

**M. Rights of buyer and seller of good will<sup>1</sup>.**

1. Good will if included in the assets<sup>2</sup>.
  - (a) if the right can be varied by agreement between the partners.
2. If good will can be sold separately or with other property.
3. If sale of good will prevents a partner from
  - (a) carrying on rival business,
  - (b) use of the firm name.
4. Representation as carrying on the same business and soliciting customers of the old firm to buy from the new business if can be restrained by injunction,
  - (a) rule of law on the subject if can be varied by agreement<sup>3</sup>.
5. Agreement in restraint of trade between a partner of the firm and buyer of good-will how far binding<sup>4</sup>.

**LECTURE VIII****REGISTRATION OF FIRM****1. Appointment of Registrar of firm.**

- (a) Number of Registrars for each province and their jurisdiction.
- (b) Duties to be performed by Registrars.
- (c) Position of Registrars as public servants.
- (d) Exception from registration under order of the Governor-General-in-Council.
  - (i) order of the Governor-General-in-Council to be published in the Gazette of India.

- 
- (1) Every affirmative advantage of a business is good-will *Cutwell v. Lye* 17 Ves 335 ; How good-will is generally valued *Von An vs. Magenhurimer* 115 App. Div. 84 ; *Page v. Ratcliffe* (1896) 75 L. T. R 371 ; when value of good-will is enhanced *Cooper v. Watson* (1784) 3 Doug. K. B. 413 *Kennedy v. Lee* 3 Mer. 441, 445 ; when good-will passes without express mention *Kingston, Miller & Co. v. Thomas Kingston and Co.* (1912) 1 Ch. 575 ; when good-will is not to be valued *Horden v. Horden* (1910) A. C. 465 P. C.
  - (2) *Trego v. Hunt* (1896) A. C. 7 ; *Dawson v. Beeson* (1882) 22 Ch. D 504 and *Boorne v. Wicker* (1927) 1Ch. 667.
  - (3) *Hall v. Barrows* (1863) 4 De. G. J. & Sm. 150 ; *Smith v. Nelson* (1905) 92 L. T. 313.
  - (4) *Chandra Kanta Das v. Parasullah Mullick* I. L. R. 48 Cal. 1030 P. C.

**2. Registration of firms how to be effected.**

- (i) Forms of application.
- (ii) Particulars to be stated.
- (iii) Rules framed by Local Government of each province to be followed.
- (iv) Verification of the statements—
  - (a) form of verification,
  - (b) signature and attestation,
  - (c) signature under authority<sup>1</sup>.
- (v) Printed forms to be used for application.
- (vi) Prescribed fee and how it is to be paid.
- (vii) Meaning of document under the partnership rules.
- (viii) Statements how to be sent.

Comparison of English rules and the forms thereunder.

**3. Firm name and its choice<sup>2</sup>.**

- (a) Bar of using certain words in firm name<sup>3</sup>.
- (b) Necessity of sanction of Governor-General-in-Council for use of certain words.
- (c) Form of consent to be given by the Governor-General-in-Council.

**4. Dispute regarding jurisdiction of several Registrars how to be settled—**

- (i) place of business, its meaning ;
- (ii) registration in one province if enough when a firm has places of business in different provinces ;
- (iii) meaning of principal place of business<sup>4</sup>;
- (iv) importance of the dates of each partner joining the firm.

**5. Mode of Registration—**

- (a) if Registrar has a discretionary power ;
  - (b) things to be done by the Registrar before registration ;
  - (c) rectification in case of incomplete or defective document ;
  - (d) registration when to be deemed complete ;
  - (e) enquiries and investigations by Registrar—
    - (i) in all matters,
    - (ii) in case of dispute between partners specially.
  - (f) Registrar's power of calling for documents and taking evidence.
- (1) Power if
- (i) administrative or
  - (ii) judicial.

(1) Rogers, Eungblut & Co. v. Martin (1911) 1 K. B. 19.

(2) Maughan v. Sharpe (1864) 17 C. B. N. S. 462.

(3) Holloway v. Holloway (1850) 13 Beav. 209.

(4) De Beers Consolidated Mines Ltd. v. Howe (1906) A. C. 455.

- (j) If registration may be made when statements are not substantially true<sup>1</sup>.

**6. Register of firms**

- (a) Forms to be used.  
 (b) Entries to be made.  
 (c) Statements to be kept in file.  
 (d) When acknowledgement of receipt and filing to be made.  
 (e) Registration of firms under the Indian Income-Tax Act.  
     (i) Procedure for such registration.  
     (ii) Cancellation of such registration.  
 (f) Difference between the two sorts of registration.

