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32,1955

No. 26 of 1954.

# In the Privy Council

UNIVERSITY OF LONDON W.C.1. 25 OCT 1956 INSTITUTE OF ADVANCED LEGAL STUDIES
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**ON APPEAL**  
*FROM THE SUPREME COURT OF CYPRUS.*

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**44813**

BETWEEN :

- A. The Firm of A. G. PATIKI & CO., of Limassol ;
- B. (1) IOANNIS G. PATIKI ; (2) VASILIOS G. PATIKI ; (3) CHRISTOS A. PATIKI ; and (4) CONSTANTINOS A. PATIKI of Limassol as partners of the Firm A. G. PATIKI & Co., of Limassol and/or personally . (Defendants) *Appellants*

AND

DEMETRA GEORGHIOU PATIKI of Athens, minor by her next friend and judicial and natural guardian THRASYVOULOS PAPALOPOULOS of Karditsa . . . . . (Plaintiff) *Respondent.*

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## Case on behalf of the Appellants

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RECORD.

1. This is an appeal by leave of the Supreme Court of Cyprus from an Order of the Supreme Court of Cyprus dated the 22nd January 1954 partly affirming and partly reversing an Order of the District Council of Limassol made on the 28th February 1953 in proceedings principally concerned with the rights arising under a Partnership Agreement of the 15th September 1923. p. 73.

2. The Appellants A are a partnership firm of wholesale tobacconists carrying on business in Cyprus and the Appellants B are the present partners in the firm.

The Respondent is the adopted daughter and claims to be the heiress of Georghios Athanasiou Patiki deceased (hereinafter called " the Deceased ") who was at the time of his death a partner in the said firm.

30 3. The questions in issue in this Appeal are (1) whether the Respondent was entitled to maintain against the Appellants proceedings relating to the share and interest of the Deceased in the partnership without first obtaining

a grant of representation to his estate or joining a legal personal representative of the Deceased as a party and (2) in the event of its being held that the proceedings were so maintainable, whether the Order of the Supreme Court of Cyprus as to the manner of taking the accounts of the said partnership was correct and particularly whether on the true construction of the said Partnership Agreement in taking such accounts the assets of the partnership should be revalued and brought in at their fair market value or the estate of the Deceased was entitled only to the sums standing to his credit in the books of the partnership together with a share of the sums carried to reserve and of current profits.

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p. 73.

4. By an Agreement in writing (hereinafter called "the Partnership Agreement") dated the 15th September 1923, the original of which is in the Greek language, it was agreed by and among the Appellants B and the Deceased (in effect and shortly stated) as follows:—

\* \* \* \* \*

(B) The parties agreed to carry on in partnership the business of A. G. Patiki & Co.

(C) For the above-mentioned purpose the capital of each partner was to be the sum with which each was credited in the books of the firm as opened on the 1st July 1923.

(D) The duration of the partnership was to be five years from the 1st July 1923, and it was provided that it might be continued thereafter either expressly or impliedly on the terms of the Partnership Agreement.

\* \* \* \* \*

(F) The firm was to keep regular commercial books, in which all the transactions concerning the firm and the partners were to be entered. These books were to be balanced and closed annually on the 1st July, or alternatively every six months. Profit and loss was to be divided equally between the partners.

\* \* \* \* \*

(I) If during the continuance of the partnership the firm should suffer such losses as to cover the capital of a partner, such partner was to cease to be a partner unless it were otherwise agreed or he replaced his lost capital.

\* \* \* \* \*

(K) After the expiration of the term of the partnership, if a partner wished to retire he was to give three months' notice in writing. After the expiration of the notice "the books of the Company shall be closed and the retiring partner or partners shall be paid every sum they will be entitled to in accordance with these books, less fifteen per cent. on his allotted share of the credits to third persons deriving from goods and tobacco and less ten per cent. on the existing goods, but the retiring partner or partners shall not be entitled to raise a claim for

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10 “ damages for their share with the Firm name, the trade marks  
 “ and goodwill of the company. It is understood that the foregoing  
 “ shall apply in case the other partners wish to continue the  
 “ operations for their account otherwise the retiring partner or  
 “ partners can apply only for the dissolution of the company.  
 “ The provisions of this clause shall apply also in the case of the  
 “ death of one or more partners at or after the expiration of the  
 “ present contract in respect of his or their heirs who shall be  
 “ entitled to ask either that they may retire from the company or,  
 “ in the case of non-acceptance by the other partners, that the  
 “ company be dissolved. In no case, however, will such heirs be  
 “ entitled to step into the shoes of the deceased partner.”

