

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bunarsee Does v. Gholam Hossein and Mulidun Mohun and Lalla Bholanath, admitted as Respondent under order of 29th February, 1868, from the late Sudder Dewanny Adawlut, at Agra, North-Western Provinces, Bengal; delivered 22nd February, 1870.

Present:—

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS is an appeal from a decree of the late Sudder Dewanny Adawlut, at Agra, which confirmed the decree of the Principal Sudder Ameen of the City of Cawnpore. The decree was in favour of Hossein and Mohun, who were Plaintiffs in court below; Palmer and Rampershad were Defendants. Bholanath has since purchased the interest of Hossein and Mohun, and is in fact the only Respondent, the representative of Rampershad, is the only Appellant.

Rampershad entered into partnership with Palmer on the 8th of June, 1861. Palmer, at that time, carried on business at Allahabad, Cawnpore, and other places; and on the 6th of October, 1860, had entered into a contract with a Railway Company to supply them with a certain number of sleepers, and, in order to fulfil his obligation, entered into a subsidiary contract with the Respondents Hossein and Mohun for the purchase of a certain number of sleepers. This contract was in fact only an oral one; the delivery of the sleepers began on the 15th of January, 1861, and continued till the 14th of July. A considerable num-

ber were delivered after the 8th of June, which was the date of the partnership between Palmer and Rampershad.

In December, 1861, Hossein and Mohun applied to Palmer for payment of their account. Palmer thereupon gave them five Hoondees, or drafts, one for 10,000 rupees, and four for 2500 each—20,000 in the whole, in part payment of their account. The drafts were dated, "Cawnpore, the 31st of December, 1861," and drawn by "Palmer and Co." upon "Palmer and Co. at Calcutta." These bills were all dishonoured and protested; but, subsequently, it appears that the Respondents received 10,000 rupees on account. There was a further sum of 24,000 rupees due to the Respondents, the value of articles purchased from them by Palmer, while in partnership with Rampershad, in the course of business.

The total amount of the debt, therefore, from Palmer and Co. to Hossein and Mohun was 34,000: 4: 3. For this amount they brought their suit, on the hoondees and on a general statement of account, against both Palmer and Rampershad, and also against Ram Putt and Kalloo Mull (to whom, after the bills had been dishonoured, the Respondents had been referred for payment), in the Court of the Principal Sudder Ameen of Cawnpore, and obtained a decree in their favour; from which an appeal was presented, by Rampershad alone, to the Sudder Dewanny Adawlut at Agra, which confirmed the sentence of the Sudder Ameen.

From these sentences the representative of Rampershad and guardian of his minor son has appealed to this tribunal. The principal grounds upon which this Appeal is founded are derived from the terms of the agreement between Palmer and Rampershad; that agreement was as follows:—

DEED OF AGREEMENT EXECUTED BY MR. PALMER,
dated 8th June, 1861.

"We, Thomas George Adam Palmer, residing
"in the house situated in Mouzah Nubee Bagh,
"Pergunnah Chayal, and Roy Rampershad, banker,
"guardian of Damodur Dass, minor, his son, resi-
"dent of Daragunj, one of the quarters of the City
"of Allahabad, Pergunnah Chayal, Zillah Alla-
"habad, having agreed between ourselves to enter

