to consider, must be construed as being retrospective in its operation. The first ground is disposed of by the Colonial Sugar Refining Company's case; the second by the judgment of the Full Bench of the Calcutta High Court and the English cases cited in that judgment. We feel that in this matter we must reluctantly dissent from the view of the High Court of Bombay, and agree with the conclusion arrived at by the Full Bench in Calcutta.

KUMARASWAMI SASTRI, J.—I agree.

WALLACE, J.—I agree.

BEASLEY, J.—I agree.

PAKENHAM WALSH, J.—I agree.

[The Letters Patent have, since this judgment, been amended so as to apply to all judgments delivered on or after the 1st February 1929.—Ed.]

K.R.

SPECIAL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Beasley and Mr. Justice Reilly.*

M. V. KRISHNA AIYAR AND SONS (ASSESSEE),

1928, October 26.

v.

COMMISSIONER OF INCOME-TAX (REFERRING OFFICER).*

Indian Income-tax Act (XI of 1922), sec. 2 (14) and rr. 2, 3 and 4 of Part I—Registration of a firm—Deed of partnership, not in force at the time of application for registration —Continuance of partnership.

A firm can be treated as a "registered firm" within the meaning of section 2 (14) of the Indian Income-tax Act (XI of 1922), only if the deed constituting the partnership is registered

* Original Petition No. 133 of 1928.

KRISHNA AIYAR AND SONS v. COMMISSIONER OF INCOME-TAX.

in accordance with rule 2 framed under the Act. The deed, for registering which an application under rule 2 has to be made in the year of assessment, cannot be registered, if it is not operative at the time of the application, though it might have been operative during the whole or a portion of the year of account.

A firm constituted by a deed of partnership for a specified time is dissolved by the efflux of the time; and if thereafter the partners tacitly or orally agree to continue as before, the continuance is, not under the deed which is spent, but under the new agreement which cannot be registered.

CASE referred under section 66 of the Indian Income-tax Act (XI of 1922) by the Commissioner of Income-tax in the matter of the assessment of M. V. Krishna Aiyar and Sons of Kumbakōnam.

The necessary facts appear from the Judgment.

K. S. Krishnaswami Ayyangar (with *R. Rajagopala Ayyangar*) for the assessee.—Though, at the time of application for registration, the partnership deed was not literally in force, the partners continued to act only on its basis; hence the deed, which was then governing them and which was presented for registration, must have been registered; section 256 of the Indian Contract Act, section 27 of the English Partnership Act of 1890; Lindley on Partnership, 8th Edition, page 642. Under rule 2, the registration can be made at any time before the assessment is made. The assessment is on the income of the previous year. The deed was in force at least for the first five months of the previous year. Hence registration should not have been refused. It must have been effected at least for those five months.

M. Patanjali Sastri for *Referring Officer*.—A partnership under a deed comes to an end on the expiry of the period fixed by the deed; if the partners tacitly continue thereafter, that is a new partnership determinable at will, though some of the terms of the deed may be applicable even then; the continuance is not under the deed but is under the new oral or implied agreement; *Clarke* v. *Leach*(1), *Neilson* v. *Mossend Iron Co.*(2), and section 32 (*a*) of the English Partnership Act of 1890. According to rule (2) of Part I of

(1) (1863) 1 De. G.J. and S., 409; 46 E.R., 163.
(2) (1886) 11 A.C., 298, 303.

the Indian Income-tax Manual, page 42, the partnership must be constituted under a deed at the time of the application. Under rule 4 (1) it is the *deed* of partnership that is registered and not the oral agreement under which the partnership continues. A spent instrument cannot be registered. Registration enures only for a year though it can be renewed every year. According to rules 2 and 3 of Part I, page 42, Income-tax Manual, the firm must be a registered firm in the year of assessment and application for registration must be made only in the year of assessment. It is not sufficient if it was a registered firm in any previous year, such as the year of account.

The JUDGMENT of the Court was delivered by

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—This is a reference put up by the Commissioner of Income-tax under section 66 of the Act. The question on which our opinion is asked is, whether, in such circumstances as this case discloses, the assessees were entitled to be registered under rule 4 of the rules framed under the Act. I will briefly summarize the material circumstances of this case. The original partnership was entered into by deed on the 3rd of November 1917, the contracting parties being Venkatarama Ayyar and Sons of the one part and D. Krishnaswami Ayyangar of the other. The business they carried on was that of silk merchants and the term of the partnership deed was expressed to be for five years, so that it expired on the 3rd of November 1922. On the 31st of August 1923 a new partnership deed came into effect for a period of 3 years, so that it would expire on the 31st of August 1926. In fact the business was continued thereafter by the partners as before, for aught we know, down to this day. A return was called for by the Income-tax authorities for the year, April 1926—April 1927, for the purposes of assessment. That return was made, and besides the return on the 26th of July 1927 the assessees put in an application for registration of the firm. The Commissioner has refused

KRISHNA AIYAR AND SONS v. COMMISSIONER OF INCOME-TAX.