5. The partnership business was continued by all five partners upon p. 40.  
 the terms of the Partnership Agreement until the death of the Deceased  
 and has since been continued by the Appellants B.

6. The Deceased at all material times resided in Greece. Owing p. 35.  
 to the German occupation of Greece he became on the 3rd May 1941 an p. 30.  
 enemy within the meaning of the Trading with the Enemy legislation.  
 During his absence abroad the Appellant Christos A. Patiki, who was the  
 20 authorised agent in Cyprus of the Deceased, acted as managing partner of pp. 75, 76, 78.  
 the firm with the authority of the Custodian of Enemy Property.

7. It was the practice of the partnership from the commencement  
 in 1923 to close its accounts on the 31st December in each year and draw p. 41.  
 up a Balance Sheet and Profit and Loss Account annually on that date. pp. 116-147.  
 In such Balance Sheets, of which those for the years 1941, 1942, 1943  
 and 1944 are typical, assets were invariably brought in at cost less amounts  
 written off and amounts due to partners on capital, loans, current and  
 other accounts were shown as liabilities. The Balance Sheets and Profit  
 and Loss Accounts of the partnership firm for the years 1941, 1942, 1943 p. 29.  
 30 and 1944 were submitted in due course to the Custodian of Enemy  
 Property.

8. The Deceased was credited with the following amounts (ignoring  
 fractions of £1) in the firm's Balance Sheet of the 31st December 1945 :— pp. 159, 166-167.

	£
Current Account .. .. .	22,538
Gold Account .. .. .	183
Interest Bearing Account .. .. .	2,000
Capital Account .. .. .	5,000

The said Balance Sheet also set out the following Reserve Funds :— pp. 152, 167.

	£
40 Reserve against bad and doubtful Debts .. .. .	4,474
Depreciation of Stock in trade .. .. .	8,927
Replacement of machinery .. .. .	8,000
Depreciation of machinery accessories .. .. .	9,981
Reserve against contingencies .. .. .	259
Depreciation of Furniture and Fittings .. .. .	638
Depreciation of immovable property .. .. .	2,718

p. 28. 9. In the month of April 1946 the Deceased came to Cyprus on a  
 p. 40. visit. During this visit he was furnished with an inventory of the assets  
 and liabilities of the partnership firm as on the 31st December 1945  
 (corresponding to the last mentioned Balance Sheet) together with a Profit  
 p. 41. and Loss Account for the same year ending on that date. Neither the  
 Deceased nor the Custodian of Enemy Property ever took any objection  
 to any of the accounts so submitted to them respectively as aforesaid  
 and in particular the Deceased never took any objection to the said  
 Inventory and Profit and Loss Account, and in the circumstances the  
 Deceased must be taken to have approved thereof and to be bound thereby. 10  
 pp. 30, 76. In a letter dated the 29th April 1946 to the said Custodian the Deceased  
 expressly approved all the actions deeds and dealings of his agent, the  
 Appellant Christos A. Patiki acting on his behalf and as manager of the  
 said firm.

p. 32. 10. The Deceased died in Greece on the 5th June 1946.

p. 81. 11. Following upon the death of the Deceased, the Appellants  
 determined to continue the partnership without dissolution pursuant  
 to the provisions of clause (κ) of the Partnership Agreement and on the  
 6th June 1946 duly registered the change in the partners with the Registrar  
 of Partnerships pursuant to section 52 of the Partnership Law. 20

pp. 171-178. 12. The Appellants closed the books of the partnership on the  
 30th June 1946, and caused a Balance Sheet to be drawn up as of that date,  
 together with a Profit and Loss Account for the period 1st January to  
 30th June 1946. In the said Balance Sheet the Deceased was shown to  
 be entitled to :—

						£	
p. 177.	Current Account	..	..	..	..	23,213	
p. 177.	Gold Account	..	..	..	..	370	
p. 177.	Interest Bearing Account	..	..	..	..	2,000	
p. 178.	Capital Account	..	..	..	..	5,000	30

p. 184. The said sum of £23,213 shown as due to the Deceased on Current Account  
 included the proportional share of the Deceased in respect of the period  
 up to his death in the profits shown in the said Profit and Loss Account.

