

Jonathan Edward David - - - - - *Appellant*

*v.*

S. P. A. De Silva - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 28TH NOVEMBER, 1933.

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*Present at the Hearing :*

LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

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This is an appeal by the plaintiff from a decree of the Supreme Court of Ceylon dated the 1st of September, 1930, which reversed a decree of the District Judge of Colombo dated the 20th September, 1929, made in favour of the plaintiff.

The action was brought by the plaintiff Jonathan Edward David, against the defendant S. P. A. de Silva for damages for breach of a contract dated the 10th December, 1927, and for the recovery of certain sums advanced by the plaintiff to the defendant.

Among other defences the defendant alleged that the plaintiff could not maintain the action because he had not complied with the provisions of Ordinance 6 of 1918, called an ordinance for the Registration of Business Names.

All the defences failed in the Trial Court and it was decreed that the defendant should pay to the plaintiff Rs. 10,015 with interest, and the costs of the action, and the defendant's claim in reconvention was dismissed.

The defendant appealed to the Supreme Court, which allowed the appeal on the abovementioned ground, and dismissed the plaintiff's action without prejudice to his right to bring the action afresh if the default be cured.

The only question arising on the plaintiff's appeal to His Majesty in Council is whether the construction of the above-mentioned ordinance for the Registration of Business Names adopted by the Supreme Court is correct and whether the plaintiff by reason of the said ordinance was debarred from bringing the action.

The material portions of the ordinance are as follows :

“ Whereas it is expedient to provide for the registration of firms and persons carrying on business under business names and for purposes connected therewith : Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :—

2.—(b) Every individual having a place of business in the Colony and carrying on business under a business name which does not consist of his true full names without any addition ;

shall be registered in the manner directed by this Ordinance.

4.—(1) Every firm or person required under this Ordinance to be registered shall furnish, by sending by post or delivering to the Registrar at the register office in that part of the Colony in which the principal place of business of the firm or person is situated, a statement in writing in the prescribed form containing the following particulars :—

(a) The business name.

(b) The general nature of the business.

(c) The principal place of business.

(e) Where the registration to be effected is that of an individual, the present name (in full), any former name (in full), the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such individual.

7. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person, such firm or person shall, within fourteen days after such change, or such further period as the Registrar may on application allow, furnish, by sending by post or delivery to the Registrar in that part of the Colony in which the aforesaid particulars are registered a statement in writing in the prescribed form specifying the nature and date of the change, signed, and, where necessary, verified, in like manner as the statement required on registration.

8. If any firm or person by this Ordinance required to furnish a statement of particulars or of any change in particulars shall, without reasonable excuse, make default in so doing in the manner and within the time specified by this Ordinance, every partner in the firm or the person so in default shall be liable, on summary conviction, to a fine not exceeding one hundred rupees for every day during which the default continues, and the court before which such partner or person shall be tried shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the order.

Provided that a Registrar to whom a statement is required to be furnished as aforesaid may, if he thinks fit, instead of instituting proceedings as aforesaid, accept from any such partner or person such sum of money as such Registrar may consider proper in composition of the offence committed by him.

Provided further that when such Registrar has accepted any such sum of money as aforesaid, proceedings under this section shall not be taken, or if already taken shall not be continued in respect of such offence, against the partner or person so compounding as aforesaid.

9. Where any firm or person by this Ordinance required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business, in respect of the carrying on of which particulars were required to be furnished, shall not be enforceable at any time while he is in default, by action or other legal proceedings either in the business name or otherwise.

12. On receiving any statement or affidavit made in pursuance of this Ordinance, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not kept so exhibited, every partner in the firm, or the person, as the case may be, shall be guilty of an offence, and liable, on summary conviction, to a fine not exceeding three hundred rupees.

13. At each of the register offices hereinafter referred to the Registrar shall keep an index of all the firms and persons registered at that office under this Ordinance, and at the principal register office a general index of all firms and persons so registered at every office throughout the Colony."

By Section 17 the Governor in Council has power to make rules or orders relating among other matters, to the forms to be used under the ordinance. Forms for the application by an individual for registration under the ordinance and for statement of change under Section 7 (amongst others) were prescribed.

By the Interpretation Clause it is provided that "Business name" shall mean the name or style under which any business is carried on, whether in partnership or otherwise and shall include a "vilasam."

