

LECTURE VI

INCOMING AND OUTGOING PARTNERS.

A. Continuity of firms inspite of change of partners.

1. *Previous law under the I. C. A.*
2. *English Law on the Subject.*
3. *Change in the law by the new Act.*
 - (i) Report of the Special Committee and their reasons.
 - (ii) Change necessary for giving unity and continuity to the business.
4. *Firm not dissolved by the outgoing of some of the partners.*
5. *Introduction of new partners with the consent of all existing partners.*
 - (i) Clause for introduction of partners in the partnership agreement, if enforceable—Lindley's views.
 - (ii) Nature of the right of a new partner introduced by the senior partner on the strength of such clause at the time of his introduction⁴.
 - (iii) If a nominee of a partner can be compelled to become a partner of the firm⁵.

(1) *Jogmohannarayan v. Girish Babu* I L. R. 42 All. 515.

(2) *The Official Assignee of Madras v. Palaniappa Chetti*
I. L. R. 41 Mad. 824.

(3) *Kakumanec Venkatasuryanarayana v. Akutthota Ramayya* 40
M. L. J. 153 ; *The Official Assignee of Madras v. Palaniappa
Chetty* 41 Mad. 824, 835, 839.

(4) *Bryne v. Reid* (1902) 2 Ch. 735.

(5) *Madgwick v. Wimbly* (1843) 6 Beav. 495.

6. *If executors or devisees or heirs of a deceased partner can claim admission into partnership without consent or previous agreement to that effect*¹.
 7. *Assignee of a partner's interest if can claim admission into partnership against the will of other members of the firm*²—
 - (a) legal consequence of such an assignment³.
 8. *Power given to a partner to nominate his successor in partnership deed—the power how to be exercised*⁴.
- B. Liability of new partners for the debts of the firm before their introduction—**
- (i) he may incur liability by an agreement to that effect ;
 - (ii) slight evidence is enough to prove such agreement⁵;
 - (iii) agreement between partners for substitution of liability if binding on creditors ;
 - (iv) agreement between partners for such substitution if enforceable by creditors⁶.
- C. Retirement of a partner.**
- (1) *A partner may retire*
 - (a) at any time with the consent of all other partners ;
 - (b) conformably to an agreement between partners ;
 - (c) by notice of retirement in case of partnership at will ;
 - (d) a dormant partner may retire without notice⁷—reason for the rule⁸. Necessity of notice when creditor knew dormant partner as a member of the firm⁹.
 - (2) *Liability of a retiring partner for debts contracted before his retirement*¹⁰.

(1) *Cromford v. Hamilton* 3 Madd. 254 ; *Crawshay v. Mauld* 1 Swanst 495, 518, 523.

(2) *Debi Baksh v. Habib Shah* 35 All. P. C. 331, 335-336, P. C.

(3) *Cassels v. Stewart* (1881) 6 A. C. 64, 73 ; *Smith v. Parkes* (1852) Beav. 115.
Jagatchandra v. Radhanath I. L. R. 10 Cal. 669.

(4) *Bechubai v. Shamji* 9 I. L. R. Bom. 536.

(5) *P. B. Sarma v. Phanindra* 35 C. W. N. 593.

(6) *Smith v. Patrick* (1901) A. C. 282 ; *Russa Engineering Works v. Canada Transport Co.* (1926) I. L. R. 41 Mad. 930 ; *British Homes Assurance Corporation v. Paterson* (1902) 2 Ch. 404 and *Ex parte Whitmore* 3 Deac. 365.

(7) *Heath v. Sansom* (1832) 4 B. & Ad. 172.

(8) *Carter v. Wholley* 1 B. & D. 11.

(9) *Farrar v. Deftine* 1 Car. & K. 580.

(10) *Maurice v. Morley* 29 C. W. N. 496.

- (3) *Mode of discharge of a retiring partner from liability to a third party for acts of the firm done before his retirement.*
- (a) Necessity of a tripartite agreement.
 - (b) Such agreement if may be implied by a course of dealing.
 - (c) Creditor when stopped from suing a retiring partner.
- (4) *Liability of a retiring partner for future debts of the firm.*
- (a) Exception—in case of persons dealing with the firm without knowing him to be a partner.
 - (b) Cessation of liability by giving public notice.
 - (i) Mode of giving public notice under SS. 63 and 72 I. P. A.
 - (ii) By whom notice may be given.
 - (iii) Prescribed form of such notice.
 - (iv) Notice to individual customers if necessary under the present Act—previous law discussed.

D. **Expulsion of partners.**

- (1) *Special provisions for expulsion in articles of partnership necessary.*
- (2) *Expulsion clause to be strictly construed¹.*
- (3) *Necessity of perfect good faith for exercise of contractual power.*
- (a) Meaning of good faith in such cases².
- (4) *Necessity of concurrence of all partners as required by articles.*
- (5) *If majority can expel without express power.*
- (6) *Grounds of expulsion—*
- (i) Breach of covenant of partnership if sufficient.
 - (ii) Flagrant breach of duties by a partner if ground for expulsion.
 - (iii) Criminal convention if good ground³.
- (7) *Reason for expulsion if required to be stated.*
- (i) If statement of reasons can be dispensed with by agreement.
- (8) *Legal consequences of arbitrary expulsion⁴.*
- (a) *Remedies of the expelled partner.*
 - (i) Re-instatement
 - (ii) Dissolution
 - (iii) Damage or
 - (iv) Account.