p. 33. 13. The Deceased died intestate a widower and leaving no lawful  
 p. 25. issue him surviving. He was survived by the Respondent, Demetra  
 Georghiou Patiki, who was born on the 18th April 1932, and was therefore  
 then of the age of fourteen years. The Respondent was a niece of the  
 deceased wife of the Deceased and was the daughter of Thrasyvoulos  
 Papalopoulos. In the year 1935 she was adopted by the Deceased in  
 p. 37. accordance with the Greek Civil Code and pursuant to an order of the 40  
 Court of First Instance in Trikkala, Greece.

p. 84. 14. By an Order of the District Court of Limassol, Cyprus (Probate  
 Jurisdiction), made on the 8th November 1946, Sir Panayiotis Cacoyannis  
 was appointed as temporary administrator of the estate of the Deceased  
 which was situate in Cyprus for all or any of the purposes therein specified  
 which included making a return of the income of the Deceased for the

purpose of income tax and payment of any income tax payable, preparing an inventory of the property of the Deceased situate in Cyprus, making a return of the property of the Deceased in Cyprus for estate duty purposes and acting as temporary administrator for the purposes of estate duty laws.

15. By a letter dated the 19th December 1946 the said Thrasyvoulos Papalopoulos as the natural father of the Respondent and her judicial guardian appointed by the appropriate Court in Greece was informed by Sir Panayiotis Cacoyannis as such temporary administrator of the matters stated in paragraphs 11 and 14 hereof. p. 82.

16. On the 31st August 1948 the Appellants paid into the Ottoman Bank at Limassol sums amounting in the aggregate to £19,731 to meet the claims of the estate of the Deceased and the Appellants have also from time to time paid on the directions of the said temporary administrator substantial sums on account of income tax payable by the Deceased and estate duty on his death. p. 189.  
p. 188.

17. On the 30th November 1948 the Respondent by the said Thrasyvoulos Papalopoulos as her next friend and judicial and natural guardian instituted

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#### THE PRESENT SUIT

by writ of summons in the District Court of Limassol. The Defendants named in the writ as originally issued were (A) the Appellant Firm A. G. Patiki & Co. and (B) the Appellants (1) Ioannis G. Patiki (2) Vasilios G. Patiki (3) Christos A. Patiki and (4) Constantinos A. Patiki. There were subsequently added by amendment after the delivery of Defences by the original Defendants four persons as Defendants (C) being the persons who with the Appellants (B) (3) and (4) claimed to be entitled under the law of Cyprus to succeed beneficially to any estate in Cyprus as to which the Deceased died intestate. p. 1.

30 18. By her said Writ and also by her Statement of Claim the Respondent claimed relief to the following effect (shortly stated):— pp. 3-8.

(A) That she was the sole heir of the Deceased and entitled to inherit all the property of the Deceased in Cyprus ;

(B) That as such sole heir she was entitled to payment of the value of the share of the Deceased in the partnership property, such value to be assessed on the basis of the actual value of the assets of the partnership at the date of the death of the Deceased, subject to the 15 per cent. and 10 per cent. deductions required to be made by clause (κ) of the Partnership Agreement ;

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(C) Dissolution of the partnership if the Appellants should not consent to pay out the Respondent on the foregoing basis ;

(D) Interest at the rate of 9 per cent. per annum from the date of the death of the Deceased until payment on the sum found payable to the Respondent as the value of the Deceased's share in the partnership property, or in the alternative a fifth share of

the profits of the partnership from the Deceased's death, because the Appellants did not duly exercise the option to purchase the share of the Deceased although they continued to carry on the business for their own account, or alternatively because, if the Appellants did exercise such option, they failed to pay to the Respondent the sum due to her as the value of the share of the Deceased or any sum.

pp. 8-19.

19. By their several Defences the Appellants A and B pleaded (as the fact was) that there were other persons, namely, the mother, sisters and nephew of the Deceased, not parties to the action, who claimed to be his heirs, and that all such persons ought to have been joined as parties. In consequence thereof such other persons were as already mentioned added as Defendants (C). 10

20. By their several Defences all the Defendants disputed the claim of the Respondent to be an heir of the Deceased according to the law of Cyprus for various reasons therein set forth. Without prejudice to their contention that the Respondent was not entitled to maintain her action without making a legal personal representative of the Deceased a party, the Appellants no longer dispute the claim of the Respondent to be the sole person beneficially interested in the movable property of the Deceased in Cyprus in a due course of administration. The Appellants further do not dispute that for the purposes of succession the share of the Deceased in the immovable property of the partnership must be considered as movable property. 20

p. 32.

