

(1929) 02 PRI CK 0002

In the Privy Council

Case No : Privy Council Appeal No. 154 of 1927

Jwaladutt R. Pillani

APPELLANT

Vs

Bansilal Motilal

RESPONDENT

Date of Decision : 28-02-1929

Acts Referred:

Citation : (1929) AIR(PC) 132

Hon'ble Judges : Charles Sargant, Carson, Viscount Dunedin, JJ.

Advocate : T. L. Wilson, Lattey and Dawe, C. Holden, G.R. Lowndes, L.De Gruyther, W.H. Upjohn, E.B. Raikes, A. Greene, for the Appearing Parties.

Judgement

Viscount Dunedin, J.

The facts in this case are not in dispute. The appellant Pillani was a partner of a firm of Husseinbhai Pillani Wadia and Co. On 3rd April 1923, that firm along with Wadia Woollen Mills, Ltd. granted in respect of a loan a promissory note for two lacs of rupees with interest at 7- per cent. in favour of the respondent Raja Bahadur Bansilal Motilal. On 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 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 two lacs, interest on this note running at 8? 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. Bohomutoollah* 1864 W. R. 94. The defence of the appellant is based on the terms of S. 264 Contract Act of 1872, which is as follows:

"Persons dealing with a firm will not be affected by 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* 1882 8 Cal. 678 : 11 O. L. R. 225, 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 farreaching 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 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 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 *Irrawaaddy Flotilla Co. v. Bugwandas* 1891 18 Cal. 620 : 18 I. A. 121 : 6 Sar. 40 (P. C.), says (p. 129 of 182A.).

"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 sub-division 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 connexion 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.