APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Coutts Trotter.

VANAMATI SATTIRAJU (PLAINTIFF), APPELLANT,

1918, March, 26.

v.

BOLLAPRAGADA PALLAMRAJU AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

Partnership—Boat, co-owners of—Employment of boat to earn freight—Partnership in freight—Suit for dissolution, whether maintainable—Section 239, Indnia Contract Act (IX of 1872).

Where the co-owners of a boat employ it to earn freight, they become partners in respect of such earnings and a suit for dissolution of such partnership is maintainable although the plaintiff, being only a co-owner, is not entitled to a decree for the sale of the boat employed by the partnership.

SECOND APPEAL against the decree of GANGADHARA SOMAYAJULU, the Subordinate Judge of Cocanada, in Appeal No. 92 of 1916, preferred against the decree of C. RANGANAYAKULU NAYUDU, the District Munsif of Cocanada, in Original Suit No. 383 of 1915.

Plaintiff and first defendant were co-owners of a boat, each advancing a certain sum towards its construction. Plaintiff alleged *inter alia* that they agreed that a licence to ply the boat for hire was to be applied for and got in the name of the first defendant, that the first defendant should keep an account of all the earnings of the boat and that the first defendant refused to account for such earnings. The second and third defendants were the sons of the first defendant. Plaintiff prayed (*a*) for a dissolution of partnership, (*b*) for an account of the earnings and (*c*) for the sale of the boat. The defendants denied the agreement of partnership. The Court of first instance gave a decree as prayed for. The Subordinate Judge, on appeal, without going into the merits of the case, dismissed the suit on the ground that the facts alleged by the plaintiff, even if true, did not in law constitute plaintiff and first defendant partners but constituted them only co-owners. Plaintiff preferred this second appeal.

A. Krishnaswami Ayyar for appellant.

* Second Appeal No. 934 of 1917.

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P. Narayanamurti for respondent.

The Court delivered the following JUDGMENT:—

COUTTS TROTTER, J.—In this case the plaintiff sued for a decree for the dissolution of his partnership with the defendants, and the learned Subordinate Judge dismissed the plaintiff's suit on a point taken for the first time in his Court, namely, that the suit was not maintainable, as, assuming the facts alleged in the plaint to be true, there was in law no partnership.

These facts are contained in the third, fourth and fifth paragraphs. Paragraph 3 says that the plaintiff and the first defendant entered into an agreement in or about December 1907 to construct at their joint expense a boat and another smaller boat attached to it, the plaintiff making certain advances towards it, among certain other stipulations which need not be gone into in detail, and agreeing that the licences, when the boat was completed, should be taken in the name of the first defendant, that the boats should be plied for hire, that the first defendant should keep the accounts and that the net profits and losses derived from the user of the boats should be shared equally between the plaintiff and the defendants. Paragraph 4 sets out the amounts advanced by the plaintiff towards the capital and paragraph 5 states that the first defendant had been letting the boat for hire and managing the whole business and had earned large sums of money by way of profit from her use for which he had not accounted to the plaintiff.

Now the learned Subordinate Judge, having perused a section in Lindley on Partnership on this extremely difficult subject, apparently has come to the conclusion that people who own a ship in common in no circumstances are partners. The law of England is no doubt that a mere co-ownership of a ship does not constitute the relation of a partner. That is clearly stated in all the books and in all the cases. And there is no doubt that section 239 of the Indian Contract Act has tended to import into the law of this country some of the very fine distinctions derived from the law of England where special reasons or public policy led to the making of these close distinctions between mere co-ownership and co-partnership in regard to vessels. Although it is quite true that co-ownership in a vessel does not constitute the relation of partners but merely that of tenants-in-common, yet when the ship begins to be put to use to earn freight a very

different state of things exists. Abbott on Merchant Shipping, Part I, Chapter III, page 132, of the Fourteenth Edition, says this :

"Firstly, co-owners are as such, tenants-in-common of their ship ; and secondly, if they employ their ship in earning freight, or otherwise as a money-making machine, they become joint adventurers or partners in the employment."

And for that proposition *Green* v. *Briggs*(1) is cited. That is a very long judgment of WIGRAM, V.C., and he cites *Holderness* v. *Schakel*(2) and says this :

"The Court distinguished there between the ship itself and her earnings, and held, in that case, that, although part-owners were tenants-in-common of the ship, they were jointly interested in the use and employment of the ship, and that the law as to earnings must follow the law in partnership cases."

And in *Ex parte Hill*(3) the Vice-Chancellor said :—

"Here is no lien on the ship, because that was not joint property ; but the earnings of the ship would have been joint property, and liable to the joint creditors ; not from any doctrine peculiar to the earnings of a ship, but on the general principle applicable to the joint property of every partnership. If, in this case, the *Thames* had been employed on a whaling voyage, and the money now at the Bank represented the cargo, no dispute could have arisen. Then is freight, *qua* earnings, distinguishable from other earnings of a ship, for the purpose under consideration? In the absence of authority establishing such distinction, or a clear principle requiring me to admit it, I will not adopt it."

In *Ex parte Young*(4), one of the cases relied on by the respondents' vakil, in which Lord ELDON's mind was distinctly called to the distinction between the ship and her earnings, he said :—

"I have no doubt that freight is liable to the joint demand. As to the ship, it stands upon the nice distinction of a tenancy-in-common."

And I notice that Lord LINDLEY points out that there are two cases under the English law of employment of a ship : one is where she is employed by some only of the total co-owners which in English law can be done against the will of the rest ; for reasons of public policy it has been held that the majority of the co-owners of the ship who wish to employ her may force the hand of the others. Therefore one sees that if a ship is

(1) (1847) 17 L.J. Ch., 323. (2) (1828) 8 B. & C., 612.
(3) (1815) 1 Mad., 61 at p. 66. (4) (1813) 2 V. & B., 242.

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employed under those conditions it may very well be right that the law should guard the unwilling co-owners from being made co-adventurers in an employment which they did not approve of. With regard to the second case what Lord LINDLEY in his treatise on Partnership, Eighth Edition, says (at page 37) is this:

"Where a ship is employed by all the part-owners, or by some of them, but not against the will of the others, they all share her gross earnings, and contribute to the expenses incurred in obtaining them; and in such a case there is little, if any, difference between the account which is taken between the part-owners and that which would be taken if they were actually partners."

And similarly Abbott lays it down quite plainly at page 133 that

"Each part-owner, who does not, before the commencement of an adventure, effectually withdraw authority from his co-owners to sail the ship on his behalf, is liable, as a partner, for the whole of the expenses of that adventure."

We, therefore, hold that, so far as the earnings of the ship go, as regards the freight that she earns, on the allegations in the plaint there exists a partnership between the plaintiff and the defendants and the plaintiff, if he can prove those allegations, will be entitled to a dissolution of partnership and taking of accounts as regards freight. But he is not a partner but only a co-owner in respect of the actual hull of the ship and he will not be entitled in any event to have his prayer granted as regards the sale of the boat or boats used by the partnership.

The preliminary objection on which the learned Subordinate Judge dismissed the case was due to a misapprehension and it must be remanded to him for disposal upon the merits. The appellant will have the costs in this Court. The costs in the Courts below will be costs in the cause.

N.R.