

Privy Council Appeals Nos. 78 and 79 of 1933.

Kala Ram - - - - - *Appellant*

v.

The Punjab National Bank, Limited, Peshawar - - - *Respondents*

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

Consolidated Appeals.

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE
NORTH-WEST FRONTIER PROVINCE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER, 1934

Present at the Hearing :

LORD ATKIN.

LORD ALNESS.

SIR SHADI LAL.

[*Delivered by* LORD ALNESS.]

These are consolidated appeals against the judgments and decrees, dated 22nd October, 1932, of the Judicial Commissioners of the North-West Frontier Province, reversing the judgments and decrees, dated 2nd December, 1931, of the Court of the Senior Subordinate Judge of Peshawar.

In the first case, the Punjab National Bank, hereinafter termed "the plaintiff," filed a suit for Rs. 10,242.11.2 on 11th March, 1929, against four brothers, Relumal, Dharam Chand, Gurmukh Dass and Kala Ram, who were said by the plaintiff to have been customers of the Bank and to have incurred to it a debt of that amount. The debt was alleged to have been incurred after July, 1928.

In the second case, which was directed solely against the appellant, the plaintiff sued for the balance of a loan account—viz., Rs. 6,887—the claim being based on a promissory note dated 8th June, 1928.

The main defence propounded by the appellant was that, on 5th October, 1919, he ceased to be a partner in the firm of

the four brothers, that notice of his retirement from the firm duly reached the plaintiff, that subsequent transactions were not with him, and that accordingly he was free from liability for the sums sued for. It may be added that the fact of the dissolution of the partnership in 1919 was not in dispute. The issue relates to whether or no the plaintiff had notice of that dissolution.

The circumstances under which the claims by the plaintiff were made sufficiently appear from the judgments in the Courts below, and their Lordships deem themselves absolved from again rehearsing them in detail.

Section 264 of the Indian Contract Act, 1872 (Act IX of 1872) provides :—“ Persons dealing with the firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.” Admittedly, in this case, no public notice of the retirement of the appellant in 1919 from the firm of four brothers was given ; but it was strenuously maintained on his behalf that the plaintiff was apprised of that retirement before the debts sued for were contracted. If that was so, the problem submitted to the Board for decision is solved.

The question whether the plaintiff had notice of the dissolution of the firm of four brothers by the retirement of the appellant from it is one of fact, and the *onus* of proving that fact is plainly, and indeed admittedly, on the appellant. Has he then discharged that *onus* ? Or must the verdict be one of “ not proven ? ” The question is not free from difficulty, and the difficulty is increased by the course of the proceedings in the Courts below. The Senior Subordinate Judge does not allude to the question of notice in his judgment, while the Judicial Commissioners dismiss it in a few lines. The latter say, in the course of their judgment, that “ admittedly the bank did not know of the dissolution until after the transaction on which the present suit is based.” Their Lordships cannot help thinking that this statement is based upon a misapprehension. It is true that no registered notice was given, and it may be that the Judicial Commissioners in the passage from their judgment now under survey were referring to that fact. However that may be, the Judicial Commissioners then proceed, in effect, to hold that no such notice was given.

Their Lordships find themselves unable to agree with the conclusion of the Judicial Commissioners on this matter. The evidence to the effect that notice was given, in their Lordships' opinion, suffices to discharge the *onus* of proof. In the first place, the evidence adduced by the appellant affirms a general practice of giving notice under the circumstances which existed in this case, and raises a presumption that it was given. A new loan account was opened by the firm in 1920, and it is clear from the evidence that the practice of the plaintiff was to make due enquiries regarding any applicants for a new loan.

Moreover, there is substantive and convincing evidence to the effect that notice *was* given by the appellant to the plaintiff. The witness Gurmukh, who was adduced by the appellant, states that, in the application to the plaintiff for a loan, the names of the three brothers, omitting that of the appellant, were given. There is really no cross examination upon this testimony, and certainly no contradiction of it, by production of the application form or otherwise.

Further, there is the definite evidence of the witness Shival, who was also adduced by the appellant as a witness, who was manager for the plaintiff at the relevant period, and who was the appropriate person to make enquiry, to the effect that he was informed by one Amir Chand, the Treasurer of the Bank, that the appellant had separated himself from the firm by a deed of release. Amir Chand, who was also called by the appellant, in terms confirms this evidence. Now Shival held a responsible position in the Bank, and no suggestion has been, or indeed could be made against his probity or truthfulness. The evidence of these witnesses constitutes a formidable body of testimony.

The evidence adduced by the plaintiff *contra* is, in their Lordships' view, negligible. Reliance was chiefly placed on the document printed on p. 66 of the record. Now, in the first place, that document is stale. It is dated in the year 1909. In the second place, their Lordships are uninformed as to the questions to which the document purports to supply the answers. In the third place, the appellant is referred to in the document not as a partner of the firm, but as an "overseer"—as in truth he was. In their Lordships' opinion no conclusion in the plaintiff's favour can safely be drawn from the terms of that document. No communication, written or verbal, between the appellant and the plaintiff, or any one on his behalf, between 1919 and 1928 is proved in evidence, nor is there any evidence to the effect that the plaintiff relied, in giving credit to the firm, on the document of 1909. In these circumstances, their Lordships are not disposed to attach much importance to the negative evidence adduced by the plaintiff.

Their Lordships are prepared to hold, and do hold that the appellant has affirmatively established that the plaintiff had notice of the appellant's separation from the firm of four brothers before the transactions in suit were entered upon, and that therefore the terms of the exception at the end of section 264 of the Indian Contract Act are satisfied. In that view, as already stated, all other questions in the case which were argued before their Lordships' Board are superseded, and their Lordships abstain from offering any opinion regarding them.

Their Lordships will therefore humbly advise His Majesty that the appeals in both suits should be allowed, and that the judgments and decrees of the Judicial Commissioners should be reversed. The appellant must have the costs of the appeals.

In the Privy Council.

KALA RAM

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THE PUNJAB NATIONAL BANK, LIMITED,
PESHAWAR.

SAME

2.

SAME.

(*Consolidated Appeals.*)

DELIVERED BY LORD ALNESS.

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