1963 *Present :* **Sansoni, J., and H. N. G. Fernando, J.**

A. THEDCHANAMOORTHY and another, Appellants,
and A. NADARAJAH, Respondent

S. C. 233/61—D. C. Jaffna, 925/M

Partnership—Liability of a person for " holding out " as a partner—Proof.

A person cannot be liable on a contract, on the ground that he held himself out as a partner, unless he did so *before* the contract was entered into. No representations made subsequent to the making of the contract can be relevant to the question of holding out.

APPEAL from a judgment of the District Court, Jaffna.

S. Sharvananda, with *V. Nanayakkara*, for the 2nd and 3rd Defendants-Appellants.

V. Arulambalam, for the Plaintiff-Respondent.

Cur. adv. vult.

October 29, 1963. SANSONI, J.—

The Plaintiff has sued four Defendants on two causes of action, alleging that they were carrying on business in partnership under the name, firm and style of " Northern Cargo Despatch Company " and/or held themselves out as partners in the said business. On the first cause of action he pleaded that the Defendants as such partners in or about April 1957 requested him to transport certain goods and he accordingly transported them between 12th April 1957 and 1st May 1957, and he claimed that a balance sum of Rs. 3,191/80 was due on this account. On the second cause of action he pleaded that the Defendants as partners borrowed a sum of Rs. 59/81 on or about 30th April 1957.

The 1st Defendant in his answer admitted that he engaged the Plaintiff to transport the goods in question, but he pleaded that the Plaintiff was only entitled to Rs. 2,182. He denied the other allegations contained in the plaint. The 2nd, 3rd and 4th Defendants in their respective answers denied the Plaintiff's allegations and asked that the Plaintiff's action be dismissed with costs.

The main issues on which the parties went to trial are recorded as follows :—

1. (*a*) Were the Defendants carrying on business as partners in or about April 1957 ?

   (*b*) Did the Defendants hold out to the Plaintiff as partners in transport business ?

2. Did the Defendants as such partners request the Plaintiff to transport for them by lorry gypsum and gunny bags from the Customs to the Cement Factory, Kankesanturai, agreeing to pay at the rates referred to in paragraph 2 of the amended plaint ?

After trial the learned District Judge answered the issues as follows :—

1. (*a*) No, but the 1st, 2nd and 3rd Defendants conducted themselves in such a way that the Plaintiff believed that they were carrying on business in partnership under the name and style of " Northern Cargo Despatch Company ".

   (*b*) The 1st, 2nd and 3rd Defendants by their conduct held out to the Plaintiff that they were carrying on business in partnership under the name and style of " Northern Cargo Despatch Company ".

2. Yes—but only the 1st, 2nd and 3rd Defendants and not the 4th Defendant.

He dismissed the Plaintiff's action against the 4th Defendant with costs. He gave judgment for the Plaintiff on the first cause of action against the 1st, 2nd and 3rd Defendants jointly and severally for a sum of Rs. 2,753/80 and costs, and rejected the claim on the second cause of action.

I need not deal in this judgment with the second cause of action since there is no appeal by the Plaintiff. The question that arises on this appeal is whether the 2nd and 3rd Defendants held themselves out as partners of the 1st Defendant or allowed the 1st Defendant to do that, so as to make themselves partners by estoppel.

The Plaintiff attempted to prove that there was a partnership between the four Defendants by producing a certificate of registration of a business described as the Northern Cargo Despatch Co. dated the 16th February 1955, where the names of the 2nd, 3rd and 4th Defendants and three others appeared as partners. But the 1st Defendant produced a notice of cessation of business dated 24th January 1956 given by these

same six persons, and in view of this notice the certificate of registration of the partners was worthless. Further, the plaintiff came to know of this certificate only about October 1959, so that it could not have operated as a representation in 1957. An equally irrelevant document produced by the Plaintiff is an application made by the four Defendants on 20th July 1957 for registration of a business called the Northern Cargo Despatch Company. This again was made long after the time this transaction took place. The business was never in fact registered in spite of the application. The learned Judge has found that the Plaintiff when he came to know of these two documents thought that the four Defendants were partners of the particular firm and that he could file a case against them all, and he properly rejected them.

In order to fix the four Defendants with liability the Plaintiff also said that all four of them saw him in April 1957 and asked him to carry out the transport work. The position of the 1st Defendant was that he did request the Plaintiff to do the work, but that the 2nd and 3rd Defendants were his employees and not his partners. The learned Judge held that the 2nd and 3rd Defendants were not partners of the 1st Defendant. But in view of their admission that they were employees of the 1st Defendant who were present with him when the Plaintiff was asked to do the work, he has made the 2nd and 3rd Defendants liable on the ground that the Plaintiff would have believed that he was working for the Northern Cargo Despatch Company of which the 1st, 2nd and 3rd Defendants were partners.

Although the Plaintiff said that all four Defendants were present and asked him to do the work, the learned Judge has disbelieved him when he said that the 4th Defendant was also present. He accordingly dismissed the action against the 4th Defendant. The rejection of the Plaintiff's evidence on this vital matter requires that his evidence on other points also should be carefully tested, for his credibility cannot be rated high. I cannot accept the learned Judge's view that because the 2nd and 3rd Defendants were employees of the 1st Defendant who accompanied him when the contract was made, that was sufficient to make the Plaintiff believe that all three were partners. Nowhere has the learned Judge found that any representation was made by words to the Plaintiff that the 2nd and 3rd Defendants were partners of the 1st Defendant. It was the Plaintiff's fault if he assumed that two persons, who might well have been only employees of the 1st Defendant, were his partners.

Two further reasons given by the learned Judge for finding that there was cause for the plaintiff to believe that the 1st, 2nd and 3rd Defendants were partners are, firstly, that the 1st, 2nd and 3rd Defendants were together when an order was given by the 1st Defendant to the Manager of the Vivekananda Press—after the contract was entered into—to print certain forms for the Northern Cargo Despatch Company at the time when the Plaintiff also was present; and secondly, that the 2nd and 3rd Defendants assisted the 1st Defendant when the Plaintiff was carrying out the transport work in question. Now it must not be overlooked

that the first cause of action is based on a contract said to have been entered into between the Plaintiff and the Defendants. It is settled law that no representations made subsequent to the making of the contract can be relevant to the question of holding out. A person cannot be liable on a contract, on the ground that he held himself out as a partner, unless he did so *before* the contract was entered into—see *Baird v. Planque* [1]. It follows that what happened when the order was given to the printers, and when the work was being carried out by the Plaintiff, is irrelevant on the first cause of action.

It is significant that the Plaintiff sent a letter of demand only to the 1st Defendant. He also wrote himself to the 1st Defendant asking for payment. No such letter was written by him or at his instance to the other Defendants. This also seems to indicate that the Plaintiff's plea that he was led to believe that the 2nd and 3rd Defendants were partners of the 1st Defendant is an afterthought, and that he regarded his contract as being with the 1st Defendant alone. It is probable that it was only after he obtained the certificate of registration of 1955 and the application for registration of July 1957 that he wrongly thought he was entitled in law to make the 2nd, 3rd and 4th Defendants liable as partners of the 1st Defendant.

I cannot accept the learned Judge's finding that the 2nd and 3rd Defendants are liable as partners of the 1st Defendant. I would set aside the judgment in so far as it affects the 2nd and 3rd Defendants and dismiss the Plaintiff's action against them with costs in both Courts.

H. N. G. Fernando, J.—I agree.

Judgment affecting the 2nd and 3rd defendants set aside.