

18, 1960

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IN THE PRIVY COUNCIL

No. 12 of 1959

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL
(GOLD COAST SESSION)

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N:

THE CHEAPSIDE SYNDICATE LIMITED
(Defendants) Appellants

50963

- and -

G. STANLEY LEWIS
(Plaintiff) Respondent

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CASE FOR THE RESPONDENT

1. This is an Appeal from a Judgment dated the 7th February 1956 of the West African Court of Appeal (Gold Coast Session) allowing an appeal from a judgment dated the 1st October 1952 dismissing the Plaintiff's action. The Order now appealed from inter alia remitted the case to the Court below with directions as hereinafter more particularly set forth.

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20 2. The Appeal raises the question whether the Respondent (the plaintiff in the action) is entitled to one-third of the profits of the Company for the year ended the 31st March 1949 as remuneration for his services rendered to the Appellant Company as District Agent thereof. The Appellant Company's contentions may be summarised as follows, viz. (1) that no agreement to pay the Respondent such amount was ever entered into or approved by the Appellant Company in General Meeting or by the
30 directors thereof (2) that in any event no such agreement would be valid (the respondent being a director of the Company) unless approved by the Company in General Meeting and (3) that such share of profits was payable to him in goods which have been tendered and refused.

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3. The Respondent in his writ claimed in addition a sum in respect of £645.11.0d fixed salary, £500 thereof being (though this is not stated in the Writ) in respect of the year ended the 31st March 1949. The Order appealed from provided for an adjustment as hereinafter mentioned to avoid a double claim. The Respondent accepts this adjustment.

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4. The amount of the one-third of the profits claimed by the Respondent is £3571.14.8d being one-third of a profit of £10,715.4.1d shown by a Profit and Loss Account for the year ended the 31st March 1949 forming part of Exhibit "N" in the record herein. It is admitted by the Respondent that the said Profit and Loss Account may not show the true profit for the reason that the Appellant Company's stock of goods was for the purpose of the said account valued at cost instead of cost or market price (whichever be lower) and that accordingly an adjustment in such profits must be made. As appears from paragraph 12 hereof the Respondent contends that the adjustment ordered by the judgment of the West African Court of Appeal proceeds on a wrong basis. 10 20

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5. The Respondent was for many years before the year ended the 31st March 1949 employed by the Appellant Company as a District Agent but in or before the month of October 1948 intimated to one George Francois the Managing Director of the Appellant Company his dissatisfaction with the remuneration that was being paid. The Respondent will contend that as a result of such intimation he received an offer by letter dated the 15th October 1948 (Exhibit "S") that he be remunerated with a one-third share of the profits of the Appellant Company for the year ending the 31st March 1949 and that he accepted such offer by conduct in continuing to serve the Company. 30

Alternatively if it be held that he did not so accept such offer he continued to serve the company at a remuneration to be agreed and such remuneration was agreed by a resolution of a meeting of the directors of the Appellant Company held on the 1st May 1949 or of a meeting of such directors held on the 30th October 1949 or was otherwise agreed upon in manner binding the Appellant Company either by the directors as a board or by the said George Francois as Managing Director thereof. 40

The Respondent contends that the relevant

minutes of the Appellant Company (which are not included in the Record) are not a complete record of the meetings minuted.

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6. The Respondent relies (inter alia) on the following facts as evidence of the foregoing contentions:-

- (A) The Respondent in evidence at the trial stated that he was informed by directors present at a meeting of directors of the Company held on the 1st May 1949 that his one-third share of profits (meaning a one-third share of the profits for the year ended the 31st March 1949) had been agreed on at the meeting. This has not been contradicted by the oral evidence of any person who was present at the meeting, no such person having been called as a witness. p.18
- (B) The Respondent has received from the Appellant Company numerous communications referring to his one-third share of profits viz:-
- (1) Memorandum to directors dated 9th September 1949 signed by the Managing Director and accompanying balance sheet and accounts (Exhibit N). pp. 113-120
- (2) Letter dated the 10th February 1950 signed by the Secretary of the Company (Exhibit JJ). pp. 139-140
- (3) Letter dated the 15th February 1950 signed by the Secretary of the Company (Exhibit B). p. 140
- (4) Letter dated the 23rd February 1950 to Respondent's solicitor signed by the Managing Director and accompanying accounts (Exhibit J). pp. 142-144
- (C) A meeting of the directors of the Appellant Company held on the 30th October 1949 at least recommended that one-third of the profits of the Company be awarded to the Respondent. p. 55
- (D) The Appellant Company's accounts for the year 1948-9 submitted to the Deputy Commissioner for Income Tax for the year of assessment 1949-50 showed the said share of profits as a deduction in computing the profits of the Company. p.36
pp. 128-9

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(E) The Appellant Company in their defence tacitly admit that the Respondent was entitled to a share of profits claiming that it was payable in goods.

