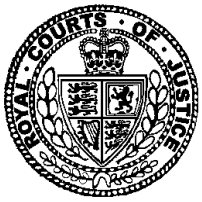

Neutral Citation Number: [2024] EWCA Civ 324

Case No: CA-2023-001997

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTCE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST (ChD)
His Honour Judge Davis-White KC (sitting as a Judge of the High Court)
[2022] EWHC 1202 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 April 2024

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE NUGEE
and
LADY JUSTICE FALK

- -

Between :

SUZANNE ELAINE PROCTER	**Claimant / Respondent**
- and -	
(1) PHILIP JOHN PROCTER **(2) JAMES GEOFFREY PROCTER**	**Defendants/ Appellants**
(3) GEORGE KNOWLES **(4) WOMBLE BOND DICKINSON (TRUST CORPORATION) LTD** **(formerly Bond Dickinson (Trust Corporation) Ltd)** **(5) WIDE OPEN FINANCE LTD**	**Defendants/ Respondents**

- -
- -

Edward Peters KC (instructed by **Ebery Williams Solicitors**) for the **Appellants**
Bruce Walker (instructed by **Grays Solicitors LLP**) for the **1st Respondent**

Hearing date: 14 March 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Nugee:

Introduction

1. This appeal from the High Court raises a question of partnership law which can be summarised as follows. A partner resigns from a partnership, the other partners continuing in partnership; they in effect agree to her leaving. Nothing however is said, let alone agreed, about the financial terms on which she does so. Is she in those circumstances entitled to be paid the value of her share of the partnership assets? Or is the position that, since nothing has been agreed beyond the fact that she is to cease to be a partner, she has no claim against the continuing partners?

2. The issue arises in a long-running and multi-faceted dispute between the Claimant, **Suzanne** Procter, and her brothers, **Philip** and **James** Procter, who are the first two Defendants. I will refer to them by their first names for convenience, without intending any disrespect; I will also, as the Judge did, refer to their parents, Geoffrey and Jean Procter, as **"Father"** and **"Mother"**, and to Father's own parents, John and Ellen Procter, as **"Grandfather"** and **"Grandmother" –** this is how they are referred to in the pleadings and, although unconventional, has the advantage of making it easy to distinguish the generations.

3. Suzanne and her brothers were partners, initially with both their parents, and subsequently with Father alone (Mother having retired), in a farming partnership formed to continue a farming business carried on by Father on family-owned land in Skelton in Yorkshire. In 2010 Suzanne wrote resigning from the partnership. There was no provision in the partnership deed for one partner unilaterally to resign, but the other partners (Father, Philip and James) accepted that she had ceased to be a partner. Nothing was said about any financial terms at the time.

4. After the death of her parents (Mother in 2013 and Father in 2014) Suzanne brought a claim in the High Court in Leeds against her brothers and others for various relief in relation to the family entities (trusts, estates and the partnership) which owned or occupied the land. The action came on for a trial in Leeds in 2018 before HHJ Davis-White QC (now KC) (**"the Judge"**) and he handed down judgment in 2019 at [2019] EWHC 1199 (Ch) (**"the 2019 Judgment"**) on a number of issues. One of these was a claim by Philip and James, as the remaining partners in the partnership, that the partnership had the benefit of a yearly tenancy, created in 1994, of the majority of the land (**"the 1994 tenancy"**), which was protected by the Agricultural Holdings Act 1986 (**"AHA"**). The Judge found that such a tenancy would have been created by conduct, but held that it had not in fact been so created on the basis that it was not possible for a tenancy that was not in writing to be granted by A to A and B: see the 2019 Judgment at [225] and [251]-[256]. An appeal to this Court against the latter point was successful: see *Procter v Procter* [2021] EWCA Civ 167, [2021] Ch 395 where Lewison LJ (with whom Arnold LJ and I agreed) held that the law permitted A and B to grant a tenancy to A, B and C.

5. Suzanne claimed that she was entitled to the value of her share in the partnership assets at the date that she resigned (8 July 2010), her claim subsequently being limited to a ¼ share in the then value of the 1994 tenancy. That issue, among others, was the subject of a second trial before the Judge in April 2022. He handed down judgment on 25 May 2022 at [2022] EWHC 1202 (Ch) (**"the 2022 Judgment"**) in which he upheld

Suzanne's claim.