21. Judgment in the action was given by the District Court of Limassol (C. Zannetides, P.D.C., and G. Theocharides, D.J.) on the 28th February 1953. The judgment was delivered by the President and is divided into five parts:—

p. 33.

(A) *Institution and Form of the Action.* The Court decided that neither the Wills and Succession Law 1895, nor the Common Law of England were any obstacles to the Respondent's suit, and that an action relating to inheritance to property found in Cyprus, against persons most of whom were within the jurisdiction, could be brought and maintained in Cyprus without any previous grant by a Court in Cyprus. 30

p. 35.

(B) *Domicile.* The Court found that the Deceased was at his death a Greek subject domiciled in Greece. This finding is not disputed by the Appellants.

p. 36.

(C) *Adoption.* The Court decided that the adoption of the Respondent by the Deceased was a matter governed by Greek law, and that the Respondent was validly adopted by the Deceased according to Greek law. This decision and finding are not disputed by the Appellants. 40

p. 37.

(D) *Succession.* The Court decided that the succession to the movable property of the Deceased in Cyprus was regulated by Greek law, as the law of the Deceased's domicile at the date of

death, and found that under Greek law the Respondent was the only person entitled to inherit the movable property of the Deceased in Cyprus. This decision and finding are not disputed by the Appellants.

(E) *Property left by the Deceased in Cyprus.* It was admitted p. 39.  
 by all parties that the property left by the Deceased in Cyprus consisted of the sum to which he was entitled in respect of his share in the partnership, ascertained in accordance with the provisions of the Partnership Agreement. The Court held that the accounts, 10 valuations and balance sheet for the year 1945 were in accordance p. 41. with the Partnership Agreement; that they bound the Deceased and his heirs and could not be re-opened; and that the account which the Respondent was entitled to have taken for the period 1st January 1946 to the date of the Deceased's death was an account taken by means of the partnership books, in which account the valuation of the assets would be the same as in the balance sheet for the year 1945. The Court also held that the Respondent was entitled to the following share in the Reserve Funds, namely: (i) her share pp. 42, 43. of the Reserve Fund against bad and doubtful debts, other than the 20 15 per cent. of the "credits to third persons deriving from goods and tobacco" required by the Partnership Agreement to be deducted, (ii) her share of the Reserve Fund against depreciation of stock in trade, other than the 10 per cent. of "the existing goods" required by the Partnership Agreement to be deducted, and (iii) so much of the other Reserve Funds as should, upon an account being taken as directed by the Court, be found unnecessary as at the date of the Deceased's death. The District Court ordered and adjudged accordingly.

22. The Respondent appealed against so much of the judgment of p. 45.  
 30 the District Court of Limassol as adjudged how the share of the Deceased in the partnership should be calculated, and against the consequential Order of the Court as to what accounts should be taken for the purpose of ascertaining such share. The Appellants cross-appealed (so far as material to this present appeal) against the decision of the District Court that the action could be maintained in the absence of a personal representative of the Deceased, and against the decision on the Respondent's right to share in the said Reserve Funds. pp. 48-53.

23. The appeal from the District Court came before the Supreme pp. 53-68.  
 Court of Cyprus (Chief Justice Hallinan and Mr. Justice Griffith Williams)  
 40 and judgment therein was given on the 22nd January 1954.

It was held by the Supreme Court that the Respondent was entitled to maintain the action in her own name notwithstanding the absence of a legal personal representative; that for the purpose of taking an account of the sum due to the Respondent a valuation must be made of all the partnership assets as at the 5th June 1946; and that after deducting 15 per cent. of the Deceased's share of the book debts and 10 per cent. of his share of the stock in trade, the sum found due on such account should

be paid to the Respondent. It was also held that the Respondent was entitled to interest at the rate of 9 per cent. from the 5th June 1946 on the balance due to her.

An Order was made by the Supreme Court accordingly.

