
(1869) 06 CAL CK 0050

Calcutta High Court

Case No: None

Baldeodas Agarwalla

APPELLANT

Vs

Alexander Kaich and
Another

RESPONDENT

Date of Decision: June 22, 1869

Judgement

Phear, J.

When Mr. Grunenwald became a partner with Mr. Kaich, there is no doubt that the new firm thus constituted did not necessarily become liable for the debts of the old firm; but this new firm kept on the plaintiff as its banian upon precisely the same terms as those upon which he was banian to the old firm, with full knowledge of what those terms were. Mr. Evans has very fairly declined to argue, oh behalf of his client, that the written agreement of the 5th June 1867 did not represent the agreement upon which the plaintiff became and acted as banian of the new firm. It is clear on the facts that, though no express words of contract were agreed to in this behalf, the new firm did impliedly take and continue the plaintiff as banian on the terms expressed in the agreement. (His Lordship here read the 12th clause). No doubt, these words in themselves considered as words of a current agreement apply only to such sums of money as may be due from the new firm to the plaintiff. And the question now is, whether or not the new firm took over the balance which was due to the plaintiff from the old firm, and placed it in the same condition as if it were a sum of money due to the plaintiff from the new firm. I think it did so. As I have already said, the new firm continued the plaintiff in his old position of trust, without telling him that there had been any change in the terms of his responsibility; they never told him that, from the date of the new partnership, he could not look to in-coming goods as security for any other than the sums disbursed by him since the establishment of the new firm. There is no doubt on the evidence that the plaintiff did think that his old balances were taken into the new current account between him and the new firm, and were covered by the security of the existing goods from time to time in the godowns, and ha had very good cause to suppose that that was the true relation between himself and his employer. And if this were not so, the consequences to him would be very serious

indeed; for at the commencement of the new partnership, he had a lien upon the goods in the godowns for the whole of the balance then existing. If the new state of things was such that do goods subsequently brought in became liable for that balance, then day by day, and week by week, as the old goods were allowed to pass out, his security would gradually diminish and ultimately disappear, and I suppose it is probable that at the present time there are do goods in the godown identical with those which were there when the new partnership commenced. So that unless the new firm did take over the old balance, and bring it under the operation of clause 12 of the newly adopted agreement, the plaintiff has by this time lost all the security which he undoubtedly had at the commencement of the partnership for the balance then due to him. Clearly this very inequitable result was never for a moment contemplated by the defendants themselves. They had no intention of letting the plaintiff into a trap of this kind. No one thought that there had been any break made in the relative position and circumstances of the parties. Under the circumstances I think that the defendants' new firm did impliedly agree to take over the old balance due to the plaintiff, and to take it into the account current between the new firm and the plaintiff. An account must be taken, and the case be adjourned to take the account. The injunction must remain in force.