sent  
to the  
Defendant by  
the Plaintiff  
24.8.49

**P11**  
**Telegram sent to the Defendant by the Plaintiff**

SEAL : 24 AU 49.

CEYLON TELEGRAPHS

DUPLICATE

To *Name* : Muhandiram R. W. Pathirana,  
Kurunegala.

WIRE NO REPLY TO MY LETTER DATED  
16TH INSTANT

ARIYAPATHIRANA 10  
(Sgd.) ARIYA PATHIRANA,  
22, Kandy Road, Kurunegala.

P11A  
Receipt issued  
by Kurunegala  
Post Office  
for P11  
24.8.49

**P11A**  
**Receipt issued by Kurunegala Post Office for P11**

CEYLON TELEGRAPHS

Receipt for Inland or Indian Telegram.  
Office of Origin : Colombo. Seal—KURUNEGALA  
24AU  
49

The charges entered upon this form have been duly paid in 20  
respect of the Telegram indicated by number.

The sum stated includes extra charges, if any, paid for Reply, Delivery, etc. AUG. 24 D—00·85 056

Should any complaint become necessary, the particulars shown will enable the Telegram to be traced.

P11A  
Receipt issued  
by Kurunegala  
Post Office  
for P11  
24.8.49—  
*Continued*

---

**P12**

**Letter sent to the Plaintiff by the Defendant**

Muhandiram R. W. Pathirana.

*Without prejudice.*

10

Ariya Pathirana, Esqr.,  
27, Kandy Road,  
Kurunegala.

“ Pathiniwasa,”

Dambulla Road,  
Kurunegala, 26th August, 1949.

P12  
Letter sent to  
the Plaintiff by  
the Defendant  
26.8.49

Dear Mr. Pathirana,

I am in receipt of your letter of the 16th instant.

It is not correct for you to say that you had to file action on account of my refusal to have the questions in dispute settled amicably in terms of the Indenture.

Your accusation that I have fraudulently obtained the sole  
20 agency rights of the Caltex business is without justification. There was no fraud involved and you have no claim on the business carried on by me as sole agent.

I do not understand the purport of your letter. It will be helpful if you state explicitly what it was intended to convey.

Yours faithfully,  
(Sgd.) R. W. PATHIRANA.

P12A  
Registered  
Envelope  
addressed to  
the Plaintiff  
26.8.49

**P12A**  
**Registered Envelope addressed to the Plaintiff**

Registered	
R/Kurunegala No. 286	SEAL : 26 AU 49.  Ariya Pathirana, Esqr.,
Muhandiram R. W. Pathirana Kurunegala.	27, Kandy Road, Kurunegala  Try Monday also  (Intd.) ..... 27/8.

No such No. 27  
Mr. Ariya Pathirana left for Co.  
  
(Intd.) .....  
27.8.

Still not found  
(Intd.) .....  
29.8.

**P16****Defendant's Additional List of Witnesses in District Court  
Kurunegala Case No. 5029**

IN THE DISTRICT COURT OF KURUNEGALA

No. 5029

Defendant's additional list of witnesses

1. C. Selvanayagam, Chief Clerk, Municipal Council, Kurunegala.
2. S. Charles Pathirana, Dentist, No. Kandy Road, Kurunegala.

Kurunegala, 9th September, 1949.

10

(Sgd.) RATNAYAKE & PERERA,  
*Proctors for Defendant.*

Received a copy.

Copy served.

Proctors for Plaintiff.

True copy of Defendant's additional list of witnesses filed in  
District Court, Kurunegala, No. 5029.

(Sgd.) .....

*Secretary, District Court, Kurunegala.***P4A**

20

**Issues framed in District Court Kurunegala Case No. 5029**

District Court, Kurunegala.

19.9.49. Case No. 5029.M.

Plaintiff and defendant present.