**7. Alteration in firm name and principal place of business.**

- (i) Alteration to be notified.  
 (ii) Period within which notice of alteration to be filed.  
 (iii) Particulars to be stated in such a notice.  
 (iv) Verification of the statements and its alteration.  
 (v) Enquiries and investigations.  
 (vi) Payment of prescribed fee as to amendment of the entry in the register of firms.  
 (vii) Statement how to be filed. S. 60. (2) I. P. A.

**8. Closing and opening of branches.**

- (a) Intimation how to be given.  
 (b) Forms of such intimation.  
 (c) Prescribed fee.

**9. Change in the name and address of partners.**

- (a) Intimation of the alteration.  
 (b) Form of the intimation.  
 (c) Alteration of entry and filing intimation.  
 (d) Rules and forms.

**10. Recording changes in the constitution of the firm and dissolution of the firm.**

- (a) By whom notice to be given.  
 (b) Prescribed fee,  
 (c) Form of such notice.  
 (d) Rules and forms regarding the same.  
 (e) Recording such notice.  
 (f) Filing of the statement.

**11. Notice of election by a minor admitted to the benefits of partnership.**

- (a) Time limit for election and notice.  
 (b) Form of notice.  
 (c) Rules and forms.

---

(1) National Provincial & Co., Bank of England v. Choruby (1924) 1 K. B. 431.

12. **Rectification of mistakes.**
- (a) Clerical mistakes in the Register of firms to be corrected by the Registrar.
  - (b) Rectification of mistakes in
    - (i) statement
    - (ii) notices and
    - (iii) intimations filed with the Registrar.
  - (c) Amendment of the Register according to the decision by court in respect of a registered firm.
    - Amendment of any incorrect entry in the Register of firms.
13. **Rules for inspection of the Register and filed documents**
- (a) if notes may be taken at the time of inspection<sup>1</sup>,
  - (b) rules for granting copies.
14. **Evidentiary value of the Statements, intimation and notices filed with the Register**
- (a) upon whom binding,
  - (b) statements how to be proved,
  - (c) certified copy if admissible without production of the original,
  - (d) signatures if to be proved,
  - (e) register of firms, if a public document and if can be used as proof of registration.
15. **Penalty for furnishing false particulars to the Registrar**
- (a) facts constituting an offence under Section 70 I. P. A.
  - (b) how facts to be proved,
  - (c) punishment.
16. **Effect of registration on the persons dealing with the firm**
- (a) if registration operates as notice to them<sup>2</sup>.
17. **Effect of non-registration**
- (a) disability of unregistered firms and partners,
  - (b) suits barred under the present law :—
    - (i) suits against the firm by a partner,
    - (ii) by a partner against another,
    - (iii) by the firm against a partner,
    - (iv) suits against third party,
    - (v) claim of set-off,
    - (vi) other proceedings to enforce a right arising from a contract,

---

(1) Muller v. Eastern and Midland Railway Co. (1888)

(2) Mahoney v. East Holyford Mining Co. Ltd. (1875)

33 Ch. D. 92.  
L. R. 7 H. L. 869.

- (c) cases not affected by non-registration,
  - (d) if registration after institution of suit cures defect
  - (e) exemption of firms and partners from operation of S. 69 I. P. A.
    - (1) if Section 69 I. P. A. applicable when a firm has places of business in as well as outside British India ;
    - (2) what British India means,
  - (f) if Section 69 I. P. A. applicable to
    - (i) execution proceedings
    - (ii) if applicable to pending suits
    - (iii) if it applies to suits instituted after the commencement of I. P. A<sup>1</sup>.
- 18. Partnership rules made by**
- (i) Governor General-in-Council,
  - (ii) by Local Government
    - (a) power of making rules
    - (b) rules *intra vires* and *ultra vires*.

## LECTURE IX

### BANKRUPTCY AND ADJUDICATION OF FIRMS AND PARTNERS

#### 1. Adjudication of Firms—

- (a) if a firm can be adjudicated insolvent in the firm name<sup>2</sup>,
- (b) the legal status of a firm under the old and the new Act,
- (c) if a firm can be adjudicated without adjudication of partners<sup>3</sup>,
- (d) if a firm and some of its partners can be adjudged without adjudication of other partners,
- (e) if an order of adjudication can be made against a dissolved firm,
- (f) distinction between a trading Hindu joint family and a firm in respect of adjudication<sup>4</sup>.

---

(1) Surendra v. Monohar 37 C. W. N. 67.  
 (2) Kali Charan v. Hari Mohan 31 C. L. J. 206 and Gokuldas v. Parry & Co. I. L. R. 48 Mad. 795 and Exparte Blair (1877) 12 Ch. D. 235.  
 (3) Gokul v. Parry & Co. I. L. R. 48 Mad 795.  
 (4) Bolisetti Māmayya v. Kolla Kottaya, Kommurri Ramayya Rice Mill Co. I. L. R. 44 Mad. 810.