(1) *Carmichael v. Evans* (1904) 1 Ch. 486.

(2) *Green v. Howell* (1910) 1 Ch. 495, C. A.

(3) *Carmichael v. Evans* (1904) 1 Ch. 486.

(4) *Blisset v. Daniel* (1853) 10 Hare 493; *Andrews v. Mitchell* (1905) A. C. 78; *Clark v. Hart* (1858) 10 E. R. 1443.

- (9) *Liability of the expelled partner for past and future debts of the firm.*

E. Insolvency of a partner.

- (1) *Effect of insolvency of a partner on the continuance of firm.*
- (a) Agreement for continuance how far binding.
 - (b) Cessation of partnership after adjudication.
 - (i) Date of adjudication order, if retrospective¹.
- (2) *Liability of the estate of insolvent partner for an act of the firm subsequent to adjudication.*
- (3) *Liability of the firm for acts of insolvent partner.*
- (4) *Dealings and transactions with bankrupt after order—when and how far protected².*
- (5) *Dissolution of a firm on adjudication of a partner—*
- (i) Right of solvent partners to get in joint assets.
 - (ii) Appointment of a solvent partner as manager or receiver in case of disputes as to management³.

F. Effect of death of a partner.

- (1) *Firm reconstituted with the surviving partners under the previous agreement.*
- (a) Non-liability of the estate of the deceased partner for any act subsequent to his death.
- (2) *Firm dissolved by death in the absence of agreement to the contrary⁴.*
- (i) Authority of the surviving partners for the purpose of winding up.
 - (ii) Rights of the representatives of deceased partners when partnership business is continued after the death of the partner⁵.
 - (iii) Liability for account by surviving partners when money in the share of the deceased partner is used in their business⁶.

G. Rights of the outgoing partner to carry on competing business.

- (1) *Advertisement of a competing business by an outgoing partner.*

(1) S. 51 of Presi. Towns Insol. Act 1909 & S. 28 Sub-sec. (7) of Prov. Insol. Act 1920 and S. 37 English Bankruptcy Act 1914.

(2) *Shears v. Goddard* (1896) 1, Q. B. 406.

(3) *Fox v. Hanbury* (1776) Cowp. 445.

(4) *Mussamat Jatti v. Banwari Lal* 28 C. W. N. 785 at p. 790.

(5) *Haji Hedayetullah v. Mahomed Kamil* 29 C. W. N. 161 P. C.

(6) *Mahomed v. Haji* 26 C. W. N. 463 and *John v. Bertha* 47 C. L. J. 295 P. C.

- (2) *Restrictions on such advertisements—*
- (a) Not to use the firm name,
 - (b) Not to represent himself as carrying on business of the firm,
 - (c) Not to solicit the customers of the old firm¹.
- (3) Rights of an outgoing partner may be extended or restricted by an agreement between partners—
- (i) Agreement in restraint of trade if valid².
 - (ii) Reasonableness of restriction necessary³.
 - (iii) Restriction containing two severable parts, one reasonable another not—if reasonable part enforceable⁴.

II. Rights of the outgoing partner to share subsequent profits.

- (1) User of the share of the assets of an outgoing partner by other partners in the business without final settlement of account gives option to the outgoing partner
- (a) To claim a share of the profits proportionate to his share, or
 - (b) To charge interest 6% p. c. on the share of his assets⁵.
- (2) Partnership for fixed period—expiry of the period—automatic dissolution—final settlement not made—managing partner continuing business—
- (i) If the outgoing partner has the same option⁶.
- (3) Option given to surviving partners to purchase the share of the deceased partner.
- (a) Option how to exercise.
 - (b) Compliance with the terms in all material respects, if necessary.
 - (c) Effect of non-compliance.

Distinction between an option to purchase and a contract for the purchase of deceased partner's share⁷.

- (4) Option given to continuing partners for the purchase of the share of an outgoing partner in partnership agreement.
- (a) Option only exercised—right of the outgoing partner to any further share of the profits.

(1) *Konski v. Peet* (1915) 1 Ch. 530.

(2) S. 27 I. C. A.

(3) *Mc Ellistrim v. Ballymacelligot Co-operative & Co. Society* (1919) A. C. 548.

(4) *British Reinforced Concrete Co. Schelff* (1921) 2 Ch. 563.

(5) *Yates v. Finn* 13 Ch. D. 839 and *Muhammad Kamil v. Hazi* 33 C. L. J. 411.

(6) *Parsons v. Hayward* 135 R. R. 249.

(7) *Vyse v. Foster* (1874) L. R. 7 H. L. 318.

- (b) Compliance in all material respects necessary.
- (c) Non-compliance keeps the liability to account alive.

I. Effect of a change in the constitution of a firm on the continuing guarantee given

- (a) to a firm or
 - (b) to a third party in respect of transactions of the firm.
- (1) Continuing guarantee when revoked by change in the constitution of the firm¹.
 - (2) No revocation when the person agreed to become a surety to the fluctuating body².
 - (3) Contract of surety binding so long as the firm remains unchanged³.