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IN THE PRIVY COUNCIL No. 9 of 1957

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant

- and -

MOHANLAL RAMJI ... 1st Plaintiff-Respondent
SHIVJI RAMJI ... 2nd Plaintiff-Respondent
VANDRAVAN MAGANLAL Defendant-Pro Forma Respondent

AND BETWEEN

MOHANLAL RAMJI ... Plaintiff-Appellant

- and -

KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

CASE FOR KESHAVJI RAMJI

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Solicitors for Keshavji Ramji and
Vandravan Maganlal.

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VANDRAVAN MAGANLAL Defendant ~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

CASE FOR KESHAVJI RAMJI

RECORD

1. This is an appeal from an order, dated the 27th July, 1956, of the Court of Appeal for Eastern Africa (Worley, P., Bacon, J.A. and Mahon J.), by which the First and Second Respondents were held to have been partners of the Appellant, in a business carried on in the Appellant's name, and other consequential relief was also granted. The Court of Appeal for Eastern Africa set aside a decree, dated the 5th October, 1954, of the High Court of Tanganyika (Edmonds, Ag.J.) dismissing the Respondents' action on the ground that no partnership ever existed between them and the Appellant.

p.152

p. 93

2. The law governing partnerships in Tanganyika is that contained in the Indian Contract Act, 1872. Section 239 of that Act provides as follows :-

> "'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them."

3. The proceedings were started by a Plaint

RECORD

issued in the High Court of Tanganyika on the 4th September, 1950 by the First Respondent against the
P.1, L.20-30 Appellant and the Second Respondent. By this Plaint the First Respondent alleged that he, the Appellant, and the Second Respondent, who were brothers, had been carrying on the business of manufacturing furniture and body building as partners
P.2, L.1-3, 14. in equal shares since 1920. The business had been carried on in the Appellant's name. The Second Respondent had retired from the partnership on or about the 1st January, 1948, when the Appellant had paid him his share of the partnership assets. Thereafter the First Respondent alleged that he
P.2, L.29-33 and the Appellant had carried on the business in partnership until March, 1950, when the Appellant had assigned the assets of the business to a company.
P.2, L.34- P.3, L.1 He also alleged that the three brothers had acquired immovable property in equal shares out of the profits of the partnership, and the Appellant had not rendered proper accounts of the profits of these properties. The First Respondent asked for a declaration that the partnership had been dissolved
P.3, L.21 in March, 1950, and accounts of the partnership business and the properties.

P. 8. L.12-14, 15-19, 21 4. By his Defence, dated the 30th October, 1950, the Appellant denied that either Respondent had ever been his partner in any business. As to the properties, he said some of them belonged exclusively to him, while others had since the 15th January, 1948, been held by the three parties and one Vandravan as tenants in common. The Second Respondent
P.9, L.10, L.12-23, L.24-30. by his Defence, dated the 30th October, 1950, admitted the allegations of the Plaint save those relating to his retirement from the alleged partnership in January, 1948. He alleged that the Appellant and two Indian friends of his had induced him to retire from the alleged partnership from the 1st January, 1948, and to accept the sum of 50,501
P.9, L.28. shillings as his share of the assets, by fraud and undue influence. The fraud and undue influence which he alleged were that the Appellant (whom he
P.9, L.31-36 P.10, L. 2 alleged to have been 'in loco parentis') and his two friends had told him (the Second Respondent) that he could not enforce any right in the business, and if he did not accept what was offered him, would get nothing at all . It had been agreed that the
P.10, L.2-22. Appellant's two friends should examine the accounts of the partnership and establish the amount payable to the Second Respondent, but the two friends

RECORD

had valued the Second Respondent's share at 50,501 shillings without going into the accounts. He admitted that 50,501 shillings had been paid to him, but submitted that the agreement made on the 15th January, 1948, was voidable and had been avoided by him by a letter written by his advocate on the 27th October, 1950. P.10, L.42-45

5. At this stage orders were made transferring the Second Respondent from the position of second Defendant to that of Second Plaintiff, and joining Vandravan as the Second Defendant. It was also ordered that the Second Respondent's Defence should thenceforward be treated as his Plaint. P.18, L.14-20

