Privy Council Appeal No. 154 *of* 1927.

Jwaladutt R. Pillani - - - - - - - *Appellant*

v.

Raja Bahadur Bansilal Motilal - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1929.

Present at the Hearing :
VISCOUNT DUNEDIN.
LORD CARSON.
SIR CHARLES SARGANT.

[*Delivered by* VISCOUNT DUNEDIN.]

The facts in this case are not in dispute. The appellant Pillani was a partner of a firm of Husseinbhai Pillani Wadia & Co. On the 3rd April, 1923, that firm along with Wadia Woollen Mills, Limited, granted in respect of a loan a promissory note for 2 lacs of rupees with interest at $7\frac{3}{4}$ per cent. in favour of the respondent Raja Bahadur Bansilal Motilal. On the 12th September, 1923, the firm dissolved partnership and the appellant retired. The firm continued to do business under the same name and by the deed of dissolution a certain interest in the business was secured to the appellant though he was no longer a partner.

On the 3rd April, 1924, the old promissory note was cancelled and a new promissory note given by the company and the firm for the same sum of 2 lacs, interest on this note running at $8\frac{1}{4}$ per cent. It is admitted that the retirement of the appellant from the firm was advertised in the *Bombay Gazette* and in four other newspapers, and it was found by the Trial Judge and has not since been questioned that no intimation was sent or conveyed in

any way to the respondent. The sole question is whether the appellant is liable on the second promissory note. He has been so found by the Judge of first instance and by the Court of Appeal. There can be no question that the plaintiff, being an old customer and no notice having been given to him of the dissolution of the partnership and the retirement of the appellant, the appellant is by English law liable. It would be otiose to quote authority for this, and this was undoubtedly the law of India, at least prior to the Contract Act of 1872 : *Shewram* v. *Rohomutoollah* (Supplemental Volume of Sutherland's Reports, Civil Side, p. 94). The defence of the appellant is based on the terms of Section 264 of the Indian Contract Act of 1872, which is as follows :—

> " Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given unless they themselves had notice of such dissolution."

The appellant argues that " persons " includes both old and new customers, and that though the section is expressed in a negative form there must be extracted therefrom the positive proposition that persons will be affected by a dissolution of which public notice has been given. Against that it is urged that the section is merely negative and must be strictly limited to what it says, which is the effect of the dissolution of the firm on the rights of persons dealing with it, but not on the liabilities of the firm to the persons so dealing.

Their Lordships feel that if this were a new statute which was to be construed for the first time, there would be great force in the appellant's argument. But the matter cannot be so approached. As long ago as 1882 the very question was raised before the High Court of Calcutta in the case of *Chundee Churn Dutt* v. *Eduljee Corvasjee Bijnee* (I.L.R. 8 Cal. 678), and Garth C.J. pronounced a judgment contrary to the contention of the appellant. He was chiefly swayed by the consideration that if it was intended to make such a far-reaching change on what had been the law of England introduced into the law of India, and which was still the law of England, the enactment would have been expressed in clear and positive words and not left to be gathered by inference from a negative proposition. That judgment has been followed in subsequent cases, and has ruled the law and contracts in India ever since. To the view of Garth C.J. their Lordships would add two further considerations. The law as laid down in England has been all along found a workable law in a country where there is far more commercial experience than in India, and it remained unaltered in England when the whole subject was reviewed in the Partnership Act of 1890. Also the Indian Contract Act is not a code. The preamble so states " Whereas it is expedient to define and amend certain parts of the law relating to contract " ; and Lord Macnaghten in the case of *Irrawaddy Flotilla Company* v. *Bugwandas* (18 I.A. 121), says (p. 129) :—

> " The Act of 1872 does not profess to be a complete code dealing with the law relating to contracts. It purports to do no more than to define

> and amend certain parts of that law. No doubt it treats of bailments in a separate chapter. But there is nothing to show that the Legislature intended to deal exhaustively with any particular chapter or subdivision of the law relating to contracts."

And although the section does occur in a fasciculus of sections devoted to partnership, it is clear that the fasciculus is not exhaustive of all questions which can be raised in connection with partnership.

Taking into account all these considerations their Lordships do not think they would be justified, in view of the ambiguity of the expression used, to give effect to a view which would upset what has been considered by the commercial community as the law for such a long period. They will, therefore, humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

JWALADUTT R. PILLANI

v.

RAJA BAHADUR BANSILAL MOTILAL.

DELIVERED BY VISCOUNT DUNEDIN.

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