

**John Lachlan McGillivray Watson** - - - - - *Appellant*

*v.*

**Bertha Elinor Lilian Haggitt and others** - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF NEW ZEALAND.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1927.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

LORD BUCKMASTER.

LORD CARSON.

LORD DARLING.

LORD WARRINGTON OF CLYFFE.

[*Delivered by* LORD WARRINGTON OF CLYFFE.]

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This appeal raises a question of construction upon articles of partnership between the appellant John Lachlan McGillivray Watson and Arthur Bryan Haggitt. The business of the partnership was that of barristers and solicitors.

The articles were dated the 18th May, 1905, and the term of the partnership was 15 years from that date. The term expired on the 18th May, 1920, but the partners continued the business as partners at will without fresh articles, and, therefore, upon the old terms so far as they were applicable to a partnership at will.

Mr. Haggitt died on the 5th January, 1926, and the partnership was thereby dissolved. The respondents are his executors.

The articles contained the following clause (No. 21) :—

“ If at any time during the term of the said partnership either of the said partners shall die or become permanently incapacitated for work or shall become insane or of unsound mind to such an extent as to render him unable or unfit to carry on the business of the partnership then and in any such case the surviving or remaining partner shall during the period of five years from the occurrence or happening of such event or

contingency pay to the executors and administrators of such partner so dying as aforesaid or as the case may be to the committee or representatives of such partner so incapacitated as aforesaid a sum equivalent to a one-third part or share of the nett annual profits of the said partnership business for each year of the said term of five years."

Taken by itself that clause presents no difficulty of construction. The nett annual profits, by which the amount of the sum to be paid by the surviving partner in each of the five years is to be measured, would be ascertained by deducting from the receipts and earnings of the business such outgoings and expenses as were under the articles or by the use and wont of the partners so deducted during the partnership, the business being for this purpose treated as a continuation of the partnership business (*ex parte Harper* 1 De G. & J. 180). A payment, however, which under the articles ceased with the dissolution of the partnership would not be properly deducted.

The appellant, however, contends—and his contention was upheld by the Judge of first instance and by one of the four Judges in the Court of Appeal—that he is entitled to deduct, in addition to the ordinary business expenses and outgoings, an annual sum payable to him by way of "salary" during the partnership. Whether this contention is correct is the question for decision.

The clause of the articles providing for payment of "salaries" to the partners is clause 3, which is in the following terms:—

"The said Arthur Bryan Haggitt shall receive a salary of £600 for the first year of the said partnership term, a salary of £750 for the second year of the said partnership term and the said John Lachlan McGillivray Watson shall draw all the nett profits of the said business during the first two years aforesaid. During each of the third, fourth and fifth years of the said partnership term the said J. L. M. Watson shall draw a salary of £1,500 per annum and also one-half of the nett profits for each such year and the said A. B. Haggitt shall draw a salary of £750 per annum for each of the said third, fourth and fifth years and also one-half of the nett profits for each such year. Thereafter and during the continuance of the said partnership term the said J. L. M. Watson shall draw a salary of £1,500 per annum and one-half of the nett profits each year and the said A. B. Haggitt a salary of £1,000 per annum and one-half of the nett profits for each year during the term of the said partnership, and the said partners shall be allowed to draw the aforesaid amounts by monthly instalments in anticipation of their respective shares or profits in the said partnership business."

Clause 5 is a common form of provision for the payment of expenses, outgoings and losses out of the receipts and earnings of the business,

"And in case of deficiency thereof then by the said partners in the shares in which they shall for the time being be entitled to the nett profits of the said business."

The contention of the appellant and the judgments of the two Judges who decided in his favour are based upon a supposed rule of construction that the same meaning ought to be given to an expression in every part of the document in which it appears.

Applying this supposed rule it is said that "nett profits" in clause 3 and in clause 5 means what is left after the deduction

of salaries, and, therefore, it must have the same meaning in clause 21. If this conclusion were logically applied the "salary" of A. B. Haggitt should also be deducted and paid to his executors, but the absurdity of paying a "salary" to the executors of a dead partner who cannot give any assistance in the business is recognised and the Judges who were in the appellant's favour stop short of the logical application of their conclusion by deciding that the "salary" of the appellant alone ought to be deducted.

The truth is there is no rule of such general application as is contended for by the appellant. A difficulty or ambiguity may be solved by resorting to such a device, but it is only in such cases that it is necessary or permissible so to do.

In the opinion of their Lordships it is in the present case quite clear that in clause 21 the expression "nett profits" has a different application to that which it has in clause 3 and clause 5. Clause 21 is dealing with a state of things wholly different from that dealt with in clause 3. The partnership is dissolved, the "salaries" which were payable "during the continuance of the partnership term" have ceased and the business is being carried on by the appellant on his own sole account and for his own benefit, the annual sum payable to his deceased partner's executors being, in substance, purchase money for his interest in the assets of the business. Under such circumstances it is impossible to hold, without an express provision to that effect, that the partners intended to allow a salary to the surviving partner.

Their Lordships are of opinion that the appeal fails and ought to be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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JOHN LACHLAN MCGILLIVRAY WATSON

o.

BERTHA ELINOR LILIAN HAGGITT  
AND OTHERS.

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DELIVERED BY LORD WARRINGTON OF CLYFFE.

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