The material facts of the case are as follows: In 1924 the plaintiff began to carry on a business under the business name of "J. E. David & Coy.": the nature of that business was that of accountants and auditors. That business was duly registered by the plaintiff under the provisions of the ordinance on the 20th May, 1925. The material particulars of the Registration are as follows:

- |   |   |   |   |                                      |
|---|---|---|---|--------------------------------------|
| 1. Business Name  | - | - | - | J. E. David & Co.                    |
| 2. The General Nature of the Business   |   |   |   | Accountants and Auditors.            |
| 3. The Principal Place of the Business  |   |   |   | No. 2A, Queen Street, Fort, Colombo. |
| 4. The Date of the Commencement of the Business, if the business was commenced after Novr. 7 1918 |   |   | - | 10th March, 1924.                    |
| 5. Any other Business Name or Names under which the business is carried on                        |   |   | - | —                                    |
| 6. The present Name (in full) of the Individual   |   |   | - | Jonathan Edward David.               |

7. Any former Name (in full) of the Individual - - - - - \_\_\_\_\_
8. The Nationality of the Individual - British.
9. The Nationality of Origin of the Individual if not the same as the present nationality - - - - - \_\_\_\_\_
10. The usual Residence of the Individual Colombo.
11. The other Business Occupation (if any) of the Individual - - - - - \_\_\_\_\_ ”

It is to be noted that as the accountancy business was the only business carried on by the plaintiff at that time, there was no entry made opposite No. 11, “The other Business occupation (if any) of the individual.”

In the year 1926 the plaintiff started a timber business on his own account and carried on that business in his own name without any addition.

The timber business was distinct from the accountancy business; it was carried on in separate premises, and there was a separate set of books and bank account for the timber business.

In the course of carrying on the said timber business the plaintiff entered into the above-mentioned contract with the defendant dated the 10th of December, 1927.

In the said contract the plaintiff was described as “carrying on business under the “name style and firm of J. E. David & Coy.,” but it was signed by the plaintiff in his own name “J. E. David.”

The plaintiff was described in the plaint in the action as carrying on business under the name style and firm of J. E. David & Coy. In spite of these matters both the Courts in Ceylon held after careful consideration of the evidence that the plaintiff did not carry on the timber business as “J. E. David & Coy.,” but that he carried it on under his own name “J. E. David.”

It is obvious that if he had carried on the timber business under the name of “J. E. David & Co.,” he ought to have effected registration of the business name and other particulars required by Section 4.

Their Lordships, however, adopt the findings of fact of both the Courts in Ceylon in respect of this matter, and they are of opinion that as the timber business was carried on as a separate business and in his own name without any addition, it did not come within the purview of Section 2 (b), and it was not necessary for the plaintiff to register the timber business under that section.

It was contended on behalf of the plaintiff in the Trial Court, and so held by the District Judge, that when the plaintiff started the timber business in 1926, it was not necessary for him to notify the Registrar of that fact, inasmuch as it did not constitute “a change of the business specified in the register,” and so was not within the purview of Section 7.

The learned counsel for the plaintiff, in his argument before their Lordships did not rely on this ground.

On the contrary, he admitted and, in their Lordships' opinion, he rightly admitted that the starting of the timber business by the plaintiff did necessitate a change in the particulars which had been registered in respect of the accountancy business and that such change should have been notified to the Registrar in accordance with the provisions of Section 7.

As already mentioned, the item 11, viz. : "the other business occupation (if any) of the individual," in the registered particulars of the accountancy business, had been left without any entry against it, and when the timber business was started there clearly was a change in the particulars in that respect, of which a statement should have been furnished to the Registrar in accordance with Section 7 of the Ordinance.

There remains for consideration the construction which the Supreme Court placed on the terms of Section 9.

The learned Judges of the Supreme Court were of opinion that the words of that section, viz. : "in respect of the carrying on of which particulars were required to be furnished," referred to all businesses conducted by the plaintiff whether in his own name or in the name of J. E. David & Co.

The learned counsel who appeared for the defendant in effect adopted the Supreme Court's construction of the section, for he urged that once an individual had to register under the provisions of Section 2, he must register particulars of all his business activities, and if he failed so to do, the rights of such individual arising out of any contract in relation to any of such business activities could not be enforced by action or other legal proceedings while he was in default.

Their Lordships are of opinion that the aforesaid construction is too wide.

The words at the beginning of Section 9 : viz., "Where any . . . person by this Ordinance required to furnish a statement of particulars," in this case must refer to the particulars in relation to the accountancy business, which it was necessary for the plaintiff to register, inasmuch as he was carrying on that business under a business name which did not consist of his own name, without any addition, and which were, in fact, registered by the plaintiff.

Further, the change contemplated in the words "or of any change in particulars," must refer to the same particulars which had already been registered, viz. : the particulars of the accountancy business.

That being so, is there any reason for giving a larger or different meaning to the material words which follow later in the section, viz. : "the business, in respect of the carrying on of which particulars were required to be furnished" ?

Their Lordships think there is no such reason. They are of opinion that the natural construction to be placed on these words is that they refer to "THE" business in respect of which parti-

culars had to be furnished or in respect of which any change in particulars had to be furnished, viz. : the accountancy business.

The position may be summarised by saying that the business, in respect of which the disablement from suing mentioned in the ninth section arises, is the business which the plaintiff was carrying on under a business name, in respect of which he was required under the ordinance to furnish a statement of particulars or any change in such particulars, viz. : the accountancy business.

In other words, there was no default in respect of the timber business ; the default was in respect of the accountancy business, by reason of the plaintiff's failure to notify the change in the particulars of the accountancy business.