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7. The Appellant Company claim in the letter mentioned in paragraph 6(B)(4) hereof and in their defence mentioned in paragraph 6(E) hereof that the Respondent's share of profits was payable in goods. The Respondent will contend that this is inconsistent with the other documents referred to in paragraph 6 hereof and also inconsistent with the fact that no actual appropriation of goods has ever been made with the consent of the Respondent or at all.

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8. The Appellant Company claim that no agreement to pay to the Respondent one-third of the profits has been approved by a General Meeting. The Respondent will rely on Article 12 of the Articles of Association of the Appellant Company which provides as follows:-

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12. A director may hold the office or place of profit as Managing Director or other employee of the Syndicate in conjunction with his directorship and may be appointed thereto on such terms as to remuneration tenure of office or otherwise as may be arranged by the directors.

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The Respondent contends that under this Article the directors had power to fix his remuneration at a one-third share of the profits of the Appellant Company without the sanction of the Company in General Meeting. He will further contend that this power of the directors is one which can be delegated to the Managing Director and is one which would be regarded as being conferred by the Managing Director as part of the ordinary powers of a managing director either generally or having regard to the advice tendered by the meeting of the directors held on the 30th October 1949 mentioned in paragraph 6(C) hereof.

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9. At the trial of the action Acolatse J. gave judgment in favour of the Respondent on his claim for £645.11.0d but dismissed his claim for a one-third share of the profits. He found that (1) the offer contained in the letter from the said Managing Director of the 15th October 1948 had not been accepted (2) that the Respondent's claim to a one-

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third share of the profits had never been adopted by any lawful authority under the Articles of Association of the Appellant Company and (3) that the meeting of the directors of the Appellant Company held on the 30th October 1949 had not done more than recommend accession to the Respondent's claim.

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10. The West African Court of Appeal allowed an appeal by the Respondent from this decision, holding that, having regard to Article 12 of the Articles of Association of the Appellant Company, no authority was required beyond that of the directors and that on the evidence, having regard in particular to the matters specified in paragraphs 6(B)(2), 6(B)(3) and 6(E) hereof, the Appellant Company had acceded to the Respondent's claim.

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11. The said Court of Appeal however directed that the Respondent's claim for £3,571.14.8d be modified in two respects as follows:-

20 (1) there being no appeal against the award of £645.11.0d awarded by the trial judge and the Court being of opinion that the figure of £500 (part of the said sum of £645.11.0d mentioned in paragraph 3 hereof) ought not to be awarded in addition to the said share of profits directed that £500 ought to be deducted therefrom;

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30 (2) the amount of the profits ought to be adjusted by ascertaining the actual value at the 31st March 1949 of the goods referred to in an account (Exhibit J3) shown as being of a cost price £3,571.14.8d.

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40 12. The Respondent accepts that the deduction (1) should be made and that in arriving at the profits for the year ended 31st March 1949 stock should be valued at market value where that is lower than cost but will submit that the valuation directed to be made is not practicable, the said George Francois having admitted in evidence that no appropriation of specific stock to the Respondent's share of profits had even been made. Accordingly the only possible course is to value the whole of the stock as at the said 31st March 1949 and write

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the revised value into the accounts of the Appellant Company for the year ended on that date and to re-calculate the Respondent's share accordingly. If necessary, the Respondent will ask for leave to appeal to have the said direction of the West African Court of Appeal modified accordingly.

The Respondent therefore humbly submits that the Appeal of the Appellant Company should be dismissed and the said Order of the West African Court of Appeal should be affirmed, or affirmed subject to the modification mentioned in paragraph 12, for the following, among other,

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R E A S O N S

- (1) BECAUSE under the Articles of Association of the Company the directors have power to appoint any director to a remunerated employment with the Appellant Company and to fix such remuneration.
- (2) BECAUSE on the evidence the inference is irresistible that either the directors of the Appellant Company either did fix the remuneration of the Respondent for the year ended 31st March 1949 as one-third of the profits thereof or authorised the Managing Director to do so.
- (3) BECAUSE the Managing Director of the Appellant Company did in fact so fix the remuneration of the Respondent either in pursuance of such authority or under his general authority as Managing Director.
- (4) BECAUSE there is no evidence that the Respondent ever agreed to take his share of profits in goods.
- (5) BECAUSE there is no evidence that any goods were ever appropriated to the Respondent's share of profits with his consent or at all.
- (6) BECAUSE the decision of the West African Court of Appeal is right or right subject as mentioned in paragraph 12 hereof and ought (subject as aforesaid) to be affirmed.

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J. G. MONROE

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