6. By his Defence to the Second Respondent's Plaint, dated the 16th April, 1951, the Appellant denied that he had ever been 'in loco parentis' to the Second Respondent, denied that the Second Respondent had been induced to enter into the agreement of the 15th January, 1948 by any misrepresentation, fraud or undue influence, and alleged that that agreement had extinguished any interest which the Second Respondent might ever have had in the business. The agreement of the 15th January, 1958 (hereinafter called the first agreement) was annexed to this pleading. By it, the Appellant agreed to give a 28½% share in his business of bodybuilding and furniture making to the Second Respondent up to the 31st December, 1947. The Appellant and the Second Respondent also appointed two gentlemen as arbitrators to settle the amount thus due to the Second Respondent, and agreed to accept their decision. At the foot of the agreement was a declaration by these two gentlemen, that they had inspected the books, accounts stock in trade, machinery, vouchers, etc. of the business, and found the sum of 50,501 shillings to be due from the Appellant to the Second Respondent. P.23, L.21 P.24, L. 3 L. 14-17 P.24, L.5-13 P. 26, L.4-12 P. 26, L.13-18 P. 27, L.31-50

7. Vandravan, by his Defence, dated the 6th November, 1951, alleged that the four parties had since the 15th January, 1948 held certain of the properties as tenants in common, and he, Vandravan, was entitled to an undivided share of 14½% therein under an agreement of the 15th January, 1948 (hereinafter called the second agreement). The two Respondents refused to perform this agreement, and Vandravan counterclaimed specific performance thereof. P. 32, L.20 P.33, L.1-7 P.33, L.18-21

RECORD

P.29-31. This second agreement was made between the four parties to the suit, the Appellant having executed it on behalf of the First Respondent by virtue of a Power of Attorney. By it, the four parties agreed that they held certain properties in the proportion of 28½% each to the Appellant and the two Respondents and 14½% to Vandravan.

P.34, L.1, L.17-24 8. By his Reply to this Defence, dated the 11th December, 1951, the First Respondent denied that he was a party to the second agreement, and alternatively alleged that it P.34, L.32 was void against him because he had received no consideration. He alleged that the P.35, L.18-20 et seq to 40. Counterclaim was barred by limitation. The Second Respondent by his Defence alleged that the second agreement was unenforceable for want of consideration and had been executed by him as a result of the same misrepresentation and fraud as the first agreement. He also alleged that the Counterclaim was barred by limitation.

P.36 - 81 9. The action was tried by Edmonds, Ag.J. between the 12th and the 17th September 1954. The First Respondent gave evidence P.37, L.15 saying that the Appellant was his elder brother and the Second Respondent his younger brother, while Vandravan was the son of a deceased brother. The Appellant had come to Tanganyika P.37, L.19 in 1919 and started a carpentry business in 1920 or 1921. The Second Respondent had come L.22, 23 to Tanganyika in 1920, and he himself in 1921. L.25 They had all three worked and lived together. L.27 Their living expenses had come from the joint L.31 business and they had also drawn money from L.37 the business for other purposes. Starting in 1922 he, the First Respondent, had worked for four years on the railways, then for a few months again in the business, then for about 10 years he had run a taxi but had also worked P. 38 in the business. His earnings from other L. 1-3, sources he had handed, after providing for his L. 7, 8 maintenance, to the Appellant. The Second L. 4, Respondent had also worked elsewhere for 2 or L.25. 3 years, during which he had put his salary into the business. The Appellant had gone to India for 3 months in 1921 and the two Respondents had carried on the business. The