Mr. Advocate P. Navaratnarajah with Mr. Advocate C. Manohara  
and Mr. Advocate Pathirana instructed by Messrs. Thambiraja  
and Kandiah for the plaintiff.

Messrs. Ratnayake &amp; Perera for the defendant.

Mr. Navaratnarajah opens his case and states that the only dispute  
is whether the defendant has rendered to the plaintiff a true and  
30 correct account of the partnership business from 1.4.45 to 31.3.48.  
It is admitted that the defendant was the Manager of the partnership.

Mr. Navaratnarajah suggests the following issues :—

1. (a) Has the defendant rendered an account of the partnership  
for the period 1.4.45 to 31.3.48 ?

P16

Defendant's  
Additional List  
of Witnesses in  
D.C.  
Kurunegala  
Case No. 5029  
9.9.49

P4A

Issues framed  
in D.C.  
Kurunegala  
Case No. 5029  
19.9.49

P4A  
Issues framed  
in D.C.  
Kurunegala  
Case No. 5029  
19.9.49—  
*Continued*

(b) If not, is defendant liable to file in Court such an account ?

2. If issue No. 1 is answered in the affirmative what amount is due from the defendant to the plaintiff ?

At this stage of consent commission to issue under Section 430 of the Civil Procedure Code to Messrs. Satchitananda, Schokman and de Silva to take an account of the partnership business carried on under the name of R. W. and A. Pathirana for the period 1st April, 1945 to 31st March, 1948, and to file the said account in Court on or before 1st November, 1949.

True copy of proceedings in District Court, Kurunegala of 10 19.9.49. District Court 5029.

(Sgd.) .....  
*Secretary, District Court, Kurunegala.*

P17  
Defendant's  
Additional  
List of Witnesses  
in D.C.  
Kurunegala  
Case No. 5029  
26.4.51

**P17**  
**Defendant's Additional List of Witnesses in District Court**  
**Kurunegala Case No. 5029**

**IN THE DISTRICT COURT OF KURUNEGALA**  
**No. 5029**

Defendant's additional list of witnesses.

- I. Mr. Waduwal, Tax Collector, Municipal Council, Kurunegala. 20

Kurunegala, 26th April, 1951.  
(Sgd.) RATNAYAKE & PERERA,  
*Proctors for Defendant.*

Received a copy.

(Sgd.) TAMBIRAJA & KANDIAH,  
*Proctors for Plaintiff.*

True copy of defendant's additional list of witnesses filed in District Court, Kurunegala, No. 5029.

(Sgd.) .....  
*Secretary, District Court, Kurunegala. 30*

**P4**

**Issues framed in District Court Kurunegala Case No. 5029**

P4  
Issues framed  
in D.C.  
Kurunegala  
Case No. 5029  
14.5.51

D.C. 5029. 14th May, 1951.

Mr. Navaratnarajah states . . .

He suggests the following issue :

- 3. What is the income derived from the partnership business for the years 1945-1946, 1946-1947, 1947-1948 ?

Mr. Kandiah suggests the following issues :—

- 10 4. Did partnership Deed No. 285 provide that the matters in difference be referred to arbitration in terms of clause 14 of the said agreement ?
- 5. If so, has this Court jurisdiction to entertain the plaint or to proceed with the action, (a) as the matters in dispute have not been referred to an arbitration, and (b) as the plaint does not aver that the matters in dispute have been referred to arbitration by the defendant or the defendant has refused to refer the matters in dispute to arbitration ?

True copy of proceedings of 14th May, 1951, in District Court Kurunegala No. 5029.

20 (Sgd.) . . . . .  
Secretary, District Court, Kurunegala.

**P4B**

**Issues framed in District Court Kurunegala Case No. 5029**

P4B  
Issues framed  
in D.C.  
Kurunegala  
Case No. 5029  
1.2.54

**IN THE DISTRICT COURT OF KURUNEGALA**

No. 5029. Ariya Pathirana of Kurunegala . . . . . *Plaintiff*  
*vs.*  
Robert Watte Pathirana of Kurunegala . . . . . *Defendant.*

D.C. 5029/M. 1.2.54.

