Decree will therefore be entered allotting to each of the plaintiff and the third defendant a ¼ share of the land and to the second defendant a ½ share. The order of the District Judge with regard to improvements and plantation will stand, subject to the modification that the third defendant will be allotted the building marked No. 1 on Lot A, and the order directing the third defendant to remove the said buildings will be deleted.

I see no reason to interfere with the order for costs made by the learned District Judge. The second defendant appellant will pay the costs of appeal to the plaintiff respondent.

WINDHAM J.—I agree.

Appeal dismissed.

1949 *Present :* **Wijeyewardene C.J.**

MOHAMED *et al.*, Appellants, *and* SAHUL HAMEED, Respondent

S. C. 257—C. R. Kandy 2,569

Landlord and tenant—Partnership—Contract of tenancy between partners—Action for rent and ejectment—Not maintainable.

One partner, as landlord, cannot sue the other partners, as tenants, for rent and ejectment in respect of premises where the business of the partnership is carried on.

APPEAL from a judgment of the Commissioner of Requests, Kandy.

H. W. Tambiah, for defendants appellants.

H. V. Perera, K.C., with *C. E. S. Perera* and *M. A. M. Hussein*, for plaintiff respondent.

Cur. adv. vult.

June 6, 1949. WIJEYEWARDENE C.J.—

This is an action for rent and ejectment filed by the plaintiff against the defendants.

The question that has to be decided is whether the plaintiff can maintain this action as he and the defendants are partners. In view of that question it is necessary to set out the following paragraphs in the plaint :—

Para 2 : "The plaintiff and the defendant are persons carrying on business under the name, style and firm of M. K. A. Mohamed Mutalib at premises No. 132, Colombo Street, Kandy . . . .".

Para 3 : "The plaintiff let to the said partners premises No. 132, of Colombo Street, Kandy, at a monthly rent of Rs. 60".

Para 4 : "The defendants wrongfully and acting in concert refused and failed to pay plaintiff such rent as from October 1, 1946, and there is now due to the plaintiff as arrears of rent up to February 28, 1947, the sum of Rs. 300".

Para 5 : "The plaintiff on December 17, 1946, noticed the defendants to quit and vacate, on or before January 31, 1947, the said premises as he required the same for his own use but the defendants have failed and neglected to quit".

It will be seen from paragraphs 2 and 3 of the plaint that the contract of tenancy was between the plaintiff and the "partners" whom he described in paragraph 2 as consisting of himself and the two defendants. The position was made clearer by the specific admission made by plaintiff's counsel at the trial "that the premises were let out to the plaintiff himself and the two defendants who were partners by the plaintiff". In this action the plaintiff claims the entirety of the arrears of rent and asks for a writ of ejectment against the two defendants. The evidence in the case shows that the plaintiff and the defendants were at the time of the action carrying on the business of the partnership at the premises in question.

It is contended by the appellant's Counsel that on the contract set out in the plaint the plaintiff has to sue the firm of which he is a partner and the plaintiff would then appear as a defendant in the action filed by him. Moreover, it is contended that under the English Law of partnership no legal contract could subsist between the plaintiff and the firm and that the plaintiff could have entered into a contract only so far as to render him liable in equity (*vide Bosanquet et al. v. Wray et al.*[1] and *De Tastet v. Shaw et al.*[2]). Such an "equitable debt" would be an item in a partnership account and it would be necessary to go into partnership accounts to ascertain the amounts due to the party sued.

The respondent's Counsel argued that the law as laid down in the earlier cases was modified by the operation of the Judicature Acts, 1873 and 1875, and the rules made thereunder and he made particular reference to Order 48A Rule 10. No doubt, the Judicature Acts provided generally that the Rules of Equity should prevail in various matters in which there was a conflict between the Rules of Equity and the Rules of the Common Law. But referring to these rules Lord Sterndale, M.R., said in *Meyer & Co. v. Faber* [3] :—

> "The rules do not in any way, as it seems to me, alter the substantive law as it existed before, or alter the rights which in law and equity partners have one against the other; all they do is to provide that the procedure which is laid down in the order shall apply to actions between partners and that the firm name will be used for those actions".

These rules being rules of procedure are not binding on us, though in deciding questions with respect to the law of partnership, the law to be administered is the same as would be administered in England (Civil Law Ordinance, section 3). Moreover, the rule particularly referred to is restricted in its operation even in England as it applies only in case of persons who are carrying on business within the jurisdiction of the High Court (Lindley on Partnership, Ninth Edition, page 344).

It has also to be noted that the deed of partnership executed by the plaintiff and the defendants requires the business to be carried on "at No. 132, Colombo Street, Kandy, or at such other place as the partners

[1] *(1815) 6 Taunton 597.* [2] *(1818) 1 B. and Ald. 664.*

[3] *(1923) 1 Ch. 421.*

shall from time to time agree on". The giving of notice by the plaintiff and the refusal of the defendants to vacate the premises appear to me to show that the partners are at variance with regard to the place of business.

I would allow the appeal and direct decree to be entered dismissing the plaintiff's action. The appellants will have costs here and in the Court below.

Appeal allowed.

1949 *Present:* **Windham J. and Gratiaen J.**

MANUFACTURERS LIFE INSURANCE CO. LTD., Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 425—IN THE MATTER OF AN APPLICATION UNDER SECTION 214 OF THE CIVIL PROCEDURE CODE TO REVIEW THE TAXED BILL OF COSTS IN S. C. 578 (F)

Costs—Appeal on a case stated by Commissioner of Stamps—Taxation of costs in such appeal—Costs actually incurred—Civil Procedure Code, section 214—Section 31 of Stamp Ordinance as amended by Ordinance No. 47 of 1941.

The scale of costs prescribed by the Schedule to the Civil Procedure Code does not apply to an appeal on a case stated by the Commissioner of Stamps. In such case the Registrar ought to allow the full amount of fees actually paid to Counsel unless they are unreasonably extravagant or needlessly incurred.

THIS was an application to have a bill of costs, as taxed by the Registrar of the Supreme Court, reviewed.

S. J. Kadirgamar, for the applicant.

H. W. R. Weerasooriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 13, 1949. WINDHAM J.—

The petitioner applies to have his bill of costs, as taxed by the Registrar of the Supreme Court, reviewed. The bill of costs related to an appeal before the Supreme Court upon a case stated by the Commissioner of Stamps under section 31 of the Stamp Ordinance, as amended by the Stamp (Amendment) Ordinance, No. 47 of 1941. Subsections (3) and (4) of that Ordinance provide that the Commissioner, after considering an appellant's grounds of objection to any stamp adjudication, shall issue the appellant a stated case giving his reasons for the adjudication, which the appellant may transmit to the Supreme Court, which may thereupon determine the appeal. In the present case the Supreme Court determined the appeal in favour of the appellant, and it is his bill of costs in that appeal which is the subject of this petition. In taxing the bill of costs the learned Registrar allowed only Rs. 147 out of an item of