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the contents which say nothing about visits, medical treatment, clothing, bedding, nor the taking of such disciplinary action as may be necessary during the confinement of the prisoner.

I would, therefore, hold that neither this Court nor the Court of the Commission has any jurisdiction to go into the question of whether the Superintendent had or had not disregarded or observed the provisions of section 40 and that, presuming the order was improper, the prisoner's redress lay to the Superior executive authority.

I would, therefore, dismiss the application for revision.

ADDISON J. ADDISON J.—I agree.

N. F. E.

Revision dismissed.

APPELLATE CIVIL.

Before Tek Chand J.

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July 1.

HARBHAJAN SINGH-SOHAN SINGH
(PLAINTIFFS) Appellants

versus

SIRI GOPAL AND ANOTHER (DEFENDANTS)
Respondents.

Civil Appeal No. 2393 of 1928.

Indian Contract Act, IX of 1872, Section 264: Partnership Firm—implied agency of partners—whether still in force after firm has ceased to be a going concern.

In December 1925 one *A*, Defendant No. 2, purporting to act on behalf of the Firm *B A*, executed a Hundi for Rs. 1,200 in favour of Plaintiffs-Appellants who, in a suit for recovery of the amount due thereunder, impleaded *B* as well as *A* as defendants. The latter admitted the claim, but *B* denied liability on the ground that he had ceased to be a partner in the firm of *B A* in 1921 and that that firm was not a going concern at the time when the *Hundi* was executed by *A*. It

was found by the Lower Appellate Court as a fact that the Firm did dissolve on 28th February, 1921, on which date *B* retired from the business; that a large sum was then due to *B* which *A* promised to pay by instalments; and that *A* was meanwhile allowed to carry on the business for the purpose of winding up and to use the old name of the firm until he had paid the amount due to B. No notice of the dissolution of the firm was given, however, either by public advertisement or to the old customers by name. *A* continued to work in the firm's old name for some years—but long *before* the *Hundi* was executed he had ceased to transact business in the name of *B A*.

Held, that had the firm been a going concern at the time of the execution of the *Hundi*, the mere fact that *B* had retired from it some years before would not have absolved him from liability unless plaintiff had notice of the dissolution.

Jawaladutt Pillani v. *Bansilal Motilal* (1), followed, *Pramatha Chandra Kar* v. *Bhagwandas Madanlal* (2), referred to.

But, as this was the case of a *quondam* partner of a defunct firm (which had long ceased to do any business) raising a new loan, wrongly describing himself as a representative of that firm, there was no presumption of implied agency such as is applicable to the case of a going concern, and *B* was therefore not liable on the Hundi.

Bata Mall and others v. *Ruldu and another* (3), *Premji Ludha* v. *Dossa Doongersey* (4), *Ganda Singh* v. *Bhag Singh-Bhagwan Singh* (5), and *Hashmat Ali* v. *Lachhmi Narain* (6), relied on.

Second appeal from the decree of Lala *Devi Dayal Dhawan, Additional District Judge, Amritsar, dated the 6th July, 1928, affirming that of* Sheikh *Abdul Rahman, Subordinate Judge, 3rd Class, Amritsar, dated the 19th May, 1927, decreeing the suit against Lachhman Das, defendant, only.*

(1) (1929) I. L. R. 53 Bom. 414 (P.C.).
(2) (1931) 35 Cal. W. N. 705.
(3) 40 P. R. 1889.
(4) (1886) I. L. R. 10 Bom. 368.
(5) (1926) I. L. R. 7 Lah. 403.
(6) 75 P. R. 1908.

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HARBHAJAN SINGH-SOHAN SINGH *v.* SIRI GOPAL.

TEK CHAND J.

JAGAN NATH AGGARWAL and NIHAL SINGH, for Appellant.

KISHAN DAYAL and BHAWANI SINGH PURI, for Respondents.

TEK CHAND J.—On the 21st of December 1925, Lachhman Das, defendant No. 2, purporting to act on behalf of firm Siri Gopal-Lachhman Das, executed a *hundi* for Rs. 1,200 in favour of the plaintiff-appellant. The *hundi* was not honoured on the due date and the plaintiff brought a suit for recovery of the amount due against Siri Gopal and Lachhman Das.

Lachhman Das admitted the claim, but Siri Gopal denied liability on the ground that he had ceased to be partner in the firm Siri Gopal-Lachhman Das in 1921 and that the aforesaid firm was not a going concern at the time when the *hundi* in dispute was executed by Lachhman Das. The Lower Appellate Court has passed a decree against Lachhman Das, but has dismissed the suit against Siri Gopal. The Plaintiff has preferred a second appeal praying that Siri Gopal also be made liable.

It may be stated at the outset that in the plaint it was alleged that the plaintiff was an old dealer with the firm and that the *hundi* had been executed in part payment of the amount due by the firm Siri Gopal-Lachhman Das to the plaintiff in lieu of debts due before Siri Gopal's separation. The plaintiff, however, did not go into the witness-box, to prove this allegation, nor did he produce his account-books. On a consideration of the evidence the learned District Judge has found the allegation unproved. It must, therefore, be taken as settled for the purposes of this appeal that consideration of the *hundi* was not the amount due to the plaintiff on account of pre-dissolution debts.