RECORD

Appellant had again been in India from 1931 to 1937, and the Respondents had again carried on the business. The First Respondent described how various properties had been bought out of the profits of the business. The business was always called 'Keshavji Ramji Furniture Manufacturer'. The partnership had never been recorded in writing. Drawings from the business were debited against each party as salary. The witness referred to certain books of the business to show this. The witness had himself gone to India in 1940 and started a business there, returning to Tanganyika only in March, 1948. On his return he found that certain property bought out of the profits was registered in the Appellant's name alone. He had asked the Appellant about this, and the Appellant said it did not matter if the property stood in one name or three as they were in partnership. On his return in 1948 he had learned of the change in the constitution of the business, the Second Respondent having been paid his share in the terms of the first agreement. He (the First Respondent) and the Appellant had continued as before until 1949. A dispute then arose because the Appellant produced a draft of a partnership deed showing the partnership as beginning in 1948. He had refused to sign this deed and the Appellant had stopped him going to the office. The business had been transferred by the Appellant to a limited company in 1951. He (the First Respondent) had never agreed to give a share of the properties to Vandravan, nor had he ever authorised the Appellant or the Second Respondent to make such a gift. He said that it had been agreed in 1918 that the Appellant should start a business in Dar es Salaam and his brothers should join him later. He admitted in cross-examination that the business had been conducted solely in the Appellant's name, and the public might have gained the impression that it was the business of one man. He had once been charged with creating a nuisance as manager of the business, and had said in Court that he was the manager of the Appellant's shop. He had always signed business correspondence 'p.p. Keshavji Ramji Furniture Manufacturer'. The Appellant had become head of the family in accordance with Hindu custom, and for many years had supported the First Respondent, the First Respondent paying the Appellant from his earnings. It was possible that some of the books showed the two

P. 38, L.30- P. 39, L.15, 16.
L.22, L.29-30
P.40, L.8-23.
P. 41, L. 22-30
P. 42, L.8-30
L.44.
P.43, L.9
P.44, L.16-21.
P.46, L.6-9.
L.15 L.20
L.42
P.47, L.24 to 36
P.48, L.13-15.

RECORD

Respondents, but not the Appellant, as drawing salaries. He (the First Respondent) could not explain this, he had access to the books but never examined them. He had never mentioned in his income tax returns that part of his income was from the business. The Appellant had paid income tax on the whole of the profits of the business. The First Respondent said it had been agreed in Zanzibar, when the business was started in 1920, that shares in it should be equal, but in 34 years he had never examined the books and before the commencement of the proceedings had never asked for any account of the profits. He admitted that more than once the Appellant had dismissed him from the business, but had subsequently taken him back. He produced a large number of letters which had passed between the parties.

P.49, L. 7-8 L.12-16 L.19

P.51, L.3-9

10. A man named Udvadia, a clerk in the Official Receiver's Office, gave evidence. He said that the Exchange Bank of India and Africa, Limited, was among the companies in liquidation, and among the papers connected with it was a letter written by the Appellant and the two Respondents on the 2nd May, 1947, depositing a title deed as security for an overdraft, in which they said that they were "carrying on business as Keshavji Ramji Furniture Manufacturer".

P.51, L.30, L.38

11. The Second Respondent said in evidence that he was about 50.years old. He had entered into the first agreement because of a quarrel which had arisen between his son-in-law and the Appellant. He said he had been told by one of the arbitrators named in that agreement that he had no enforceable right in the business, because it was carried on in the Appellant's name alone. It was for that reason that he had accepted 28½% although his real share was a third. The Arbitrators had made their award five minutes after the signing of the agreement, without any inspection of any accounts. He had on the 27th October, 1950 written to the Appellant and the First Respondent revoking the agreement. He admitted that he was on the list of employees of the business as receiving wages. He said he had never looked at the books of the business and was not aware that he had been credited with a monthly salary, although he also said that he complained that his salary was not enough. When working

P.53, L.25-34. P.54, L.33-35 P.55, L. 7, L.42. P.56, L.39. P.57, L.7-13, L.20-24. P.58, L. 7, L.17-20

RECORD

outside the business he had given his wages to the Appellant; he had been living with the Appellant and the Appellant had been supporting him. He admitted that his income tax return for 1947 showed no income from the business. He had never been paid any profits, had never asked for any, and did not know what profits were made.