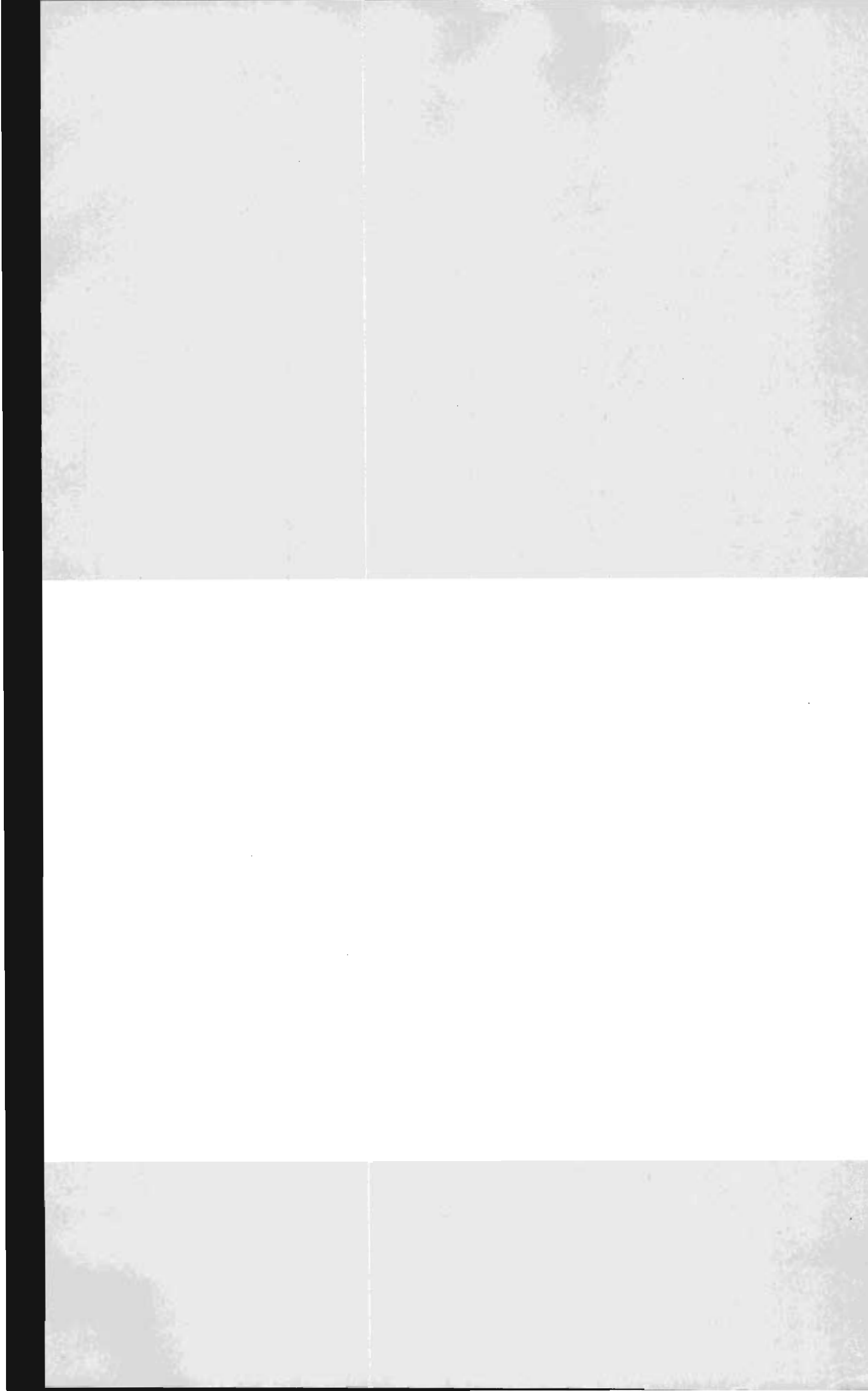
One of the learned Judges in the Supreme Court was of the opinion that the words of Section 9 were not easy of interpretation, and said that he had arrived at his conclusion with some hesitation. Their Lordships agree with the learned Judge that the meaning of the section might have been made more clear.

They are of opinion, however, that if there is ambiguity as to the meaning of the section, inasmuch as it is a disabling section, the construction which is in favour of the freedom of the individual should be given effect to.

Their Lordships, therefore are of opinion that although the plaintiff was in default by failing to notify the Registrar of the change in the registered particulars of the accountancy business, that default did not deprive him of his right to sue the defendant for the breach of contract made by him with the plaintiff in relation to his timber business.

For these reasons the appeal must be allowed, the decree of the High Court, dated the 1st of September, 1930, must be set aside, and the decree of the District Judge, dated the 20th of September, 1929, restored. The defendant must pay to the plaintiff his costs of this appeal and of the appeal in the High Court.

Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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JONATHAN EDWARD DAVID

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S. P. A. DE SILVA.

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DELIVERED BY SIR LANCELOT SANDERSON.

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