6. Philip and James now appeal his decision on that point to this Court with the permission of the Judge himself. They appeared by Mr Edward Peters KC. Suzanne appeared by Mr Bruce Walker. The other parties to the proceedings have taken no part in the appeal.

7. Despite the arguments ably advanced by Mr Peters I consider that the Judge was right, essentially for the reasons that he gave, and I would dismiss the appeal for the reasons that follow.

Facts

8. The Procter family between them own about 600 acres near Skelton, made up principally of Spring Hill Farm, Glebe Field, the Park, Park Farm and Wide Open Farm, and consisting of farmland, a golf course, farmhouses and ancillary buildings. The vast majority of it was originally acquired in various parcels in the 1930s and 1940s by either Grandfather or Grandmother (who died in 1954 and 1982 respectively), with some more land added subsequently. By the time of the proceedings, as the Judge said in the 2019 Judgment, the land was "owned and managed through a complex web of trust, partnership and company structures"; the structures had been arranged by Father and they were, the Judge said, "driven largely, if not entirely, by tax considerations and a desire to avoid the payment of tax" (the 2019 Judgment at [6]).

9. Details of these various structures and of the legal and beneficial interests in the various parcels of land are given in the 2019 Judgment. It is not necessary to set them out for the purposes of this appeal, but the position can be summarised as follows:

    (1) Of the 600 acres or so, about 128 acres is used for a golf course which was built between about 1990 and 1993. The remainder is farmed by the partnership as an arable farm.

    (2) Much of the land is still vested in the trustees of Grandfather's will trusts. By 1986 the trustees were Father, Mother and Philip, and after the death of both his parents Philip remained as sole trustee.

    (3) Under Grandfather's will his residuary estate was left to Grandmother for life and then as to one half to Father and as to the other half to Father's brother Frederick for life with remainder (in the events which happened) to Father. In 1975 Father settled his reversionary interest in the first half on a trust for his children and their issue (**"the 1975 Trust"**). The 1975 Trust therefore now has a 50% beneficial interest in the land vested in the trustees of Grandfather's will trusts. This consists of some 470 acres (including Park Farm, Wide Open Farm and the Park), of which 128 acres is used for the golf course and the rest is farmland with certain farmhouses. I will refer to this land as **"the 1975 Trust land"**.

    (4) Other interests in land are held by other trusts, or by a family-owned company, or by the members of the family themselves, but the details do not matter for present purposes.

10. The farming business was formerly carried on by Father. By deed dated 1 October

1980 and made between Father, Mother, Philip and Suzanne (**"the Partnership Deed"**) it was agreed that the four of them should as from 6 April 1979 be deemed to have carried on, and should continue to carry on, the business of farmers in partnership under the name G W Procter & Partners, taking over the business and its assets from Father. I will have to look at the detailed terms of the Partnership Deed in due course, but at this stage simply note that profits and losses (including capital profits and losses) were to be split unequally with Father entitled to 7/12, Mother to 1/12, and Philip and Suzanne to 1/6 each. Philip was then just shy of 22 (he was born in October 1958) and Suzanne was then 19 (she was born in January 1961); James (born in May 1966) had not yet attained his majority.

11. One of the issues raised by Suzanne in the first trial was a contention that the partnership was not intended to create enforceable rights or obligations. The Judge did not accept that. He had no difficulty in accepting that, as he put it in the 2019 Judgment at [78]:

> "the position can be summed up as being one where, whatever the technical legal rights, the Family Inheritance was regarded as being for the benefit of Father and Mother and that whatever Father said should happen, would happen and would be respected by all family members."

Or, as Suzanne herself put it in her witness statement, her parents were able to "call the shots" (accepted by the Judge as a correct summary in the 2019 Judgment at [92]).

12. But he concluded that it did not follow that the partnership was not intended to have legal effect, saying (in the 2019 Judgment at [93]):

> "In my assessment, it is not accurate of Suzie to say that the Partnership was not intended to create any enforceable rights or obligations. Rather, the Partnership operated on the basis that the partners would not enforce their legal rights or obligations but rather they would act as requested, or required, by Father."

13. James was admitted as a partner by deed dated 20 August 1987 shortly after turning 21 (albeit with effect from 5 April 1986). This deed also varied the profit shares so that Father and Mother were thereafter each entitled to ¼ , and each of the children to 1/6 .

