[JOSEPHIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

S.O.R.E.L. LIMITED,

Appellants-Defendants,

v.

NICOS SERVOS,

Respondent-Plaintiff.

(Civil Appeal No. 4668).

Contract—Contract for services rendered—Reasonable remuneration on a quantum meruit—Basis of assessment—The remuneration must be reasonable regard being had to the particular circumstances of each case.

Quantum meruit—See above.

Remuneration—Reasonable remuneration—How assessed—See above.

Practice—Appeal—Grounds of appeal—Amendment—Leave to amend granted at the first hearing of appeal—The Civil Procedure Rules, Order 35, rule 4.

Appeal—Grounds of appeal—Amendment—See above.

Grounds of appeal—Amendment—See above.

Amendment of grounds of appeal—See above.

This is an appeal by the defendants against a judgment of the District Court of Nicosia, awarding the plaintiff-respondent £695 as reasonable remuneration for certain tests of olive oil which the latter carried out for the defendants during the period beginning on the 9th March, 1966, and ending on the 15th June, 1966. The parties agreed that the plaintiff-respondent would be paid £300 for analysing samples of olive oil which were to be delivered to him by the defendants-appellants for a fixed period of two months. As the plaintiff-respondent began work on the 8th January, 1966, the agreement came to an end on the 8th March, 1966, the plaintiff having been duly paid the agreed remuneration of £300. But he continued his work for the appellants for an extra period of three months and seven days *i.e.* from March 9, 1966 to June 15, 1966. He carried out during this extra period 1390 tests claiming reasonable remuneration on a quantum meruit basis which he put it at 900 mils per test. The

trial Court awarded him compensation on the basis of 500 mils per test *i.e.* £695 for the whole work of 1390 tests aforesaid. The relevant finding of the trial Court is as follows:

"During the two months period for which the plaintiff received the sum of £300 he carried out approximately 600 tests, for which he was paid £300.—*i.e.* 500 mils per test. The extra work he carried out was 1390 tests. So on the basis of 500 mils we find that the plaintiff is entitled to £695".

It was argued on behalf of the appellants-defendants that the trial Court erred in so assessing the remuneration; that the right basis would have been what the plaintiff was paid during the previous two months, that is to say, at a rate of £150 per month and not on the basis per test carried out.

In allowing at the hearing the grounds of appeal to be amended; and in allowing partly the appeal, the Court:-

Held, (1). Applying to the present case the principles laid down in *Way* v. *Latilla* [1937] 3 All E.R. 759, at p. 764B per Lord Atkin, and at p. 766B per Lord Wright, we have to assess, on the facts as found by the trial Court, what is the reasonable remuneration to which the respondent–plaintiff is entitled in the particular circumstances on record.

(2) We are of the view that such remuneration should be assessed on the basis of what the respondent–plaintiff was paid during the first two months that he worked for the appellants–defendants, which was agreed at £300 for the whole period of those two months as found by the trial Court. On that basis, and considering that he worked for an extra period of three months and seven days at the rate of £150 per month, he would be entitled to £485 (and not £695 as held by the trial Court).

(3) In the result the appeal is partly allowed and the judgment of the trial Court is varied accordingly.

Appeal partly allowed. No order as to costs on the appeal.

Cases referred to:

Scarisbrick v. *Parkinson* (1869) 20 L.T. 175;

Way v. *Latilla* [1937] 3 All E.R. 759, at p. 764B per Lord Atkin, and at p. 766A per Lord Wright, *applied.*

Appeal.

Appeal against the judgment of the District Court of Nicosia (Ioannides Ag. P.D.C. & Demetriades D.J.) dated the 30th September, 1967, (Action No. 3826/66) whereby the defendants were adjudged to pay the plaintiff an amount of £695 as reasonable remuneration for certain tests of olive oil which he carried out for the defendants.

A. Triantafyllides with *J. Mavronicolas*, for the appellants.

Ph. Clerides, for the respondent.

Mr. Triantafyllides: I have prepared the particulars of these new grounds of appeal and I gave a copy to my learned friend in which I raised these two points i.e.

(a) Whether the trial Court approached the evidence in the proper manner—I shall not try to disturb the finding of the Court by analysing the evidence and saying that the Court should have believed the evidence for the defence rather than the plaintiff; and

(b) Assuming that the Court decided correctly on the question of liability, whether they were right in assessing the remuneration on a quantum meruit on a "per test" basis, rather than on a monthly basis as was the agreement between the parties until March 1966.

I have these grounds in writing.

JOSEPHIDES, J.: These are completely new grounds. It is a new basis altogether.

Mr. Triantafyllides: I agree, Your Honours. I understand, however, that my learned friend raises no objection. I informed him 20 days ago and I gave him a copy of the new grounds.

JOSEPHIDES, J.: We shall have to consider that.

Mr. Clerides : That is true. Provided the proper machinery is complied with and the proper amendment is made, after leave of the Court, then I shall not object to the amendment being granted.

JOSEPHIDES, J. : These are the amended grounds of appeal now produced in Court, and Mr. Triantafyllides begs leave to amend his notice of appeal accordingly. Mr. Clerides, for the respondent, who has received prior notice of this application, does not object to the amendment sought. It should be observed, however, that, under the provisions of Order 35, rule 4, a notice of appeal may not be amended without the leave of this Court.

