

PRIVY COUNCIL.

*Before Lord Dunedin, Lord Phillimore, Sir John Edge,
Mr. Ameer Ali and Sir Lawrence Jenkins.*

RAM SINGH (PLAINTIFF)—Appellant,

versus

RAM CHAND (DEFENDANT)—Respondent.

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Oct. 30.

Privy Council Appeal No. 29 of 1923.

(Chief Court Appeal No. 1654 of 1914).

*Partnership (at will)—Dissolution—Right to order for
Accounts—Falsification of Accounts and Fraud by Plaintiff.*

Where a partnership at will has been dissolved by notice a partner is entitled to an order for accounts although he is found to have destroyed part of the account books, made false entries in the accounts, and to have been guilty of other misconduct in relation to the firm's business. His right to a declaration that the partnership is dissolved and to an order for an account to be taken is a legal, not an equitable, right.

Decree of the Chief Court reversed.

*Appeal from decree of the Chief Court (Sir
Henry Rattigan, C. J. and Abdul Raof, J.), dated
19th May 1919, reversing a decree of the District
Judge of Delhi, dated 1st June 1914, and dismissing
the suit.*

The appellant sued the respondent for a declaration that a partnership at will between them was dissolved, and for accounts, and other relief. The respondent pleaded that it was a term of the partnership (which was verbal) that there should be no dissolution without his consent, he denied the alleged terms of the partnership, and further alleged specified acts of misconduct by the appellant in relation to the books of account, and the business of the partnership; he contended that the appellant was not entitled to any relief.

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The District Judge of Delhi who tried the suit found that no time had been fixed for the duration of the partnership, and that it had been duly determined by the plaintiff-appellant by notice. He further found that certain entries in the books of account were forgeries by the plaintiff and that other entries as to interest were wrong. He made a preliminary decree declaring the shares of the partners in the partnership and that the partnership was dissolved on February 11th, 1911; he also gave directions for taking accounts, one of these directions containing his finding abovementioned with regard to the false entries.

An appeal to the Chief Court, and cross-objections, were heard by the Chief Judge (Sir Henry Rattigan) and Abdul Raof, J. The learned judges found that the plaintiff had burnt the old account books relating to the period before 1897; that several entries in the accounts produced were interpolations and forgeries by the plaintiff, and that in consequence the account books were wholly worthless and unreliable; and that he had been guilty of other misconduct in relation to the firm's affairs. The learned judges were of opinion that having regard to the plaintiff's misconduct he was not entitled to come to the Court for the relief which he prayed. In support of that view they relied upon an unreported decision of the Chief Court of the Punjab (Second appeal No. 8 of 1902, decided on June 17th, 1909). The learned Judges accordingly made a decree dismissing the suit.

DUBE and BISHAN NARAIN, for the Appellant,
DE GRUYTHER K. C., and PARIKH, for the Respondent.

The judgment of their Lordships was delivered by:—

LORD DUNEDIN—This case is of the simplest nature. A gentleman who has a partnership at will

brings a suit for a declaration of dissolution. The learned Judge of the District Court before whom the case depends finds and it is declared "that this partnership shall be deemed to have been dissolved on 11th February 1911, the date of the notice of the plaintiff to the defendant," and then he makes a declaration in ordinary form as to accounts being taken, but he puts in one particular finding, No. 3. "An account of all dealings and transactions between plaintiff and defendant from December 1897 with the instructions that the debit of Rs. 7,559 against defendant and credit of Rs. 3,133 in plaintiff's favour are forgeries and are to be struck off, and all entries relating to interest payable to either party are wrong."

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Both parties appealed against that decree. On appeal, so far as the finding of fraud is concerned, the Chief Court are entirely in accordance with the learned Judge, and they say in their judgment:—"From the evidence on the record it is therefore clear that the plaintiff has been guilty of gross misconduct. He has destroyed the old account books, has falsely prepared a balance sheet, Exhibit P. W. 1, has made false entries in the books and has tried to deprive the firm of a valuable asset."

If they had stayed there all would have been well, but they go on to say this:—"Having done all this he has had the audacity of coming into Court with a prayer for an equitable relief."

But it is not an equitable relief, for which he is asking. When it is a partnership at will a partner is entitled to dissolution; it is a legal right, under the Contract Act and under the contract. Then the learned Judges quote a judgment of the Chief Court based upon a passage from "Lindley on Partnership" which deals with the circumstances in which a Court may

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order a dissolution of partnership during the term, which of course, has nothing to do with this case.

The appellant here has been forced to admit that he cannot ask for any alteration of paragraph 3 of the decree of the District Judge which has been read, and the respondent cannot support the judgment of the Chief Court, which says that there is to be no relief given ; but on the question of relief he practically says :—“ There is no room for an account here at all, because we have already seen that this gentleman has falsified all the account books, and there is nothing to account upon.” That is really trying to make this Board do what the Commissioner ought to do when the accounts are being taken.

In the circumstances it is quite clear that the appeal must be allowed with costs, and the decree of the District Court restored. With regard to the costs of the appeal to the Chief Court which were ordered to be paid by the present appellant, their Lordships think that having regard to what took place there, neither party should have any costs, and any costs paid under the Chief Court's order must be repaid. The future costs, which will be incurred on the further proceedings in the District Court will of course be in the discretion of that Court. Their Lordships will humbly advise His Majesty accordingly.

A. M. T.

Appeal allowed.

Solicitors for appellant : *Ranken Ford & Chester.*
Solicitors for respondent : *T. L. Wilson & Co.*