24. The decision that the Respondent was entitled to maintain this action in the absence of a legal personal representative was based on section 18 of the Wills and Succession Law 1895, which was in force at the date of the death of the Deceased. This section was in the following terms :—

“ From and after the grant of probate or letters of administration, whether with Will annexed or otherwise, or if no such grant is made, the right and liabilities attaching to the property of the deceased person are vested in and devolve upon the executor or administrator, as the case may be, until the property is administered ; and from and after the administration of the property they are vested in and devolve upon the persons legally entitled.” 10

25. In the judgment of the District Court (which on this point was adopted by the Supreme Court) the President after reading section 18 of the Wills and Succession Law 1895 continued as follows :—

p. 34.

“ This section, which deals with the vesting of the property of the deceased, is very unfortunate ; the words between two commas— ‘ , or if no such grant is made, ’— were not put by the draftsman in their proper place ; they make no sense at all in the place where they are. 20

In the draft Bill which appeared in the *Cyprus Gazette* of 29.3.1895, these words did not appear at all ; they were added when the Bill was passed into Law, published in the *Cyprus Gazette* of the 16th August, 1895, but they were put by the draftsman in the wrong place, to make the section unintelligible, and, to understand Section 18, so as to make sense, we have to alter their collocation and put them in their proper place, which is after the words ‘ . . . and from and after the administration of the property, or if no such grant is made . . . ’ such mode of construction is allowed : Maxwell, on the Interpretation of Statutes, 9th ed., p. 312. 30

Section 72 of the Wills and Succession Law, 1945, which repealed and replaced the Law of 1895, cured that defect by putting those words at their proper place as stated above.”

26. In the submission of the Appellants this is not a proper or a permissible method of construing a statute. The intention of a legislative authority is to be ascertained from the words appearing in the law and it is not legitimate for that purpose to refer to the wording of the original draft. In any event, even if it be established that the words “ or if no such grant is made ” were inserted after the publication of the first draft of the law that circumstance does not justify their being arbitrarily transposed to another place in the section so as to alter the meaning of 40



the words used by the legislature. Furthermore it was not proper to construe the Law of 1895 by referring to the similar provision in the Law of 1945, which came into force on the 1st September 1946 and professed to amend as well as to consolidate the previously existing law.

27. It is submitted that the proper method is either to construe section 18 literally with the words "or if no such grant is made" in the place in which they appear in the section or to reject these words entirely as inept. Alternatively, even if the District Court and the Supreme Court were justified in transposing the words as they did, it is submitted that the  
10 latter part of the section refers only to the beneficial interests in property and not to legal interests.

28. The case of *Papadopoulos v. The Law Union & Rock Insurance Company*, 10 Cyprus Law Reports 65, on which the District Court relied cannot be regarded as authoritative. In it the Supreme Court based its decision largely upon Article 1642 of the Mejlle. By this Article any heir was entitled to sue for a debt due to the deceased and to recover the proportion thereof due to him. Since the Courts of Justice Law 1935 this Article of the Mejlle has ceased to be included amongst the Ottoman Laws to be applied by the Courts of Cyprus.

20 29. In any event the condition "if no such grant is made" was not fulfilled in the present case, because a limited grant of administration was made by the District Court of Limassol in favour of Sir P. Cacoyannis p 84. on the 8th November 1946 and has never been revoked.

30 30. The Appellants furthermore submit that section 18 of the Wills and Succession Law 1895 relates to succession to property and that by section 4 (which is set out in the Appendix to this Case) it is provided that that Law shall regulate the succession to property of all persons domiciled in Cyprus and the succession to immovable property of any person not domiciled in Cyprus. The Appellants therefore contend that  
30 section 18 of the said Law had no operation in relation to the movable property of the Deceased who neither died nor was domiciled in Cyprus. By the Administration of Estates by Consular Officers Law 1940 (the relevant parts whereof are set out in the Appendix to this Case) provision is made for the administration of the property in Cyprus of deceased subjects of certain states (including Greece) by the Consul Vice-Consul or Consular Agent of such state upon obtaining from the Court letters of administration of the property of such deceased person limited in such manner or for such time as to the Court shall seem fit.