12. The Appellant said in evidence that he had first come to Tanganyika in 1902, returning to India after about 5 years. After 6 months there he had come back to Tanganyika and worked as a carpenter. In July, 1919 he had started carpentry on his own account. The Second Respondent had started working for him in 1923. The First Respondent had come to Dar es Salaam in 1923 and for 2 or 3 years had worked for the railways. The three brothers had at first lived together, and the other two had paid their wages to him. The two Respondents had worked for him like any other employee receiving a wage. Before 1948 neither had ever suggested that he was a partner. In 1937 he had dismissed them both, and in 1939 had again dismissed the First Respondent, but on both occasions had re-engaged them. Applications for trading licences had been made by him, the bank account had been in his name, and he had paid income tax on the business income. He had at one time been shown in the books as drawing a salary, but this had been a mistake and he had told the clerk to stop it. He had entered into the two agreements of the 15th January, 1948. He had wanted to give Vandravan a quarter share of the properties, but to persuade his brothers to agree had reduced this share to 14½%. It was also in order to persuade the Second Respondent to agree to this that he had by the first agreement given the Second Respondent a 28½% share of the business. He described how the various properties had been bought out of the profits of the business. He had sometimes put the properties in the names of the three brothers in order to give the two Respondents a present of shares in the properties. In March, 1950 he had transferred all the business assets to a limited company. He said that the arbitrators under the first agreement had examined the books of the business before the agreement had been signed. He had given his brothers a share in the properties because they had worked for him. He had also given the Second Respondent a share in the

P. 58, L.33- P.59, L. 7, L.14, L.17,18, 20, 23. P.59, L.25, L.34, L.35-44. P.60, L.17, L.28, L.30-40 P.63,L.7 et seq to Ps.64,65, 66. P.67,L.30 P.68,L.12 et seq.

RECORD

business, and had been prepared to give a share in the business to the First Respondent, but he had refused it. This he had done because the Respondents had worked for him. They had not been his partners.

P.68, L.28 P.69, L.1-7 P.69, L.22 to 40 L.44-45 P.70, L.31-33. P.74, L.29-33

13. A man named Shah, the bookkeeper of the business, also gave evidence. He said he had originally credited the Appellant as well as the two Respondents with a monthly salary, but the Appellant had told him in 1931 not to show him as drawing a salary. The Respondents' salaries had continued to be shown as before, but thereafter the Appellant was only debited with his drawings. The properties were paid for in the first place out of the business assets, and the Appellant was first repaid out of the profits of the properties. After this the Appellant and the two Respondents were each credited with an equal share of the profits of the properties in what was called the 'building account'. The profits from properties were kept quite separate from the profits of the business. He understood the parties to be partners in the properties but not in the business. He had compiled income tax returns in which the whole profits of the business were shown as the Appellant's income. From 1931 to 1937, while the Appellant had been in India, the witness had kept the accounts under the directions of the First Respondent.

P.81-92, L.14 et seq. to P.84, L.19-23.

14. Edmonds, Ag.J. in his judgment said that, regarding the evidence as a whole, he had experienced "no difficulty or doubt" in deciding that the Respondents had never been in partnership with the Appellant, apart from the agreements of the 15th January, 1948 affecting the Second Respondent. Apart from the letter to the Exchange Bank containing an admission by the Appellant, there was no other indication that a partnership had ever existed as alleged. In all other letters and documents, including those to the Bank, as well as to Government authorities, to the Courts and to the lawyers of the business, the only representation was that the business was that of the Appellant. The letter to the Bank had in fact been drafted by the Bank, and its purpose was to raise a loan on the security of property itself owned by the brothers in equal partnership with one another. At the time when all income of the brothers from whatever source was

RECORD

paid into the business, the Respondents had lived with, and been maintained by, the Appellant, who allowed them to draw on the business for any other expenses. Only in the 1930 ledger book was the Appellant credited with a salary. This was stopped on his orders, but no objection was taken to this by either of the other brothers in subsequent years, or to the fact that, though they received only monthly salaries, he drew sums from the business as and when he pleased. Although, when the Appellant was in India for six years, the Respondents were left in charge, they both said that they never examined the account books and could give no satisfactory explanation of why they had not done so. The learned Judge did not believe that they were unaware of the way in which the accounts were being kept. As they had never done anything to oppose it, they had to be taken to have acquiesced in it. The account book of the properties held jointly by the brothers showed a regular credit of profit from rent to each brother, although no such similar distribution of business profits was shown, nor, apparently, ever asked for by the Respondents. The Second Respondent's answer to a question by the Court, that he did not know what profits were made in the business, although he claimed a third share, and that it was not his business to know, could not be taken seriously. The fact that the books showed the three brothers as having an equal interest in the building profits but not in the business profits was one which required an explanation, but the explanation which the Respondents supplied lacked credibility. No special significance was to be attached to the particular expressions, such as "we" and "our business", used in the correspondence between the Appellant, whilst he was in India, and the First Respondent. More significant was the general tenor, indicating that it was the Appellant who had control of the business. Further evidence that he ran the business as he saw fit was provided by his dismissal of both brothers in 1937 and of one again in 1938, although he re-engaged them on each occasion. Although money raised on the security of the properties was paid into the general revenue, the First Respondent never disputed a letter in which the Appellant stated that the properties had no connection with the business. The

