IN THE HIGH COURT OF AUSTRALIA

HUPPERT

V.

KIPEN

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on THURSDAY 28TH OCTOBER 1965

A. C. Brooks, Government Printer, Melbourne
C.7639/60

HUPPERT

v.

KIPEN

ORDER

Appeal dismissed with costs.

HUPPERT

v.

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JUDGMENT
(ORAL)

BARWICK C.J.

HUPPERT

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This is an appeal against an order of the Supreme Court of Victoria decreeing dissolution of a partnership between the appellant and the respondent. The ground upon which the order was made was that it was just and equitable to dissolve the partnership substantially because the parties had ceased to have mutual confidence and to be willing to co-operate with each other in the partnership venture.

His Honour the learned trial judge thought that what he regarded as an intolerable position in the partnership affairs, which existed at the date of the hearing, had been brought about by a large number of factors, including the conduct and the temperament of each of the parties. He held, however, that such contribution to the position as had been made by the fault of the defendant, did not disentitle him to the order for dissolution of the partnership.

The case appears to have been keenly fought before the Supreme Court and his Honour's full and careful reasons for judgment set out the material facts and circumstances.

The appellant complains that some findings of fact by the trial judge are not supported by evidence; some, though evidenced, ought to have been made in an opposite sense; and that, in exercising his discretion to decree dissolution, his Honour gave too much weight to some facts, too little to others and took into consideration a number of matters that the appellant claimed were irrelevant to the matter in hand.

The appeal therefore is one which concerns findings of fact made upon oral and documentary evidence and the exercise of a judicial discretion.

We have had a meticulous examination of the evidence in relation to all the matters of fact in respect to which the appellant challenges, or desires to qualify, the findings of the Supreme Court.

We have also had considerable argument addressed to us in support of the various criticisms which the appellant makes of the learned trial judge's reasons for making the order under appeal.

Having heard counsel's analysis of the facts, and of the basis of the exercise of the Supreme Court's discretion, I feel myself in a position to deal with the appeal immediately.

The matter, in my view, calls for no elaborate discussion on my part. It is sufficient for me to say that at the end of the appellant's counsel's address no doubt had been created in my mind as to the propriety of any of the judge's findings of fact which would warrant an order for dissolution of the partnership, or as to the propriety of the exercise of his Honour's discretion to make such an order in the circumstances. Indeed, examination of the material in the case leads me to the conclusion that his Honour was right in the conclusions, as to the material facts, to which he came, and in the exercise of his discretion in making an order for dissolution of the partnership.

I would be content to adopt the substance of his Honour's reasons for making that order, and I would dismiss this appeal.

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JUDGMENT
(ORAL)

KITTO J.

I am of the same opinion. If mere debating points and discussions of peripheral minutiae be put on one side, nothing remains of the lengthy argument addressed to us on behalf of the appellant save contentions that the trial judge was influenced by considerations said to be irrelevant, invitations to differ from him on questions of fact, and suggestions that matters which he considered he did not consider enough.

The contention that consideration of irrelevant matters vitiated the decision can be dismissed as reflecting in part a failure to understand the reasons for judgment, and for the rest an unduly narrow conception of the function of the court in considering an application to dissolve the partnership.

As regards the attacks made upon the trial judge's conclusions of fact, it is enough to say that so far as they depended upon evidence there was ample to support them, and so far as they depended upon observation of the parties, it is hopeless to ask a Court of Appeal to review them.

The suggestion that his Honour did not give enough weight to some matters, even though he actually adverted to the more important of them in his judgment, never rose above the level of repetitive assertion and is completely unsupportable.

A reading of the correspondence and of the many portions of the evidence to which we have been referred merely confirms the strong impression conveyed by the judgment that the circumstances of the case, considered as a whole, cry aloud for a dissolution of the partnership, and a dissolution on the application of the defendant.

There is, in my opinion, no reason to doubt that the decision appealed from was entirely correct.

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JUDGMENT
(ORAL)

MENZIES J.

I agree. After a long and careful hearing, Adam J. found that the proper conduct of the partnership business by the defendant, in agreement with the plaintiff, had become impossible because mutual confidence had been irretrievably destroyed.

His Honour also found that, although both parties had been at fault, the defendant's conduct had not been such as to disqualify him from obtaining an order for the dissolution of the partnership on the ground that circumstances had arisen rendering it just and equitable to dissolve the partnership.

Before us, the factual basis for his Honour's decision has been attacked upon a number of grounds, many of which, whether looked at separately or together, were trivial and may be disregarded.

The real point of the case is that the dissolution of the partnership would be to the great disadvantage of the plaintiff and to the great advantage of the defendant, because the defendant is likely to succeed to a valuable business without the necessity for paying anything, or anything adequate, for its goodwill. His Honour, however, clearly enough took this important aspect of the case into account.

The only other matter to which I want to refer is the contention that his Honour paid attention to immaterial matters and failed to pay attention to material matters to the substantial disadvantage of the plaintiff.

It seems to me, however, that what his Honour said about the making of the partnership agreement and its terms, and the large return which the plaintiff was receiving for a small outlay of capital and effort was directed in the main to two

matters: firstly, to show that the circumstances were such that it was unlikely that the defendant would overlook the legitimate grievances which he had because of the plaintiff's conduct, such as putting forward a false agreement for signature, obstructing the defendant from the acquisition of a half interest in the plaintiff's property upon which the business was being carried on, and impeding the making of necessary and long-overdue repairs to that property. Secondly, as circumstances directly relating to whether the inequality of the consequence of dissolution should be decisive in the plaintiff's favour.

These, I believe, were matters that were relevant. Furthermore, it is not for the Court to fetter the wide discretion accorded to it by s. 39(f) of the Partnership Act, and it seems to me it was not necessary to exclude from consideration changes which have taken place in the size and profitability of the partnership business.

Coming to his Honour's apportionment of blame between the parties, it is apparent that this was made in the light of the impression which each party made upon him at the trial. His estimate of the temperament of the two men was clearly enough an important consideration in judging between them with regard to particular issues.

My conclusion is not merely that the learned judge has not been shown to be wrong; upon the whole of the case I agree with his conclusion that circumstances had arisen rendering it just and equitable that the partnership should be dissolved.

In my opinion the appeal should be dismissed.