

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Singleton,  
Dunn, and Company v. Knight and Others, from  
the Court of Queen's Bench for Lower Canada,  
Province of Quebec ; delivered July 31st, 1888.*

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Present :

THE EARL OF SELBORNE.

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

MR. S. WOULFE FLANAGAN.

[*Delivered by Sir Barnes Peacock.*]

THIS is an Appeal from a judgement of the Court of Queen's Bench for the Province of Quebec, Appeal side, affirming a judgement of the Superior Court by which the action of the Plaintiffs, the now Appellants, was dismissed with costs. There are therefore two concurrent judgements upon the question at issue between the parties.

The suit was brought in September 1882, and the Plaintiff's charge was: "That in and since  
" the year 1869 the Defendants Alfred Frederick  
" Augustus Knight, George Josiah Cook, and  
" John Larkin Cook, and the late James William  
" Cook, in his lifetime, the said Messrs. Cook  
" trading under the name, style, and firm of Cook  
" and Brothers, carried on business at Quebec as  
" timber merchants, in copartnership, under the  
" name, style, and firm of A. F. A. Knight." The Declaration also stated that James William Cook had died, and that certain persons were by his will appointed as his executrix and executors, and then it proceeded to state "That the  
" said executrix and executors took possession

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“ of the said estate under the said will, and after  
“ the death of the said James William Cook, the  
“ said business and copartnership of the said  
“ Alfred Frederick Augustus Knight, George  
“ Josiah Cook, John Larkin Cook, and James  
“ William Cook, trading under the name and  
“ firm of A. F. A. Knight, was continued and  
“ carried on with the legal representatives of the  
“ said James William Cook until the year 1877.”

So that the charge was that the partnership between Knight, James William Cook, George Josiah Cook, and John Larkin Cook was also continued with the addition of the executors of James William Cook in his place, and that they were also partners. Then it stated that “the  
“ said Defendants Alfred Frederick Augustus  
“ Knight, George Josiah Cook, and John Larkin  
“ Cook were, together with the legal repre-  
“ sentatives of the late James William Cook,”  
indebted to the Plaintiffs in certain sums of money.

The ground upon which it was contended that George Josiah Cook, and John Larkin Cook had become liable as partners with Knight was that James William Cook, who was a partner with George Josiah Cook, and John Larkin Cook, in the year 1869 lent to Knight a sum of 100,000 dollars for the term of five years, upon condition that Knight was to pay 6 per cent. interest for the money advanced, and also that the firm of Cook and Brothers should receive one half of the profits of Knight's business. The contract itself was not produced, but evidence was given by George Josiah Cook and other witnesses, from which it may be assumed for the present purpose that a contract was proved to have been entered into by James William Cook to the effect already stated.

Both the Courts dismissed the Plaintiff's claim upon the ground that, even assuming the alleged contract to have been executed by James William

Cook—George Josiah Cook and John Larkin Cook were not bound by it, as one partner in a business has no authority from the other partners to enter into a partnership with other persons in another business. It was contended that George Josiah Cook had ratified the agreement, and that he, if not John Larkin Cook, had become liable as a partner. The Courts found that George Josiah Cook had not ratified the agreement; and that even if he had ratified it, it did not bind him to a partnership such as that which was alleged in the Declaration, or such as would make George Josiah Cook liable as a partner with Knight and James William Cook. If George Josiah Cook ratified the agreement it was only an agreement by which James William Cook, George Josiah Cook, and John Larkin Cook were jointly to participate in the profits of Knight; they were not by reason of that agreement jointly liable, because one of them, John Larkin Cook, at all events, had never ratified or entered into the agreement, or ever authorised James William Cook to enter into it on his behalf.

It is contended now that even though John Larkin Cook was not liable, a decree may be given against George Josiah Cook, because he had ratified the agreement. There is no sufficient evidence, in their Lordships' opinion, to show that George Josiah Cook ever did ratify the agreement. One of the sections of the Civil Code of Lower Canada was cited, No. 1831, to show that participation in profits creates an obligation to participate in losses. The section is:—"Participation in the profits of a partnership  
 " carries with it an obligation to contribute to  
 " the losses. Any agreement by which one of  
 " the partners is excluded from participation in  
 " the profits is null. An agreement by which  
 " one partner is exempt from liability for the  
 " losses of the partnership is null only as to

“ third persons.” In the present case there was no participation in the profits ; no one of the partners of Cook and Company received any portion of the profits of Knight’s business, and Knight never treated Cook and Company as partners nor ever rendered them an account of the profits. He rendered merely an account of the loan and of the 6 per cent. interest.

But the Code of Lower Canada does not stop at section 1831. It proceeds to point out in chapter 2 what are the obligations and rights of partners among themselves, and shows what even if they had received the profits, would have been the rights and obligations of the Cooks as between them and Knight? Chapter 3 speaks of the obligation of partners towards third persons ; and section 1855 proceeds :—“ A stipulation “ that the obligation is contracted for the partnership binds only the partner contracting, “ when he acts without the authority express or “ implied of his copartners ; unless the partnership is benefited by his act, in which case all “ the partners are bound.” Now what benefit did Cook and Company derive by the act of James William Cook ? They derived no benefit so far as profits were concerned, because, as already stated, they received no profits. Knight did not consider that he was a partner with them by reason of the contract which he had entered into with James William Cook, and which had not been authorised or ratified by either of his other partners. It is said that George Josiah Cook read the contract, about 1873 or 1874, and that he did not give notice to Knight or to anybody else that he did not consent to the arrangement which James William Cook had entered into. But to whom was he to give notice ? Knight had never stated that he considered the contract binding on him. John Larkin Cook had never become bound. Why then should George Josiah Cook

give notice to Knight in 1874 that he did not consider himself bound as a partner by the agreement which his brother James William Cook had entered into in 1869, when Knight had never rendered an account of profits or ever shown that he treated him as a partner. There was no necessity for George Josiah Cook to give such notice, even if he read in 1874 the agreement that was entered into in 1869.

Further, it was said that by a letter which Cook and Company wrote in 1876, they acknowledged their liability. Now that letter, which is set out at page 80 of the Record, was not an acknowledgment of their liability; on the contrary, they were proceeding to enter into a contract, binding themselves, not for their own debt, but for the debt of Knight. They say:—"With reference to the amount due to you by Mr. A. F. A. Knight, we will see it settled on the following conditions, &c." They do not say, "With reference to the debt which we owe to you as partners with Knight, we will settle it." Dunn and Company never said, "You are liable yourselves; you are now proposing to guarantee Mr. Knight's debt, but it is your own debt, you are partners with Knight." There was nothing of that sort; they assented to the fact that it was Mr. Knight's debt, and not the debt of A. F. A. Knight including the Cooks.

Their Lordships therefore are of opinion that the lower Courts came to a right conclusion in holding that there was no partnership, and that neither George Josiah Cook, nor John Larkin Cook were liable in the action, and they will humbly advise Her Majesty that the decision of the Court of Queen's Bench be affirmed, and that the Appeal be dismissed. The Appellants must pay the costs of this Appeal.