P.86. L.16.
L.23.
L.34.
L.39.
P. 87. L.1-6.
L. 14.
P. 87. L.35-37
L.37
L.32
P.88,L.14.
L. 18 et seq.

RECORD

Appellant paid income tax on the whole profits of the business, which, if divided among the three brothers, would have attracted less tax, a fact which was only explicable on the basis that the
P.88, L.15 to L.30 business was that of the Appellant alone. The Second Respondent, in writing to the Income Tax authorities, stated that the Appellant was his employer and described himself as manager: in setting out his income he included rent from his one third share in one of the properties, but did not include any income from the profits of the business. In the light of the contents of the
L.41-47 business books and the fact that no third party ever knew of the partnership alleged, it would have been extremely difficult for the Appellant to have forced his brothers to share his liability, had the business fallen on bad times. The learned Judge therefore found that the First Respondent was not a partner of the Appellant and the Second Respondent did not gain any rights of partnership except under the first agreement.
P.89 & 90 Dealing with the second agreement and the question whether Vandravan was entitled to any share in the properties set out in it, the learned Judge held that the power of attorney given to the Appellant by the First Respondent was not properly used to dispose of the First Respondent's property by way of gift, as it was used without his express knowledge and permission. The First Respondent was not therefore bound to perform the second agreement. The Second Respondent was bound to execute that agreement. Vandravan was therefore entitled to an undivided 14½% share in two-thirds of the properties mentioned in the agreement No claim of partnership having been established, the question of determining whether the Second Respondent was induced to sign the agreement by misrepresentation, fraud and undue influence did not arise. Similarly, failure to prove partnership meant tha t the Respondents had not adduced any evidence to prove a legal share in the various properties (except under the second agreement).

P.95, L.20. 15. The Appellant and Vandravan appealed to the Court of Appeal for Eastern Africa on the grounds, first, that the learned Judge erred in law in finding that the Second Respondent was entitled to a
P.96. 28½% share in the business of Keshavji Ramji, although he had found that the second Respondent had

RECORD

received Shs. 50,501 in settlement of his claim under the first agreement; secondly, that the learned Judge was wrong in holding that the execution of the second agreement was not within the power of attorney conferred on the Appellant. The First Respondent cross-appealed on the following, amongst other, grounds: that the learned Judge erred in law in finding that no partnership had ever existed; in failing to take into consideration the fact that the rents of the properties and the loans taken on their security were utilised in the business; in his construction of the first agreement; and in his appreciation of the true meaning and effect of the several letters exchanged between the First Respondent and the Appellant. P.97 L.12. L.29 P.98. L.4-10. L.12. L.23.

16. An "Agreed Schedule of Properties For Appellate Judgment" was drawn up and signed by the parties. Pages 102,103 & 104.

17. The judgment of the Court of Appeal for Eastern Africa (Worley, P., Bacon, J.A. and Mahon, J.) was given on the 22nd June, 1956. Bacon, J.A., having set out the principal facts, dealt first Respondent's claim to a share in the business. Shah, who was the only witness on the issue apart from the brothers themselves, testified that in 1931 the Appellant instructed him to cease showing him (the Appellant) as drawing a salary. The daily cash book produced by the First Respondent, however, for the period 1922 to 1929, and that for 1930, showed that each of the brothers drew a salary at this time, and, when working outside the business, paid his earnings into the business. Shah also said that, to his understanding, the Respondents were partners in buildings but not in the business. He had sought to substantiate this by describing his book-keeping methods and by referring to the income tax returns compiled in the name of the Appellant alone. The learned Judge did not think that this contention carried weight, because the Appellant gave the orders as to how the books were to be kept by Shah, and, though he alone might have paid the tax, the learned Judge 'had no doubt' that the payments were entered in the books and the burden would thus fall eventually on whoever owned P.106 L. 25. P.114. L. 39. P.115. L. 15. " P.116. L.13-16. L.16-20. L.20-27.

