

1902.
July 22.

SILVA v. SILVA.

D. C., Galle, 6,310.

Partnership—Purchase of fishing boats and nets by twenty-three persons—Sale by ten co-owners of their shares to the remaining thirteen—Conduct of fishing business by the plaintiff on behalf of himself and the twelve defendants—Action for dissolution of partnership and accounting—Capital over Rs. 1,000—Ordinance No. 7 of 1840, s. 21.

Where several persons bought fishing boats and nets, and by a deed ten of them transferred their shares to the remaining thirteen co-owners, and the deed set forth the particular shares held by each of the thirteen persons, and where the plaintiff conducted the fishing business for himself and the other twelve persons, and prayed for a dissolution of partnership and for an accounting,—

Held, that as the capital amount was over Rs. 1,000, it was incumbent on the plaintiff to produce a writing signed by the defendants in order to establish a partnership, and that the deed of sale signed by the ten outgoing owners in favour of the plaintiff and defendants was not such a writing as would satisfy the requirements of section 21 of the Ordinance No. 7 of 1840.

THE following judgment of the Acting District Judge of Galle (Mr. James Peries) is explicit as to the facts of the case:—

“ The plaintiff, the defendants, and four others, about ten years ago purchased two fishing boats and nets and started the business of fishing at Talwatta. After a year, nine of the eighteen persons

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who owned the boats purchased the interest of the other nine. From time to time they admitted other shareholders into the concern and purchased other boats, and in January, 1897, there were thirteen boats and nets owned by twenty-three persons. On the 25th January, 1897, by a conveyance, No. 12,718, ten out of the twenty-three persons sold for a sum of Rs. 800 their interest in the said boats and nets to the remaining thirteen persons, to wit, the plaintiff and the twelve defendants. The plaintiff says that from that date the business was carried on by him and the defendants till November, 1900, when the defendants excluded him from participating therein and sharing the profits thereof. The plaintiff prays for a dissolution of the partnership between him and the defendants, and for an accounting, and for his share of the boats and nets.

“ The defendants in their answer admit the above facts, save and except that there are any profits for distribution among the partners, but they raise a preliminary objection that the plaintiff cannot maintain this action in the absence of a written agreement, in terms of section 21 of Ordinance No. 7 of 1840.

“ The partnership, if any, between the parties must be taken to have commenced on the 25th January, 1897, when the plaintiff and the defendants made the joint purchase of the boats. The first question to be answered is, was the capital at that time over Rs. 1,000? I think it proved that it was Rs. 1,840, as 10/23 share was then sold for Rs. 800. If, therefore, the plaintiff is seeking to establish a partnership, he can only do so by producing a written agreement. But it seems to me that this action, though framed in the shape of a partnership action, is really an action to recover from the defendants the plaintiff's share of the boats and their nett earnings. Even if we regard the action as one founded on a partnership, I am of opinion that the deed No. 12,718, under which the parties to this suit purchased the boats, is a sufficient writing to satisfy the requirements of section 21 of the Ordinance No. 7 of 1840. That section requires a writing only for the purpose of establishing a partnership, but it does not say that all the terms of the partnership should be contained in the document. The deed referred to fixes the shares of the plaintiff and the defendants in the boats, and therefore establishes the partnership between them.

“ I accordingly hold that the plaintiff can maintain this action, and over-rule defendants' objection in law with costs. As agreed to by the parties, the other matters in dispute between them, which mainly relate to accounts, will be referred to arbitration.”

The defendants appealed.

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Sampayo, for appellants.—The deed No. 12,718 does not satisfy the requirements of section 21 of the Ordinance No. 7 of 1840. It is simply a bill of sale signed, not by the present partners, but by the outgoing co-owners. It is not at all a contract of partnership. [MONCREIFF, A.C. J.—In England often several persons own a ship, but have no deed of agreement or partnership. Are they not partners?] To some extent they are, but they cannot bring a partnership action. They are simply co-owners. Co-ownership does not involve all the consequences of partnership. In Ceylon the provisions of section 21 of the Ordinance No. 7 of 1840 must be complied with. Where the capital exceeds £100, no agreement for establishing a partnership will avail here unless it is in writing. The stringency of this law has been modified in the case of a partnership which existed at one time and has ceased. In such a case, the Supreme Court held that the parties could bring an action for an accounting, but it never dispensed with proof of a written agreement in an action raised to dissolve a partnership that was said to be existing. In *Weerappa Chetty v. Alagappa Chetty* (6 S. C. C. 119) Burnside, C.J., disapproved of the modification sanctioned in D. C., Kandy, 52,568 (*Vanderstraaten*, p. 195), to the effect that where a partnership has been terminated and a sum of money is due to a partner on the balance of accounts, the Ordinance enables the plaintiff to prove his case by parol evidence not only in regard to the fact that a partnership existed, but also in regard to the balance due; *Rawa v. Mohamado Cassim* (1 C. L. R. 53); *Mendis v. Pieris* (*ibid.* 98).

There was no appearance of counsel for plaintiff, respondent.

22nd July, 1902. WENDT, J.—

I think this appeal is entitled to succeed. The plaintiff, I think, clearly declares upon a partnership, and not upon a mere joint ownership of fishing boats and nets. Paragraph 6 of the plaint shows that there was a business carried on by the plaintiff and defendants jointly for profit, and this brings their relations within the definition of partnership. This partnership is denied by the defendants, and it therefore lay upon the plaintiff to establish it. The capital was over Rs. 1,000, and therefore section 21 of Ordinance No. 7 of 1840 rendered it incumbent on the plaintiff to produce a writing signed by the defendants in order to establish the partnership. The writing upon which he relied was a bill of sale of certain boats and nets by ten vendors in favour of plaintiff and the defendants. This document was signed only by those

vendors, and not by the plaintiff or any of the defendants. More- 1902.
over, it said nothing about a partnership, or agreement or contract *July 22.*
to enter into a partnership, and it is therefore not a writing WENDT, J.
that would satisfy the requirements of section 21.

I think, therefore, that the case should go back to be disposed of
by the District Judge on that footing. The appellants are entitled
to the costs of appeal. The other costs will be in the discretion
of the District Court.

MONCREIFF, A.C.J.— .

I agree. The plaintiff was bound to establish the partnership
he alleged, but he has failed to produce the writing required in
such cases by Ordinance No. 7 of 1840, section 21.