40 31. Under section 28 (1) of the Courts of Justice Law 1935 (which is set out in the Appendix to this Case together with the relevant part of the Second Schedule) the Cyprus Courts are bound to apply the common law of England and the rules of equity in force in England on the 5th November 1914, in the absence of any relevant Law of Cyprus, any applicable Ottoman law and any relevant Statute of the Imperial Parliament. Under the common law of England the personal property of the deceased, if he had not appointed an executor, did not vest in the successors beneficially entitled thereto but in the Ordinary until he granted

administration thereof to another. It follows that, under the common law of England, and therefore under the law now applicable in Cyprus, one who is beneficially entitled to personal property situate in Cyprus of a person who dies without appointing an executor, cannot sue for that property without obtaining, or joining in the suit a person who has obtained, a grant of administration. It is submitted that the jurisdiction of the Ordinary to grant letters of administration which was by the Court of Probate Act 1857 transferred to the Court of Probate in England is in Cyprus vested in the District Courts in their probate jurisdiction.

pp. 54, 64.

32. It is submitted that on the true construction of the Partnership Agreement the estate of a deceased partner is entitled to be paid the sum standing to his credit in the books of the partnership and not a sum equal to an aliquot share of the net value of the partnership assets. The rights of the outgoing partner depend on clause (κ) of the Partnership Agreement, and that clause is of the same nature as the clause considered by the Lord Chancellor in *Coventry v. Barclay*, 3 de G.J. & Sm. 320, rather than the clause considered by the House of Lords in *Cruikshank v. Sutherland*, 92 L.J. Ch. 136, upon which the Supreme Court relied in this case. 10

p. 56.

33. In coming to the conclusion in the present case that there should be a valuation of all the property of the partnership as at the death of the Deceased, Chief Justice Hallinan expressed himself in the following manner :— 20

“ Courts should not construe an agreement so that the results are unjust unless compelled to do so by the terms of the agreement. It is easy to perceive that where a retiring partner or the estate of a deceased partner is entitled to a fifth share and that such share is ascertained by taking ‘ book ’ values which are not fair values to the firm, the retiring partner’s or deceased partner’s estate may receive far more or less than one-fifth of the true value of the assets because of arbitrary ‘ book ’ values which do not correspond to actual values. I conclude therefore that, in the absence of agreement, the property of a partnership should be brought in at its fair value when ascertaining the share of a deceased partner. Now the partnership agreement in the present case merely states that the books be closed and that the heir of the deceased partner shall receive such sum as he is entitled to in accordance with the books. We are not told anything about the method of valuation. It is submitted for the Respondents that we must assume that the partners intended that the same method should be adopted when one died as when the accounts were made up half-yearly. But why should we ? ” 30 40

It is submitted that the answer to the question is as follows. There is a distinction between the valuation of a partnership share and the calculation thereof by reference to the partnership books. The fairer method may be to value the share of the deceased partner, but it is not the convenient method. It involves delay, uncertainty and expense, which is avoided if the partners agree in advance that the value shall be calculated by reference to the partnership books and accounts. If the partnership

articles require the share of the deceased partner to be valued, the books of the partnership are irrelevant except only so far as they may need to be consulted for the purpose of identifying the assets and liabilities of the firm. If, on the other hand, the share of the deceased partner is to be calculated by reference to the books of the partnership, the true value of the assets of the partnership is irrelevant.

34. Clause (κ) of the Partnership Agreement, by requiring the books of the partnership to be closed, and requiring the estate of the deceased partner to be paid every sum to which he should be entitled in accordance with the books, adopted the second method of disposing of the claim of the deceased partner. It is submitted that a contrary conclusion, requiring a valuation to be made of every asset and liability of the partnership business, gives no weight to the words, "in accordance with these books" where the said clause provides that "the books of the Company shall be closed and the retiring partner or partners shall be paid every sum they will be entitled to in accordance with these books." p. 74.

35. So far as the Reserve Funds are concerned, the Appellants concede that—

(A) the estate of the Deceased is entitled to his share of so much of the Reserve against Bad and Doubtful Debts and the Reserve against Depreciation of Stock in Trade as exceeds the proportions of 15 per cent. and 10 per cent. laid down in clause (κ) of the Partnership Agreement, and

(B) the estate of the Deceased is entitled to his share of so much of the other Reserve Funds as may remain after answering the purpose for which they were set aside, in accordance with the Order made by the Lord Chancellor in the case of *Coventry v. Barclay*.

36. The Supreme Court further held that under section 44 of the Partnership Law 1928 (which is set out in the Appendix to this case) the Respondent was entitled to interest at the rate of 9 per cent. per annum from the 5th June 1946 upon the balance due to her in respect of the Deceased's interest in the firm. That section provides that where any partner has died and the surviving partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the estate of the deceased partner, then, in the absence of any agreement to the contrary, the estate of the deceased partner is entitled, at the option of his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of 9 per centum per annum on the amount of his share of the partnership assets. There is a proviso to the effect that where by the partnership contract an option is given to surviving partners to purchase the interest of a deceased partner, and that option is exercised, the estate of the deceased partner is not entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof he is liable to account under the preceding provisions of that section. p. 58.