RECORD

P.117. L.6-9. the business. He did not regard the books as kept by Shah from 1931 onwards as a safe guide to the legal relationship of the brothers. The

L.10 et seq to L.26. oral testimony of the brothers themselves showed on ba;ance that the Firest Respondent was a partner from the beginning, when the brothers agreed to pool their resources, including their earnings from outside, in order to establish the business.

L.36 to L.45. The learned Judge quoted extracts from the correspondence which passed between the brothers. The letters sent by the Appellant when he was in India between 1931 and 1937 contained much which, in his

P.121 L.30 to L.47 view, indicated a partnership. The 'letter of deposit' of the title deed as security given to the Exchange Bank contained an express admission that the three brothers were "carrying on business as Keshavji Ramji". The explanation by the Appellant, that this document was to ensure his brothers' liability with himself for the loan, since they were partners in the building business, was, in the opinion of the learned Judge, inconsistent with his statement that they were liable as managers

P.123 & 124. during his absence in India. Further letters between the First Respondent and the Appellant contained express or clearly implied admissions by the Appellant that the Respondents were in partnership with him. The learned Judge considered that the Appellant had failed to contradict this inference by anything said or done before, or at the

P.125. L.28-35. trial. He therefore reached the conclusion that the First Respondent was speaking the truth when he said that in 1920 it was agreed in Zanzibar that shares in the business should be held equally. The First Respondent was therefore a partner in the business with a one-third interest as from its commencement until it was transferred to Kes-

L.40. havji Ramji, Ltd. in 1950. Examination of the correspondence between the Second Respondent and

P.125. L.41 et seq. the Appellant showed that there was nothing to distinguish the position of the Second Respondent from that of the First, save that by the first agreement the Appellant recognised the Second Respondent as a partner from the beginning, and that agreement had terminated his interest in

P.126 L. 19 the firm. Dealing with the properties purchased at various times by the brothers, the learned Judge reached the conclusion that these represented an investment of business profits, for the benefit of the brothers jointly. The rents had for

RECORD

the most part had been put back into the business, but some had been paid over to the First Respondent. The second agreement constituted a contract within section 2(h) of the Indian Contract Act, 1872, binding on the First Respondent by virtue of the power of attorney conferred on the Appellant. Consequently, the First Respondent had a one-third interest in the properties purchased up to 1950, except those in which the second agreement reduced his interest to 28⅓%. The Second Respondent had a one-third interest still subsisting in the properties purchased up to 1948, when he agreed to leave the firm, except where this had been reduced to 28⅓% by the second agreement. Since the second agreement was binding on all four parties to it, Vandravan had a 14⅙% share in the properties affected by it, and specific performance of that agreement should be ordered (the Appellant does not object to this). Worley, P. and Mahon, J. agreed with the judgment of Bacon, J.A.

P.127 L.3 to Pages 128-132 L.14.

P.132. L. 45.

Pages 133-138.

P.138, L.10-14, and Pages 139 & 140.

P.140, L.22 et seq.

P.141. L.13-19.

Pages 150 & 151.

18. The Appellant respectfully submits that the learned Judges of the Court of Appeal were wrong to reverse the findings of fact made by Edmonds, Ag.J. on the evidence of witnesses whom he saw and heard. The vital issue in the case - whether the business belonged from its beginning to the Appellant alone or to the Appellant and the Respondents in partnership - depended upon the view taken of the oral evidence of the parties (and their witnesses) and their explanations of various documents. Edmonds, Ag.J. clearly preferred the evidence of the Appellant. On at least one important question, viz., whether the Respondents knew how the accounts of the business were being kept, he expressly declined to believe the Respondents. Bacon, J.A., on the other hand, preferred the evidence of the Respondents, and considered the Appellant to be guilty either od dishonesty or of putting forward a wrongful claim as a result of confusion. The Appellant submits that the learned Judges of the Court of Appeal were not justified in thus departing from findings of fact, and estimates of the reliability of witnesses, made by Edmonds, Ag.J. after seeing and listening to the witnesses, and the view of the facts taken by Edmonds, Ag.J. ought to be preferred.

