

*Privy Council Appeal No. 38 of 1922.*

*Bengal Appeal No. 15 of 1921.*

Haji Hedayetulla - - - - - *Appellant*

*v.*

Mahomed Kamil and others - - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER, 1923.

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*Present at the Hearing :*

LORD PARMOOR.

LORD CARSON.

SIR JOHN ELGE.

MR. AMEER ALI.

[*Delivered by* LORD PARMOOR.]

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Their Lordships do not think it necessary to call on Counsel for the respondents. It is possible to state quite shortly what is the advice which they will feel called upon to tender to His Majesty in this case.

There was a partnership carried on between the defendant, who is the appellant, and one Mahomed Fazil. This partnership terminated on August 3rd 1915, on the death of Mahomed Fazil. Accounts had already been taken in this partnership up to some date in 1913, so that it was not necessary to reopen them. The order of the first Court was that a further account should be taken up to the date in 1915 at which Mahomed Fazil died; but for some reason no order was made for taking any subsequent accounts. It is clear that after Fazil's death the old business was continued, although it became a partnership at will.

This action was brought by the representatives of Fazil against the appellant in order that proper accounts might be taken. The Court of Appeal made an order—

“that accounts be taken of the profits of the business since the death of Fazil on the 3rd August, 1915, up to the date when the final decree is made, all just allowance, including fair remuneration, to be allowed in favour of the defendant for managing the business. And it is further ordered that the plaintiffs as representatives of Fazil will be entitled to the same share as Fazil would have taken if the partnership had not been dissolved, and the profits will be assessed on the basis of what may be found due to Fazil at the time of his death.”

In the opinion of their Lordships this order was a proper order to make. Although the partnership terminated on the death of Mahomed Fazil, the same business has been carried on. Certain suggestions have been made by the Counsel on behalf of the appellant asking the Board to give some direction which might interfere with or fetter the discretion which the order gives to the Commissioner before whom the accounts will be brought. Their Lordships are of the opinion that no such direction should be given. It appears to them that the order as made is in the proper form in leaving all matters of account within the discretion of the Commissioner, subject to the direction that all just allowance shall be made including fair remuneration for management of the business and to the further order that the respondents as representatives of Fazil will be entitled to the same share as Fazil would have taken if the partnership had not been dissolved. The business is to be regarded up to the date of the final decree as a continuing business although Mahomed Fazil died in 1915. They have only to add that if exception is sought to be taken to any ruling of the Commissioner the person who seeks to make the complaint can apply to the Court. No order or instructions are required from their Lordships. It is a matter of ordinary procedure, but it must not be taken that their Lordships suggest that any such application will be required or should be made.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

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HAJI HEDAVETULLA

v.

MAHOMED KAMIL AND OTHERS.

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DELIVERED BY LORD PARMOOR,

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