37. The Appellants contend that the said section is not applicable in this case. The Appellants have always been willing to pay over the amount of the Deceased's share so soon as a general administrator to receive the same should have been appointed and the amount due agreed with such administrator. The Appellants have not used the Deceased's share of the assets in carrying on the partnership business but have set aside sums to provide the same as mentioned in paragraph 16 above and such sums have not been earning profits or interest. The Appellants have not failed in any material respect to comply with the provisions of clause (κ) of the Partnership Agreement, nor did the provisions of such clause amount to an option to purchase within the meaning of section 44 aforesaid. Clause (F) of the Partnership Agreement negatives any right to receive interest and clause (κ) contains all the terms applicable to the payment out of the share of a deceased partner. Moreover, 9 per centum per annum is a penal rate of interest not applicable to the circumstances of the present case. 10

p. 70.

38. On the 30th April 1954 the Supreme Court of Cyprus upon the application of the Appellants granted final leave to appeal from the Judgment of that Court.

39. The Appellants humbly submit that the Order of the Supreme Court of Cyprus was erroneous and should be reversed in so far as it was held that the Respondent was entitled to maintain this suit without obtaining, or joining therein a person who had obtained, a grant of administration in Cyprus of the estate of the Deceased for the following among other 20

## REASONS

- (1) BECAUSE it was not competent for the Respondent to institute an action for the recovery of sums alleged to be due to or otherwise relating to the estate in Cyprus of the Deceased when no grant of letters of administration to his estate had been made by the appropriate Court in Cyprus. 30
- (2) BECAUSE under the Wills and Succession Law 1895 all rights and liabilities attaching to the property in Cyprus of the Deceased had vested in the temporary administrator of his estate appointed by the Order of the District Court of Limassol dated the 8th November 1946.
- (3) BECAUSE neither the said temporary administrator nor any other administrator of the estate of the Deceased was a party to the action. 40
- (4) BECAUSE under Section 18 of the Wills and Succession Law 1895 no rights attaching to the property in Cyprus of a deceased person vest in the persons beneficially entitled thereto until after the completion of the administration of such property.

- (5) BECAUSE upon the true construction of the Partnership Agreement the expression "his or their heirs" in clause (κ) thereof means "his or their personal representatives" and the said clause does not operate to confer any rights directly upon persons beneficially interested in the estate of a deceased partner.
- (6) BECAUSE the District Court of Limassol and the Supreme Court of Cyprus erred in holding that the Respondent was entitled to maintain the action in the circumstances aforesaid.

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40. The Appellants further submit that if it be held that the Respondent was entitled to maintain this action, the Order of the Supreme Court of Cyprus was erroneous and should be reversed or varied and the Order of the District Court restored, with or without variation, for the following among other

## REASONS

- (1) BECAUSE upon the true construction of the Partnership Agreement when upon the retirement or death of a partner the other partners determine to continue operations for their own account the retiring partner or the estate of the deceased partner is entitled under clause (κ) to be paid only such sum as may appear from the books of the partnership to be his share of the partnership assets (less the amounts therein specified) and is not entitled to have the property of the partnership revalued.
- (2) BECAUSE the Deceased and his estate were bound by the Balance Sheet of the partnership for the year ending the 31st December 1945.
- (3) BECAUSE the said Balance Sheet was drawn up in accordance with the Partnership Agreement and the established practice of the partnership since its commencement.
- (4) BECAUSE the construction placed by the Supreme Court upon clause (κ) of the Partnership Agreement is only arrived at by giving no force to the words "in accordance with these books" after the words "shall be paid every sum they will be entitled to."
- (5) BECAUSE the reasoning of the District Court of Limassol with regard to the ascertainment of the sum payable to the estate of the Deceased was well founded and is to be preferred to that of the Supreme Court.

