

J. W. and C. R. HOUSTON, Active Partners of the firm of Houston Brothers & Company, Appellants, vs. **FISCHER** and **LEMCKE**, Dormant Partners of the firm of Houston Brothers & Company, Appellees.

[January Term, A. D. 1904.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Dissolution of Partnership.

Pleadings—Bill of equity—Evidence.

In order that a decree may be properly found, the allegations in a bill of equity must be supported by sufficient evidence.

This case has had the greatest attention of this court, because of the intense feeling attending it from its commencement to the present moment, not only by those interested in its eventuation, but also by others. It is brought before this court upon an appeal taken under the statutes, against a decree of the Court of Quarter Sessions and Common Pleas, Montserrado County, December 31st , 1903, sitting in equity to hear and determine a bill or petition filed in equity by Fischer & Lemcke, dormant partners of the firm of Houston Brothers & Company, said bill praying a dissolution of the partnership of said firm,-

1st, Because J. W. & C. R. Houston did, in violation of the articles of agreement upon which the partnership was formed, ship produce to Europe other than to the house of Fischer & Lemcke, partners as aforesaid of appellants.

2d, Because J. W. & C. R. Houston were indebted to them, Fischer & Lemcke, for a sum of over twenty-six thousand pounds. (Pounds sterling are here understood by the court.)

The transcript of the record filed in this case supports the fact that the court, after hearing arguments pro and con, made the following decree: That the partnership be provisionally dissolved and the business placed in the hands of receivers. This decree, in the opinion of this court, was a final decree and answered all that portion of the bill that a court of equity in upholding the petition, could grant, hence from it an appeal would lie. The appellants, being dissatisfied with the proceedings and decree,

appealed to this court in order that the doings of said equity court might be reviewed.

Now in order that justice may be done in the premises and the rights of the litigants duly protected, this court felt bound to thoroughly inform itself of the articles of agreement upon which the partnership was formed. By a careful investigation of said articles we find the following facts:

1. That on the 15th day of August, A. D. 1898, the appellants, J. W. & C. R. Houston of Monrovia, entered into a mercantile partnership with Messrs. Fischer & Lemcke of Germany, for mutual gain in proportions therein agreed to.

2. It was stipulated between the parties that the partnership should continue for five years, with the proviso that "should any of the members of the partnership wish to withdraw from the firm he should give other partners six months' notice." We find further that on the 19th day of March, A. D. 1902, by consent of all the parties, these articles of agreement were amended so as to read, "that in case of a desire on the part of Messrs. Fischer & Lemcke to withdraw from the firm during the lifetime of J. W. Houston and his brother, they would turn over the business to the Houston Brothers and allow them reasonable time to pay them off."

Neither courts of law or equity make contracts for partners, but are authorized to interpret and give them effect from the intention of the parties making them. Having set this case in clear sunshine by removing from its surroundings all cloud and appendages, we now proceed to notice the principles of law applicable to partnerships.

"Where two or more persons combine their property, labor or skill for the transaction of business for their mutual gain, a partnership is created and is binding upon them. If the agreement does not contain a specified time for the continuation of such partnership, it may be dissolved at the pleasure of either partner, but if there be such a provision it should be regarded binding. However, against fraud and such like misconduct, and against unfair dealings, a court of equity may interfere and grant such relief as the nature of the case requires." The rule is generally laid down that an action between partners cannot be sustained in a court of law, but, "what a court of law cannot do, however, in this respect, a court of equity can ; and, generally, equity has a full jurisdiction over all disputes and claims between partners, and may do whatever is necessary to settle them in conformity with justice." But although equity courts are clothed with extensive powers, yet they are bound by rules and practice, etc., in the exercise of their authority. A fundamental rule of pleadings and practice is

that evidence must support the allegations or averments in both law and equity proceedings. This court says that in pleadings, allegations are intended only to set forth in a clear and logical manner the points constituting the offence complained of, and if not supported by evidence can in no case amount to proof. Evidence alone enables the court to pronounce with certainty concerning the matter in dispute.

After the most careful examination of this case we find no evidence, not the slightest, to support the allegations set forth in the bill of equity of the appellees. This court therefore adjudges, (1) that the court below erred in its decree that the partnership be provisionally dissolved and the business placed in the hands of receivers ; (2) that the court below did further err when it refused to dismiss the petition or bill in equity filed in this case, for the reason that it was indistinct and uncertain. The bill being bad in part, should have been by said equity court adjudged bad as to the whole, and therefore dismissed.

Therefore the decree made in this case by the court below is hereby reversed and made void and of no effect, and the appellees shall pay all legal costs of the appeal. And the clerk of this court is hereby directed to issue a mandate to the court below as to this judgment; also directing him to immediately place the partners as they were before said decree.