
(1882) 03 CAL CK 0007
In the Calcutta High Court

Chundee Churn Dutt

APPELLANT

Vs

Eduljee Cowasjee Bijnee and Others

RESPONDENT

Date of Decision : 02-03-1882

Acts Referred:

Contract Act, 1872 — Section 264

Citation : (1882) ILR (Cal) 678

Hon'ble Judges : Richard Garth, C.J.; White, J

Bench : Division Bench

Judgement

Garth, C.J.—Having heard these questions properly argued, I am satisfied that, in the case of Roop Chund Pundit v. Madhub Chunder Bose ante p. 681 n; Mr. Justice Pontifex and myself were wrong in holding that, as a matter of law, the Official Gazette was the only proper medium of publication u/s 264 of the Contract Act. I discussed this subject with Mr. Justice Pontifex before he left the Court, and I am authorised by him to say, that he quite agrees with me in so thinking.

2. In that case, unfortunately, we had not the advantage of hearing counsel; and we rather took it for granted, without sufficiently considering the relative character of the two publications, that the Official Gazette in Calcutta was, in most material respects, the same sort of paper as the "London Gazette" in England. But in fact this is not so. The "London Gazette" has not only a large and general circulation in the commercial world, but it is the usual and now almost the invariable mode of advertising new partnerships, dissolutions of partnership, bankruptcy and insolvency notices, and all that class of news.

3. The "Calcutta Gazette," on the other hand, deals principally with official matters. It does indeed contain a number of advertisements of partnerships, insolvencies and the like, but not nearly the same amount of such information as the "London Gazette," and we have reason to believe, that, in the commercial world, especially among the natives, its circulation is not nearly so wide as that of the "London Gazette" in England.

4. So far as we can ascertain, the "Exchange Gazette," although not properly speaking, a newspaper, has a larger circulation, especially in the native quarters of this city, than the Official Gazette; but having considered the question referred to us very carefully, I am not prepared to say, that, as a matter of law, the publication of a notice of dissolution of partnership in either of those papers, or in both, is always sufficient public notice within the meaning of Section 264 of the Contract Act.

5. I think, moreover, that the question of sufficiency of notice, whether public or otherwise, is one rather of fact than of law. It may be a question of law, to what sort of notice any particular customer, or class of customers, is entitled; but how far in each case such notice may have been actually given, must generally be a question of fact.

6. I confess that I feel great difficulty in ascertaining the true meaning of Section 264 of the Contract Act; especially as regards old customers, who, like the plaintiff in the present case, have dealt with the firm before its change or dissolution. I suppose the section means, that all persons dealing with a firm, whether old customers or new, will be affected by any dissolution of the firm or any change of its members if they have actual notice of the fact. This would be quite in conformity with the law of England. But supposing they have no actual knowledge of the fact, is it intended that all persons dealing with the firm, whether old or new customers, are to be bound by public notice of such dissolution or change, whatever the words "public notice" may mean? The defendant contends, that this is the true meaning of the section; and there is certainly some difficulty in giving a meaning to the words "of which no public notice has been given" unless they are read in that way. And yet I cannot but believe, that if it had been intended to introduce such a serious change into the law, as that construction would involve, the language used would have been much more clear and explicit, and that the rule would have been laid down in an affirmative and not in a negative form.

7. It is possible that the section was not intended to apply to old customers at all, but only to the general public after the dissolution. But however that may be, I think, after careful consideration, that the section was not intended as an exhaustive exposition of the law, and that we must look elsewhere in the Act for a rule to guide us on this occasion.

8. The law which regulates the liability of partners for the acts of their co-partners is a branch of the law of agency; and in the absence of any specific rule upon the subject under the head of partnership, we must look to the law of agency for the solution of our present question. Each partner is the agent of his co-partners for the purpose of conducting debts and obligations in the usual course of partnership business (see Sections 2491 and 2512 of the Contract Act, Lindley on Partnership, 3rd edition, p. 248). And when this agency has once been established, it does not cease as regards third persons, until its termination has become known to them (see Section 2083 of the Contract Act).