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The learned District Judge has also found that Siri Gopal was a " dormant " partner in the firm and in judging of his liability has largely relied on a judgment of the Chief Court reported as *Hashmat Ali* v. *Lachmi Narain* (1). But the findings of fact arrived at by the learned District Judge and the other admitted facts on the record do not support this conclusion. Siri Gopal had lent his name to the firm when it was in existence and had otherwise taken an active part in its affairs. His status, therefore, can by no means be held to be analogous to that of a dormant or undisclosed partner.

This, however, does not settle the matter. The other findings of fact arrived at by the learned District Judge are that the firm continued to work till the 28th of February 1921 when it was dissolved. On that date Siri Gopal retired from the business. A large sum was found due by Lachhman Das to Siri Gopal and he undertook to pay it in instalments. In the meantime Lachhman Das was allowed to carry on the business for the purpose of winding up and to use the old name of the firm " Siri Gopal-Lachhman Das " until he had paid the aforesaid amount to Siri Gopal. Admittedly no notice of this dissolution was given either by public advertisement or to the old customers by name. In accordance with the arrangement set out above Lachhman Das worked in the firm's old name for some years after the dissolution in 1921, Siri Gopal taking no part whatever in it. It has, however, been found that long before the *hundi* in question was executed Lachhman Das had ceased to transact business in the name of Siri Gopal-Lachhman Das and that in the same premises a new firm, known as Lekh Raj-

(1) 75 P. R. 1908.

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Gurdit Chand in which Lachhman Das was interested, had been started and was working in November, 1925. The learned District Judge has recorded a very definite finding that the firm Siri Gopal-Lachhman Das was not a going concern on the date on which Lachhman Dass passed the *hundi* in favour of the plaintiff.

The question for determination is whether on these facts Siri Gopal can be held liable on the *hundi* which Lachhman Das purported to execute on behalf of the defunct firm "Siri Gopal-Lachhman Das" long after Siri Gopal had retired therefrom and the firm had ceased to be a trading concern.

For the appellant reliance is placed on section 264 of the Contract Act which lays down that persons dealing with a firm are not affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution. Now, there can be no doubt that if the business of the firm had been continued by Lachhman Das in the name of the old firm and the firm had been a going concern at the time of the execution of the *hundi*, the mere fact that Siri Gopal had retired from it some years before, would not have absolved him from liability unless the plaintiff had notice of the dissolution. See in this connection the recent pronouncement of the Privy Council in *Jwaladuttt Pillani* v. *Bansilal-Motilal* (1). Indeed, recent decisions in India have gone the length of adopting the rule of English law that in the case of dissolution of partnerships, of which no notice has been given, the liability of an expartner to an old customer for post-dissolution transactions with the supposed old firm does not depend on the customer knowing that such partner was a partner prior to the

(1) (1929) I. L. R. 53 Bom. 414 (P.C.).

dissolution, *Pramatha Chandra Kar* v. *Bhagwandas-Madanlal* (1).

The position in the present case is, however, materially different. As stated already the finding of the learned District Judge is that at the time when the *hundi* in dispute was executed, the firm Siri Gopal-Lachhman Das had ceased to be a going concern and that no business whatever was being done in its name. The case, therefore, is not one of a firm, from which one partner had retired and the other was carrying on the business in the name of the firm and while doing so he borrowed in the firm's name. Here we have the quondam partner of a defunct firm, which had long since ceased to do any business, raising a new loan wrongly describing himself as a representative of that firm. In my opinion, in such a case the presumption of implied agency, which is applicable to the case of a going concern, does not arise. The case is analogous to *Butamal* v. *Ruldu* (2), in which it was held that if at the time of the transaction in dispute the business was not a going concern, the balance struck by one of the partners, or a loan raised by him did not bind the other partners, for in such circumstances it could not be said that the executant was acting as the duly authorised agent of the firm. Similarly in *Premji Ludha* v. *Dossa Doongersey* (3) Scott J. observed that if at the time of the transaction in dispute the firm had been a going concern the plaintiff's authority to make such an acknowledgment on behalf of the firm might have been presumed, but if the business had been closed at the time and no firm of that name was in existence at all, no such presumption arises and any

(1) (1931) 35 Cal. W. N. 705. (2) 40 P. R. 1889
(3) (1886) I. L. R. 10 Bom. 368.

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acknowledgement made, or debt raised, by one of the quondam partners does not bind the other. See also to the same effect *Ganda Singh* v. *Bhag Singh-Bhagwan Singh* (1).

The result, therefore, is that on the findings of fact arrived at by the learned District Judge, Siri Gopal is not liable on the *hundi*.

The appeal fails and is dismissed. As the learned District Judge was not quite correct in some of the propositions of law which he had laid down, I leave the parties to bear their own costs in this Court.

N. F. E.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Abdul Qadir and Monroe JJ.

1932

July 19.

RASHID AHMAD AND ANOTHER (ACCUSED) Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1503 of 1931.

Criminal Procedure Code, Act V of 1898, sections 156, 202: Cognisable offence — Complaint to Magistrate — who ordered police enquiry—Police instead of submitting a report, challaning the accused—whether competent to do so.

A private complaint under section 420, Indian Penal Code, was sent to the Police by the Magistrate under section 202 of the Criminal Procedure Code, for investigation and report, in the following terms:—"The offence is a cognizance one; hence let this complaint be sent to the Inspector, Police in charge of the Kotwali, Delhi, for making investigation." The complaint was entered by the Police in the register and was placed before the Magistrate with a complete *chalan* under which the Magistrate proceeded to try the case and, after

(1) (1926) I. L. R. 7 Lah. 403.