"into equal partnership, for the purpose of carry-
 "ing on a certain trade, we do accordingly record
 "the conditions of that engagement, and testify to
 "its truth and veracity. 1st. This business shall
 "proceed under the style and title of Palmer and
 "Company. 2nd. A sum, not exceeding one lakh
 "of Rs., shall be embarked on behalf of Damodur
 "Dass, minor, Roy Rampershad's son, in this busi-
 "ness, and Damodur Dass shall remain owner of
 "this money with its interest, at the rate of 12
 "per cent. per annum out of the profits, interest
 "at the above rate due to the minor aforesaid
 "being carried to account of the business afore-
 "said, shall be paid to Damodur Dass at broken
 "rates. The interest on the money embarked by
 "Mr. Palmer in this business shall also be paid
 "to him at broken rates, and of the remainder of
 "the profits, Damodur Dass and I, Mr. Palmer,
 "shall be owners in equal shares. 3rd. I, Mr.
 "Palmer, shall draw the sum of Rs. 1,000 out
 "of the profits monthly, as remuneration for my
 "services, and after payment of this and other ex-
 "penses, we shall have equal shares in the profits.
 "4th. I, Mr. Palmer, shall not undertake any
 "contracts, etc., for any amount in this business
 "without the consent and signature of Roy Ram-
 "pershad, and all sums paid as expenses for the
 "management of this business, shall be paid with
 "the consent of Roy Rampershad. If any matter
 "should be undertaken without such consent, it
 "shall be considered distinct from this business.
 "5th. All the money in this business, and the ac-
 "counts, shall be kept by the Treasurer, selected
 "and recommended by Roy Rampershad, and Roy
 "Rampershad shall be responsible for his honesty.
 "6th. This business shall be carried on for the
 "space of two years and a half, and if, at the end
 "of this period, I, Rampershad, should for any
 "special reason desire to close the business, six
 "months previous notice of closing the business
 "shall be given to Mr. Palmer. At the time of
 "closing, Damodur Dass, minor, shall realize the
 "whole amount that may be due to him, with in-
 "terest at one per cent. from the goods and
 "property then pertaining to the business. And,
 "if, after payment of the amount aforesaid with
 "interest, there is any balance left or profits, we,

"the parties to this agreement, shall, without ob-
 "jection, divide equally between us. If any defi-
 "ciency should be found to exist, the loss shall be
 "borne by us in equal proportions. 7th. What-
 "ever profits in this business may be realized on
 "my, Mr. Palmer's, share from year to year, shall
 "be yearly carried to account of a separate debt
 "jointly due to Roy Rampershad and Ram Rikh by
 "me, Mr. Palmer. 8th. Whatever servants I, Mr.
 "Palmer, may employ for the management of busi-
 "ness, and whatever necessary expenditure I may
 "incur, I shall employ and incur after consulting
 "Roy Rampershad. The salaries and expenditures
 "shall be discharged from the profits of this
 "business. Accordingly this Deed of Agreement
 "is drawn up that it may be used when occasion
 "requires.

"Given this day, the 8th June, 1861,

"(Signed) PALMER AND Co."

It has been contended that the particular terms
 of this agreement show that it was of a limited
 nature, that it had reference only to future con-
 tracts and transactions which were authorized by
 the express consent and signature of Rampershad,
 and, therefore, had no reference to the previous
 contract of Palmer with Respondents for the pur-
 chase of the sleepers, and that there was no privity
 of contract between the Respondents and Ram-
 pershad with respect to purchase of the sleepers.

The proposition of law applicable to these facts
 is well known and indisputable. Every one of the
 partners in a mercantile firm of ordinary trading
 partnership is liable upon a bill drawn by a partner
 in the recognized trading name of the firm, for a
 transaction incident to the business of the firm,
 although his name do not appear upon the face of
 the instrument, although he be a sleeping and secret
 partner.

In order to take a case out of these principles of
 the general law, it must be shown that the holder of
 the bill knew at the time he received it that the
 transaction was the private affair of a single partner.

Their Lordships are unable to see that the facts
 of the present case are such as to bring it within
 this exception. The evidence does not establish

that the Respondents were cognizant of the limitations in the partnership agreement between Rampershad and Palmer; the contract for the delivery of the sleepers is not shown to have been one contract, but from day to day separate consignments of sleepers were passed to the firm of Palmer and Co. The consignments continued to be delivered in the same form after the date of the partnership, a condition of which was that the business should proceed under the style and title of "Palmer and Co." The money advanced by Rampershad, more than 92,000 Rupees, went, with Rampershad's knowledge, into this very transaction, and was consequently brought within the scope of the agreement.

What the "certain trade" was, which is mentioned in the agreement, does not appear, but Rampershad has himself been examined as a witness, and he has not explained what "the certain trade" was, but has advanced his money for the purpose of this business, has made no complaint of misappropriation of the funds, and has not endeavoured to satisfy the Court that it had been diverted to any purpose not contemplated by him. The hoendees were drawn in the ordinary name of the firm. Moreover, the Courts below gave credit to the witnesses who deposed to the fact that the Gomashita for Rampershad was present at Mooradabad, and that the sleepers were purchased and dispatched in his presence and under his instructions; and their Lordships see no reason to dissent from this view, though it is not necessary for their Lordship's judgment to place reliance on this evidence.

Their Lordships will humbly advise Her Majesty to dismiss this Appeal with costs.