Mr. Kumarasingham suggests the following issues :—

- 30 1. What is the income derived in the partnership business from the years ending 31.3.46, 31.3.47 and 31.3.48.
- 2. What amount is due to the plaintiff from the said partnership business ?

Mr. Pereira suggests no issues.

True copy of issues in District Court, Kurunegala, 5029.

(Sgd.) . . . . .  
Secretary, District Court, Kurunegala.

P14  
Letter sent to  
N. Selvaratnam  
by the  
Defendant  
(Document  
marked  
P46 in D.C.  
Kurunegala  
Case No. 5029)  
23.4.54

**P14**  
**Letter sent to N. Selvaratnam by the Defendant (Document  
marked P46 in District Court Kurunegala Case No. 5029)**

Muhandiram R. W. Pathirana.

Dambulla Road,  
Kurunegala, 23rd April, 1954.

N. Selvaratnam, Esqr.,  
*Accountant,*  
Main Street, Jaffna.

Dear Sir,

10

*D.C. Kurunegala 5029*

I am desirous of having the accounts of the Caltex Petrol Station for the years 1947 and 1948 audited by you, as you have prepared the accounts for the previous years.

The Books of account are kept in Sinhalese but I can arrange to let you have the services of a translater to assist you.

Please let me know when it would be convenient for you to come over to Kurunegala in this connection.

I shall pay you your fees.

Thanking you,

20

Yours faithfully,  
(Sgd.) R. W. PATHIRANA.

True copy of production P46 filed in District Court, Kurunegala, No. 5029.

(Sgd.) .....  
*Secretary, District Court, Kurunegala.*

**Extract from the Judgment of the District Court in District Court Kurunegala Case No. 5029**

**IN THE DISTRICT COURT OF KURUNEGALA**

Ariya Pathirana of Kurunegala.....*Plaintiff*

No. 5029.

*vs.*

Robert Watte Pathirana of Kurunegala.....*Defendant.*

D.C. Case No. 5029.

12.11.54.

P5  
Extract from  
the Judgment  
of the District  
Court in D.C.  
Kurunegala  
Case No. 5029  
12.11.54

**JUDGMENT**

10 There is still a balance due to plaintiff for that period, but that is not in issue in this case.

It will be noted that according to D23 there is a closing stock on 31.3.48 amounting to Rs. 3,232.84 which should be carried forward as the assets of the firm when the accounting is done from 1.4.48. This will be taken into account in going through the case which is filed by plaintiff, *i.e.* District Court 5810 for the period after 31.3.48.

I answer the issues as follows :—

- (i) Profits for the three years ending 31.3.48 from the partnership business amounts to Rs. 27,099/-.
- 20 (ii) Rs. 10,550/- is due to plaintiff from the said partnership business being plaintiff's share of profits, less drawing made by him.

Accordingly I enter judgment for plaintiff for Rs. 10,550/- and costs.

(Sgd.) P. R. GUNASEKERA,  
*A.D.J.* 12.11.54.

True copy of portion of judgment in District Court Kurunegala Case No. 5029.

30 (Sgd.) .....  
*Secretary, District Court, Kurunegala.*

P6  
Decree of the  
District Court  
in D.C.  
Kurunegala  
Case No. 5029  
12.11.54

**P6**  
**Decree of the District Court in District Court Kurunegala**  
**Case No. 5029**

DECREE

IN THE DISTRICT COURT OF KURUNEGALA

Ariya Pathirana of Kurunegala.....*Plaintiff*  
*against*  
Robert Watte Pathirana of Kurunegala.....*Defendant.*

This action coming on for final disposal before P. R. Gunasekera, <sup>10</sup>  
Esquire, Additional District Judge, Kurunegala, on the 12th day of  
November, 1954, in the presence of Messrs. Thambiraja and Kandiah,  
Proctors S.C., on the part of the plaintiff and of Mr. D. A. B.  
Ratnayake, Proctor, on the part of the defendant, it is ordered and  
decreed that the defendant do pay to plaintiff the sum of Rs. 10,550/-  
and costs of this action as taxed by the officer of the Court.