We should also add that applications for the amendment of the grounds of appeal should normally be filed with the registry of this Court well in advance and before the appeal is fixed for hearing, and notice served on the respondent.

In the circumstances of this case, leave to amend the notice of appeal, as applied for, is granted.

Order in terms.

The following judgment was delivered by:-

JOSEPHIDES, J. : This is an appeal by the defendants against the judgment of the District Court of Nicosia, whereby the plaintiff was awarded the sum of £695 as reasonable remuneration for certain tests of olive oil which he carried out for the defendants during the period beginning on the 9th March, 1966 and ending on the 15th June, 1966.

The appeal was argued on two main grounds : *(a)* That the finding of the trial Court with regard to the agreement of the parties was not warranted by the evidence, and *(b)* that, assuming that that finding of the trial Court was right, the remuneration awarded to the plaintiff was not a reasonable one.

With regard to the *first ground* of appeal, after hearing appellants' counsel, we did not call upon respondent's counsel to reply. It is common ground that the parties agreed that the plaintiff-respondent would be paid the sum of £300 for analysing samples of olive oil which were to be delivered to him by the defendants-appellants. What is in dispute is

whether a certain time limit was agreed upon by the parties or not. It was the plaintiff's version that the agreement was that he was to be paid the sum of £300 for a fixed period of two months and that as he began work on the 8th January, 1966, the agreement came to an end on the 8th March, 1966, and that he was entitled to be paid £300 at the end of that period. Any work which he did after that date—after the 8th March, 1966—he claimed that he was entitled to be paid on a quantum meruit basis. It was, on the other hand, the defendants' version that no time limit was fixed under the agreement and that the plaintiff was bound to carry out all tests of samples of olive oil delivered to him during the whole season beginning from January 1966, without any fixed time limit.

The trial Court, on the evidence before them, found in favour of the plaintiff's version.

Having read their judgment and their reasons for such finding, which included a comparison of the evidence given on both sides, we are not prepared to disturb their finding on this point.

Now, as regards the *second ground* of appeal, the plaintiff adduced evidence to prove what was reasonable remuneration per test carried out, and this was to the effect that 900 mils per sample was the usual reasonable remuneration. He carried out 1390 tests during the extra period of three months and seven days, but the Court did not award him compensation on the basis of 900 mils per sample, on the ground that that figure would be excessive having regard to the great number of tests involved in the case, and made the following finding:-

> "During the two months period for which the plaintiff received the sum of £300.- he carried out approximately 600 tests, for which he was paid £300.-, i.e. 500 mils per test. The extra work he carried out was 1390 tests. So on the above basis we find that the plaintiff is entitled to £695.-".

And the trial Court, accordingly, gave judgment in favour of plaintiff for that sum.

Mr. Triantafyllides, for the appellants-defendants, argued before us today that the trial Court applied the wrong test in fixing the reasonable remuneration in the circumstances of

this case. He submitted that the reasonable basis would have been what the plaintiff was paid during the previous two months, that is to say, at a rate of £150 per month and not on the basis per test carried out. In support of his submission, learned counsel referred to *Way* v. *Latilla* [1937] 3 All E.R. 759, a House of Lords' case, and to the principles enunciated in the case of *Scarisbrick* v. *Parkinson* (1869) 20 L.T. 175, which principles were applied by the House of Lords in the *Latilla* case. While the Latilla case does not decide any new law, it sets out the opinions of the Law Lords upon the proper practice of the court in fixing such remuneration. At page 764B, Lord Atkin says :

> "The quantum meruit would be fixed after taking into account what would be a reasonable commission, in the circumstances, and fixing a sum accordingly".

That was a case where a commission had to be fixed. At page 766A, Lord Wright says:-

> "The question of the amount to which the appellant is entitled is left at large, and the court must do the best it can to arrive at a figure which seems to it fair and reasonable to both parties, on all the facts of the case. One aspect of the facts to be considered is found in the communings of the parties while the business was going on. Evidence of this nature is admissible to show what the parties had in mind, however indeterminately, with regard to the basis of remuneration. On those facts, the court may be able to infer, or attribute to the parties, an intention that a certain basis of payment should apply".

So, in the present case, on the facts as found by the trial Court, we have to assess what is reasonable remuneration. We agree with the submission of appellants' counsel that the basis applied by the trial Court, per test carried out, would not be the correct basis in assessing reasonable remuneration in the circumstances of this case.

We are of the view that the reasonable remuneration should be assessed on the basis of what the plaintiff was paid during the two months that he worked for the defendants, which was agreed at £300 for the whole period as found by the trial Court. On that basis, and considering that he worked for an extra period of three months and seven days, at the

rate of £150 per month, he would be entitled to £485.

In the result, the appeal is partly allowed and the judgment of the District Court in favour of the plaintiff is varied by the reduction of the amount awarded from £695 to £485.

We have considered the question of costs and, having regard to the fact that the appellants today applied for the amendment of their grounds of appeal, to which the other side did not object, and to the fact that they are partly successful in this appeal, we are of the view that we should make no order as to the costs of the appeal. The judgment of the lower Court with regard to costs will stand. Order accordingly.

Appeal partly allowed.
Judgment of trial Court varied accordingly. Order for costs as aforesaid.