COUTTS TROTTER, C.J.

to register the partnership for the purposes of the Act and the question is whether he was right. I will now shortly refer to the two or three material sections and rules of the Income-tax Act. By section 2 (14)—

"A 'registered firm' means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered by the Income-tax officer in the prescribed manner"

and the manner is prescribed in the rules. The material rule is rule 2 which runs as follows :—

"Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause 14 of section 2 of the Indian Income-tax Act, register with the Income-tax officer particulars contained in the said instrument on applicationin this behalf made by the partners or any of them"

and then follows a form which sets out the particulars which are to be given. This form was filled in and the application was accompanied by a copy of the instrument of partnership of the 31st of August 1923. The Commissioner bases his refusal to register the particulars forwarded by the assessee firm on the ground that, when the application for registration was made, the instrument of partnership had ceased to be operative, that the partnership was at that date being carried on under what must be regarded as a new agreement which, being verbal, could not be said to be an instrument of partnership within the meaning of the rules. The contention of the assessees is that the true view of the position was that the business was, by verbal arrangement or tacit consent between the partners, being carried on under the original instrument of 31st August 1923, whose life had been prolonged and continued by the act of the parties. The dividing line no doubt is a very narrow one and language is used from time to time in the English authorities, which speaks of a contract to renew by implication and it is said that that enabled the

partnership, whose life had been continuous since the deed of 1923, to have it registered as the document governing their relations throughout. In one sense there clearly was no new partnership here, in the sense, that is, that there was no change in the personnel and that the trading carried on was continuous without break from August 1923. The real question we have to determine is whether in contemplation of law, the original contract was actually continued in existence, or whether the true view is that such of its terms as could be taken to govern the subsequent period could only do so on the footing that they were impliedly revived, in so far as they are applicable to the partnership at will, by the tacit verbal agreement which is to be regarded as arising from the continuance of the trade thereafter. We think that there are two decisions which conclude this question in favour of the Crown. The first is a decision of WESTBURY, L.C., in *Clark* v. *Leach*(1), and the Lord Chancellor says this:—

"Ordinarily a contract for a term constituted by a written agreement must be considered as having come to an end at the expiration of the period for which it was entered into; and the contract during the term differs from that which arises from the continuance of the relation by the mutual consensus of the parties after the term has expired. The one is to last for a certain term: the other only for so long a time as they both shall choose. Am I then by any principle of law bound to assume or justified in assuming that all the special articles and conditions in the original written deed of partnership for a term are at once transferred by law to this new contract, which has no particular limit to the term of its duration? That would be a strong and extravagant assumption, and one that is not warranted by any principle or authority."

That passage appears to me to make it clear that Lord WESTBURY considered the contractual nexus of the parties after the expiry of the deed to rest upon the new implied oral agreement, and that the articles of the deed

(1) (1863) 1 De. G. J. and S., 409.

KRISHNA AIYAR AND SONS v. COMMISSIONER OF INCOME-TAX.

COUTTS TROTTER, C.J.

which are to be considered as preserved, are preserved not by virtue of the original deed which had ceased to operate but of the new agreement. In the case of *Neilson* v. *Mossend Iron Co.*(1), Lord SELBORNE puts the matter thus:—

"There is no doubt about the law that, when there is a partnership for a term of years, and it is afterwards, after the expiration of the term, continued at will, the rule, in the absence of a contract to the contrary, is that it may be presumed that the new business is carried on upon the old terms as far as they are applicable to it, and only so far, and as far as the principle is concerned, I do not think there is any discrepancy between any of the authorities. It is not at all necessary to examine into the particular cases in which it has been held that a particular term of a written contract did or did not go into the new and unwritten contract, because every case has turned upon its own particular circumstances, and upon the question as applied to the words of the particular instrument, whether the old term was or was not applicable to the new contract."

Similar language is used by Lord WATSON who speaks specifically at page 308 of a distinction between the "old" contract and the "new". And the new contract is none the less a new contract, we must take it, because it, by implication, contains within itself certain terms of the old written contract, as it were, re-enacted. These pronouncements do not turn on any special provision of any statute but are based on the general principles of the law of partnership and we should endeavour respectfully to follow those high authorities. I think that there is nothing in the language of section 256 of the Indian Contract Act which in any way modifies the effect of these decisions. The result is that at the time that the assessees applied for registration there was no operative document to be registered.

Another contention is raised, and that is this: The year of assessment with which we are concerned is the year 1927-28 and it is said that as that will be a return

(1) (1886) 11 A.C., 298.

of trading profits for the year 1926–27 registration ought not to have been refused as four months of that trading year were before the expiration of the deed of the 31st of August 1923. We cannot accede to this contention. What we have to look to is the year of assessment; and had the application of the 21st of July 1927 been granted, it would still in our opinion only apply to the financial year 1927–28. On these grounds, we think that the Commissioner was right in rejecting the application for registration and that we must so answer the question submitted to us and order the assessee to pay the Government Rs. 250 as the cost of this reference.

My learned brothers have seen this Judgment and agree with it.

N.R.

APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, and Mr. Justice Srinivasa Ayyangar,*
(and afterwards)
before Mr. Justice Srinivasa Ayyangar and Mr. Justice Reilly.

TIRUVENGALAM AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

KODALI BUTCHAYYA (PLAINTIFF), RESPONDENT.*

1927, August 1.

Hindu Law—Authority to adopt given to two widows—Participation of both widows in adoption—Validity of adoption—Trusteeship of charity—Adopted son's right to trusteeship vested in adoptive father.

Where a Hindu died leaving two widows to both of whom he gave a joint authority to adopt, an adoption made by them jointly is not invalid, though the son adopted would in law be the son only of the senior widow who alone has the preferential

* Appeal No. 402 of 1923.