(Sgd.) P. R. GUNASEKERA,  
*Additional District Judge.*

12.11.1954.

True copy of Decree entered in District Court Kurunegala  
Case No. 5029. 20

(Sgd.) .....  
*Secretary, District Court, Kurunegala.*

**D15**  
**Profit and Loss Account**  
**R. W. & A. PATHIRANA**  
**Agents at Kurunegala for Caltex (Ceylon) Ltd.**  
**Profit and Loss Account for the Seven Months Ended 31st October, 1948**

	Rs.	Cts.
To cart hire on kerosene oil from Railway Station		
Rs. 60.10 per month .. ..	420	70
Selling commission on 41,500 gallons kerosene oil		
Cts. .06 per gallon .. ..	2,490	00
Salaries :—		
Storekeeper Rs. 60/- per month Rs. 420.00		
2 pump labourers Rs. 45/- each Rs. 630.00 ..	1,050	00
Allowance to Mr. R. W. Pathirana @ Rs. 50/- ..	350	00
Natame @ Rs. 45/- per month .. ..	315	00
Printing and Stationery .. ..	120	00
Evaporation on 51,650 gallons petrol :—		
258 gallons @ Rs. 2.17½ per gallon ..	561	15
Accountancy charges .. ..	175	00
Nett Profit carried down .. ..	3,639	40
	Rs. 9,121	25
To distribution of profit :—		
Mr. R. W. Pathirana—50% .. ..	1,819	70
Mr. A. Pathirana—50% .. ..	1,819	70
	Rs. 3,639	40
	Rs. ..	9,121 25
	By nett profit brought down ..	3,639 40
	Rs. ..	3,639 40

(Sgd.) S. A. SENARATNA  
*Audit Examiner.*

D15  
 Profit & Loss  
 Account

**D16**  
**Account of A. Pathirana**

**R. W. & A. PATHIRANA**  
**Agents at Kurunegala for Caltex (Ceylon) Ltd.**  
**Mr. A. Pathirana's Account**

	Rs.	Cts.	1948		Rs.	Cts.
1948						
April 1st to half share of loan due to Bank of Ceylon on Promissory Note .. .. .	1,400	00		October 31st By half share of nett profit as per account attached .. .. .	1,819	70
30th : Cash on chit .. .. .		42	75	Balance .. .. .	2,080	01
Payment of principal and interest due on Promissory Note .. .. .	2,360	00				
May 1st : Cash on chit .. .. .		42	75			
31st : Cash .. .. .		54	21			
	Rs. ..				Rs. ..	
					<u>3,899</u>	<u>71</u>
October 31st to balance due .. .. .						
					2,080	01

(Sgd.) S. A. SENARATNA  
*Audit Examiner.*

D17

Account of A. Pathirana

R. W. & A. PATHIRANA  
 Agents at Kurunegala Caltex (Ceylon) Ltd.  
 Mr. A. Pathirana's Account

1948	Rs.	Cts.	1948	Rs.	Cts.
April 1st to half share of loan due to Bank of Ceylon on Promissory Note .. ..		1,400	October 31st by half share of nett profit as per account attached .. ..		L, 819 70
30th : Cash on chit .. ..		42 75			
May 1st : Cash on chit .. ..		42 75			
31st : Cash .. ..		54 21			
Balance .. ..		279 99			
	Rs. ..	<u>1,819 70</u>		Rs. ..	<u>1,819 70</u>
			October 31st By balance .. ..		<u>279 99</u>
					171

(Sgd.) S. A. SENARATNA,  
*Audit Exam iner.*

D17  
 Account of  
 A. Pathirana