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- (6) BECAUSE no interest is payable to the estate of the Deceased upon the amount ultimately found to be payable to his estate upon the following amongst other grounds :—
- (A) BECAUSE clause (κ) of the Partnership Agreement contains complete provisions for the ascertainment of the sum payable to a retiring partner or the estate of a deceased partner and the provisions of Section 44 of the Partnership Law are thereby excluded : 10
  - (B) BECAUSE no option to purchase the interest of the deceased or outgoing partner within the meaning of the proviso to Section 44 of the Partnership Law is given by clause (κ) of the Partnership Agreement to surviving or continuing partners :
  - (C) BECAUSE the Appellants B have in all material respects complied with the terms of clause (κ) of the Partnership Agreement :
  - (D) BECAUSE it was not possible for the Appellants to pay or get a good discharge for the sums due to the estate of the Deceased so long as no general letters of administration to his estate had been granted : 20
  - (E) BECAUSE sums sufficient to provide for the amount payable to the estate of the Deceased have been set aside by the surviving partners and have not been employed in the partnership business and have not been earning interest :
  - (F) BECAUSE clause (κ) of the Partnership Agreement contains no provision for the payment of interest on any sums payable to the estate of a deceased partner : 30
  - (G) BECAUSE the rate of interest prescribed by Section 44 of the Partnership Law is a penal rate and is not appropriate to the circumstances of the present case.

C. MONTGOMERY WHITE.

J. A. BRIGHTMAN.

## APPENDIX

## WILLS AND SUCCESSION LAW 1895

*Section 4.*

(1) This Law shall regulate—

- (a) the succession to property of all persons domiciled in Cyprus ;
- (b) the succession to immovable property of any person not domiciled in Cyprus.

(2) No person shall be held to have acquired a domicile in Cyprus by reason only of his residing there in Her Majesty's Civil or Military  
10 service or in the exercise of any profession or calling.

## PARTNERSHIP LAW (1928)

*Section 44.*

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives to such  
20 share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of nine per centum per annum on the amount of his share of the partnership assets :

Provided that where, by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits ; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the preceding  
30 provisions of this section.

## COURTS OF JUSTICE LAW (1935)

*Section 28.*

(1) Every Court in the exercise of its civil or criminal jurisdiction shall apply—

- (a) the Laws of the Colony ;
- (b) the Ottoman laws set out in the Second Schedule to the extent specified therein ;
- (c) the common law and the rules of equity as in force in England on the 5th day of November, 1914, save in so far as other  
40 provision has been or shall be made by any Law of the Colony ;
- (d) the Statutes of the Imperial Parliament applicable either to the Colonies generally or to the Colony save in so far as the same may validly be modified or other provision made by any Law of the Colony.

## SECOND SCHEDULE

(Section 28)

## OTTOMAN LAWS

The Ottoman laws as hereinafter, in so far as they have not been repealed or other provision has not been made under any Law, that is to say :—

\* \* \* \* \*

The Mejelle, Articles 833 to 876 inclusive ;

Articles 1045 to 1191, inclusive, in so far as they do not relate to immovable property ;

Article 1595.

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## ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS LAW (1940)

*Section 2.*

Whenever any subject or citizen of the State mentioned in the first column of the Schedule hereto—

(a) dies within the Colony, or

(b) dies outside the Colony, leaving property within the Colony, and no person is present in the Colony at the time of his death who is rightfully entitled to administer the estate of such deceased person, the Consul, Vice-Consul, or Consular Agent of such State within the Colony may take possession and have the custody of 20 the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto ; but such Consul, Vice-Consul, or Consular Agent shall immediately apply for, and shall be entitled to obtain from the Court, Letters of Administration of the property of such deceased person, limited in such manner and for such time as to the Court shall seem fit.

## SCHEDULE

(Section 2)

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<i>Name of State</i>	<i>Title of Treaty</i>	<i>Date of Treaty</i>	<i>Provision</i>
Greece	Treaty of Commerce and Navigation between the United Kingdom and Greece	16th July 1926	Art. 23.



**In the Privy Council.**

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**ON APPEAL**  
*from the Supreme Court of Cyprus.*

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BETWEEN  
**A. A. G. PATIKI & CO.**  
**B. IOANNIS G. PATIKI**  
**and Others** (Defendants) *Appellants*  
  
AND  
**DEMETRA GEORGHIOU**  
**PATIKI . . .** (Plaintiff) *Respondent.*

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**Case on behalf of the**  
**Appellants**

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**INCE & CO.,**  
10/11 Lime Street,  
London, E.C.3,  
*Solicitors for the Appellants.*