

[BELCHER, C.J., SERTSIOS, J., FUAD, J.]

SOTIRI K. VIOLARI

v.

1. PETROS P. KHIRA

2. THEODOSSIS PAPA THOMA.

BELCHER,
C.J.,
SERTSIOS,
J.,
FUAD,
J.
1928.

March 9.

PARTNERSHIP—JOINT ADVENTURERS—HOLDING OUT—LIABILITY OF EACH FOR HIS SHARE IN LOSS—NO DOCUMENT, THEREFORE, "ACTIONS MUST SPEAK"—CONDUCT.

Appeal of plaintiff from the judgment of a District Court, so far as it dismissed the claim of the plaintiff against the 2nd defendant.

Triantafyllides for appellant (plaintiff).

Michaelides for respondent (defendant 2).

Defendant 1 in person.

The facts are sufficiently disclosed by the judgment of the Court delivered by the Chief Justice.

Judgment: The appellant sued the two respondents in the District Court of Famagusta for the sum of £21 19s. 3cp. which he alleged to be due to him by them jointly as the upshot of an unsuccessful cattle speculation entered into by all three in December, 1925, as to which he claimed that accounts were agreed two months later, which accounts showed a balance due to him as claimed.

The first defendant, Petro, admitted his own participation in the venture but disputed the amount of his indebtedness. The second defendant, Theodossis, while admitting that he was a partner with the first defendant in the latter's interest in the speculation, denied the existence of any contractual relationship between himself and the plaintiff.

The first issue framed by the learned Judge, and that on which defendant Theodossis' liability to plaintiff fell to be decided was "Was there a partnership between plaintiff and defendant Theodossi?" On that issue, the burden of which he rightly found to be on the plaintiff, the learned Judge found on the facts in favour of defendant 2, that is he found that the plaintiff had failed to establish the existence of a partnership in the cattle speculation as between the plaintiff and defendant 2. We need not deal with the rest of the case, as defendant 1 does not appeal from the judgment so far as concerned him (he was ordered to pay to plaintiff £20 10s. 2cp.).

The plaintiff appeals from the judgment in favour of defendant 2, and what this Court has to consider is whether the conclusion involved in the judgment was one to which

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the Court below could reasonably come on the evidence before it: was there, that is to say, such clear evidence of a partnership that no tribunal could reasonably fail to find that partnership as a fact, or might there reasonably be doubt about its existence.

In order to justify us in setting aside the finding of the District Court, the appellant must satisfy us that the former is the case.

It will be convenient first to consider the undisputed facts, that is facts which either the plaintiff has proved or defendant admitted. These may be stated shortly as follows: Theodossi and Petro had, for some time prior to the formation of the contract from which the action arose, been accustomed to enter together into joint adventures of a similar kind, that is deals in animals; in one case at least, which was the last before this, they had settled their accounts when the transaction was completed, so that their course of dealing may rather have been a series of joint adventures than a continuous partnership; but at all events, in any given transaction, the terms were as between Petro and Theodossi that Petro did the work. Theodossi provided the greater part of the capital, and they shared equally in profit and loss. On the day in question they were both in Lefkoniko, where the plaintiff Sotiri also was. Sotiri had heard that money was to be made out of shipping oxen to Alexandria and he made some proposition to Petro in connection therewith. Petro at first demurred, and said to plaintiff Sotiri "My partner Theodossi who provides me with capital may not agree." He consulted Theodossi who, after objecting, finally did agree in terms which meant that Petro could make what arrangements he pleased with Sotiri. This was communicated by Petro to Sotiri, and a term of the venture as agreed between the two latter, or, as put by Sotiri, between all three of them, was that Sotiri should find a third of the capital and stand to win or lose a third, according as matters turned out. There was in fact a loss which was borne in the first instance by Sotiri, and the crux of the dispute in the action was whether Sotiri was entitled to recover, as well as the third share for which Petro, subject to adjustment of accounts, admitted responsibility as part of two-thirds which he alleged was his share, the remaining third share from Theodossi, Petro being in fact a man of straw. The answer depends on the true meaning of the engagement entered into at the beginning. There was no document, everything was verbal, and in conversations between cattle dealers it is unlikely that there will be any exact definitions of joint and several liability. The parties'

actions must speak, and from those their intent must be found and from the intent the legal relationship must be determined with its necessary consequences.

Petro having represented to Sotiri that he could decide without Theodossi's consent, and that having been obtained and made known to Sotiri, it is clear that there are two possible constructions which may be placed on what was done. Either Petro made the contract for himself alone and did nothing to incur liability towards Sotiri on the part of Theodossi whom he merely stated to be his financier, or he engaged Theodossi in the venture as a co-adventurer with himself and Sotiri; having regard to the fact that Theodossi allowed Petro wide general powers he cannot be heard, after so holding him so out to third parties, to say that he expressly excluded power as his agent to form a contract on his behalf. The question is "was such a contract formed," and to answer that the Court below had to look at the surrounding facts. In favour of the direct participation of Theodossi the Court had before it the following facts: Sotiri was only to have one share out of three, an unusual circumstance if there were only two partners in a venture in which he himself was to do at least half the work, and the reason of it was that Petro told Sotiri that Theodossi was with him (Petro) in equal shares. Theodossi takes direct part in buying some of the cattle. The teskeres are all ultimately transferred into his name before the cattle are shipped. The bill of lading is made out in his name. He meets the other two on their return to Famagusta from Egypt. He is present when accounts are discussed at Nicosia on the 5th February. Sotiri writes to him as one directly interested. We have not that letter but we have his reply: the reply makes it clear that he was being asked by Sotiri to come to Lefkoniko and finally settle accounts with Sotiri and Petro; he does not disclaim interest in the accounts as regards Sotiri, but says in effect that he will accept Petro's settlement with Sotiri as correct and himself settle with Petro later.

The only evidence which appears against this view of an equal partnership in thirds, is the statement of Petro that he alone was Sotiri's partner and that Theodossi was not connected with Sotiri, and the statement of Theodossi to the same effect.

I have come to the conclusion that the Court below could not reasonably base on these bare denials of Theodossi's legal liability, unsupported by any evidence, a finding that he was not a partner, in view of the number of facts

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pointing in the opposite direction as summarised above. The *prima facie* inference from these facts is that this was an equal partnership of all three; the onus, once those facts were before the Court, shifted to the defendant, who, while admitting them, said they ought to be interpreted otherwise than in a natural way. But he adduced no evidence which could lead to the conclusion he asserts.

The only difference, either in formation or effect, between the equal partnership upon which plaintiff bases his claim, and the arrangement which Theodossi set up as the true one, is that by the latter Sotiri agreed to ask for no share of potential loss from a person whom he knew was going to take an equal share in potential profit. There is no evidence that Sotiri agreed to this very unusual, though no doubt possible, arrangement; for Petro's making the bargain and doing all the work of accounting on behalf of Theodossi and himself is equally consistent, in the circumstances of the parties as proved, with the natural inference of equality, whereas the intervention of Theodossi as regards the teskeres and the bill of lading, vital parts of the adventure, are quite inconsistent with his having no direct share in that adventure. In my view, therefore, there was no evidence whatever for the case set up by Theodossi.

The appeal is allowed and the judgment of the Court below set aside so far as it relates to Theodossi; there must be judgment for Sotiri as against Theodossi for such sum as may be found due by Theodossi to him, on the taking of accounts on the footing that Theodossi was liable for one-third of the loss on the adventure; if the parties cannot agree on the figure, the case must go back to the District Court to determine it. The appellant to have his costs here and in the Court below.

Appeal allowed.