RECORD

19. The Appellant respectfully submits that Bacon, J,A. fell further into error in consequence of nowhere discussing, or even mentioning, the Indian Contract Act, 1872, s.239. The definition of 'partnership' prevailing in Tanganyika is that which is contained in s.239. By that definition, 'partnership' requires an agreement between persons 'to share the profits (of their property, labour or skill) between them'. The evidence shewed that the Respondents, from the beginning of the business up to the commencement of these proceedings, had been paid salaries for their work in the business, but had never received, or even asked for, any share of the profits. Such a course of conduct extending over nearly thirty years makes it impossible, in the Appellant's submission, to believe that the Appellant and the Respondents ever agreed to share the profits of the business between them. The Appellant respectfully submits that Bacon, J.A. would have been bound to appreciate this, if he had considered s.239 in the course of his judgment. As a result of his omission to consider s.239, the learned Justice of Appeal failed to apply the proper criterion of the existence of a partnership.

20. On the evidence itself, the Appellant respectfully submits that the view of Edmonds, Ag.J. is to be preferred to that of Bacon, J.A. Not only did Bacon, J.A. fail to observe that the burden of proving the existence of a partnership rested upon the Respondents; certain important pieces of evidence tending strongly to support the Appellant's contentions were also, in the Appellant's submission, dismissed by Bacon, J.A., without a proper appreciation of their significance. Thus, the evidence shewed that the whole profits of the business were regularly included by the Appellant in his return of his personal income for purposes of tax, and no part of the profits was included in the return of either of the Respondents. Bacon, J.A. dismissed this as 'a matter of no particular significance'. The Appellant submits that there would have been absolutely no reason, if he and the Respondents had indeed been partners, why he should voluntarily have undertaken the whole burden of tax on the business profits. This would have been the more inexplicable because, as Edmonds, Ag.J. pointed out, less tax would in the aggregate have been due if the

P.49. L.1-9.
P.58. L.1-10. L.17-20.
P.70. L.31.
P.116. L.29

RECORD

profits had been divided between the returns of the Appellant and the Respondents. Again, the books of the business which were produced shewed that each Respondent received a monthly salary, but no share of profits. (The Appellant also had at one time been credited with a salary, but this stopped in 1931 and thereafter he drew from the business what sums he chose.) Bacon, J.A. thought these books were not 'a safe guide to the legal relationship of the brothers'. This is to overlook the fact that the period during which the books were kept in this way included the years from 1931 to 1937, when the Appellant was away in India and the Respondents were in charge of the business. The Appellant submits that Edmonds, Ag. J. was right in refusing to believe the evidence of the Respondents that they never looked at the books between 1931 and 1937; the only possible inference from their failure to challenge or change the method of book-keeping is that they approved of it, thereby recognising that they were entitled to salaries but to nothing more.

P.39, L.26-40

P.117, L.6-9.

21. The Appellant respectfully submits that the judgment of the Court of Appeal for Eastern Africa, so far as it found that the business was carried on by him and the Respondents in partnership and granted other relief consequential upon this finding, was wrong and ought to be reversed, for the following (among other)

REASONS:-

1. Because the Court of Appeal for Eastern Africa ought not to have departed from the findings of fact made by Edmonds, Ag.J.:

2. Because the Court of Appeal for Eastern Africa failed properly to apply the India Contract Act, 1872, s.239:

3. Because on a proper appreciation of the evidence the Respondents failed to discharge the burden, which rested upon them, of proving the existence of a partnership:

4. Because of the other reasons set out in the judgment of Edmonds, Ag.J.

FRANK SOSKISE.

J.G. LE QUESNE.

IN THE PRIVY COUNCIL No. 9 of 1957

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant

- and -

MOHANLAL RAMJI ... 1st Plaintiff-Respondent
SHIVJI RAMJI ... 2nd Plaintiff-Respondent
VANDRAVAN MAGANLAL Defendant-Pro Forma Respondent

AND BETWEEN

MOHANLAL RAMJI ... Plaintiff-Appellant

- and -

KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

CASE FOR KESHAVJI RAMJI

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Solicitors for Keshavji Ramji and
Vandravan Maganlal.