9. In the case, therefore, of a dissolution of the partnership, or of the retirement of one of its members, the agency as between the partners themselves would cease from the time of such dissolution or retirement; but as regards third persons, the agency would continue until it had been duly notified. And the mode of notification which the law requires is different in the case of old and known customers of the firm from what it is in the case of other persons. In the case of old customers, who are known to the firm as having dealt with it, an express or specific notice by circular or otherwise should be given (see Lindley on Partnership, 3rd edition, pp. 429 and 430, and the cases there cited). But as regards persons who have not dealt with the firm (or, in other words, the general public), it is impossible in a large community to give any specific notice; and therefore, as regards them, the most effectual public notice which can reasonably be given is sufficient to terminate the agency (see Lindley on Partnership, 3rd edition, p. 430). What is such a public notice must depend upon circumstances, upon the locality, and whether there are any and what newspapers in circulation there, or upon what are the usual means of giving public notice in the neighbourhood. And this, as I have said before, will generally be a question not of law, but of fact.

10. In this particular case the plaintiff was an old and known customer of the firm. There was no reason why he should not have had express notice of the retirement of the first defendant; and as he had no such notice, and is not proved to have been aware of the fact, we are of opinion that the first defendant was liable upon the promissory note.

11. Another objection was then taken, that the first defendant was not subject to the jurisdiction of the Court; and as to this the first question is, whether, under the circumstances, that defendant was entitled to raise the point when moving for a new trial. We think it was in the discretion of the Court whether it should be raised or not; and as it was allowed to be raised, and formed one of the grounds on which the new trial was granted, we think that the first defendant was at liberty to insist upon it when the new trial was had.

12. In our opinion it is a good answer to the suit.

13. The question turns upon whether Eduljee, the first defendant, was, within the meaning of Section 28 of the Small Cause Courts Act, carrying on business within the Calcutta jurisdiction at the time of bringing the action or at the time when the cause of action arose. We understand, although it is not so expressly stated in the case, that, at both those periods, Eduljee was absent from Calcutta and living at Bombay. He had dissolved partnership with his co-defendants on the 21st of May 1880; but from his omission to give notice to the plaintiff, who was an old customer of the firm, had not determined, as between himself and the plaintiff, the agency of his co-defendants to bind him by a promissory note executed in the name of the old firm, and he is therefore liable upon the note.

14. Is this a carrying on business by him within the meaning of the above

section? We are of opinion that it is not. Since the dissolution of the partnership, Eduljee has taken no part nor had any interest in the business. If he can be said to carry it on, it is only in the sense that he has not, as against the plaintiff and other old customers, properly put an end to the authority of his former partners to bind him by their acts done in the partnership name. We are not prepared to dissent from the authorities cited in the reference of *Subheraya Mudali v. The Government* 1 Mad. H.C. Rep. 286 and *Mitchell v. Hudson* 23 L.J. Q.B. 273 which lay down, that the carrying on of business must be personal on the part of a defendant, if it is sought to bring him within the jurisdiction of the Small Cause Court on the ground of carrying on business.

15. As the result of our judgment will be, that the plaintiff can get no decree against the first defendant in the Calcutta Small Cause Court, and it is doubtful whether, if he accepts a decree against the two other defendants in that Court, he will not lose his remedy against the first defendant, we think, that the plaintiff should have an opportunity afforded him to elect, whether he will accept a decree against the two last defendants alone, or will submit to a nonsuit with a view to hereafter suing the first defendant in some other Court.

16. If the plaintiff declines to submit to a nonsuit, our answer to the two first questions submitted to us by the Small Cause Court is:

1. That, upon the facts stated, the suit should be dismissed against the first defendant Eduljee, and decreed against the second and third defendants alone.
2. Our answer to the question submitted at the instance of the plaintiff's vakeel is, that the new trial was properly granted.

17. As it is stated in the case that the first defendant undertook to have the case argued by the Counsel in this Court at his own expense, we shall make no order as to costs.

1[Section 249: Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner of an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.]

Partner's liability for debts of partnership.

2[Section 251: Each partner, who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partnership to the same extent as if he were their agent duly appointed for that purpose.]

Partner's power to bind co-partners.

3[Section 208: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.]

When termination of agent's authority takes effect as to agent and as to third persons.