14. Mother retired from the partnership in April 1997, her profit share being distributed to the three children, so that each of their shares was increased from 1/6 to ¼. At the second trial, the Judge was asked to take into account the way in which her interests in the partnership were dealt with. The 1997 partnership accounts showed that Mother received her profit share for the year (which was added to her capital account), and drew just over £4,100 from her capital account, the balance of her capital account being transferred to a loan account. It was suggested on behalf of Philip and James that the parties had proceeded on the basis that that represented her legal entitlement. The Judge did not accept that, saying (the 2022 Judgment at [221]):

> "I reject the submission that I can be satisfied that the treatment of Mother's retirement demonstrates that the parties had reached an agreement or consensus which had the effect of varying/adding to the 1980 Partnership Deed relevant provisions. Quite simply, I have evidence, from the accounts, about what happened when Mother retired

> but not why it happened. It is likely that Mother simply accepted what Father determined at the time."

15. In 2007 there was a proposal that the partnership restructure its indebtedness by taking a new 20 year loan from its bankers, National Westminster Bank, in the sum of £565,000, which would not only recapitalise the partnership's existing indebtedness to the bank, but also repay existing debt with the Agricultural Mortgage Corporation and assist with working capital. It appears that Suzanne had reservations about signing the new loan agreement as although the bank had signed it on 10 September 2007, on 26 September Father wrote to her to the effect that the new agreement was needed, and that if she was not reassured, then she should let the others get on with it and not actually frustrate it, adding:

> "The sensible alternative is to resign, pending clarification, following which if you are then satisfied to sign the document, you can be reinstated, at once."

16. On 10 October 2007 Suzanne wrote to Father. She said among other things:

> "I think your suggestion, that I resign from the Partnership, is sensible."

But in the event she did not then resign, and she signed the new agreement as one of the partners.

17. In a telephone call with Philip (undated but said to have been in June 2010) Suzanne is noted as saying that she was going to come out of the partnership, Father having suggested she do this. Then on 8 July 2010 she wrote a letter to the other partners (Father, Philip and James) as follows:

> "Dad has suggested that I resign from GW Procter and Partners. I think that this makes sense.
>
> This letter is therefore to confirm my resignation from the partnership with immediate effect."

This was copied to Mr George Knowles (the 3rd Defendant), who was a solicitor and a trustee of various family trusts.

18. Father followed this up with a letter dated 30 July 2010 to Mr Knowles in which he said:

> "You will have heard from Susie resigning from the P-ship. There is no need to do anything about it I think, she is entitled to do so.
>
> I propose to just take note."

19. As I explain below it would seem that Father was in fact wrong to think that Suzanne had an entitlement to resign unilaterally from the partnership, but it is not perhaps surprising in circumstances where Father thought she could that all the other partners (namely Father, Philip and James) accepted her resignation. It was indeed common ground on the pleadings that she retired from the partnership by agreement with the other partners, and the Judge found that whether or not she was entitled to resign, and

whether or not others wanted her to do so, it was quite clear that, at least ultimately, all the then partners agreed to her retiring from the partnership and ceasing to be a partner as from 8 July 2010 (the 2022 Judgment at [223]). That is borne out by a memorandum headed "G W Procter and Partners" (undated but drawn up after, and probably shortly after, 10 November 2011) which stated:

> "It is duly recorded that Miss Suzanne Elaine Procter retired from the partnership of G W Procter and Partners with effect from 8th July 2010."

This memorandum (**"the 2011 memorandum"**) also refers to the deficit on Suzanne's capital account as shown in the partnership accounts, and I will come back to that aspect of it below.

20. The Judge did not make any findings as to the circumstances in which Suzanne's letter resigning from the partnership came to be written or why she did so. It was suggested to us that the impetus was her concern at the poor financial state of the partnership and we were taken to the partnership accounts for the year ending 5 April 2009, which show that although the farm business had made modest profits in both the previous year (some £39,000) and the current year (some £57,000), these were more than offset by substantial losses on the golf course business (of some £173,000 and £147,000 respectively), and that the balance sheet (drawn up under the historical cost convention) showed an accumulated deficiency of assets of almost £½ million. That may indeed have been what prompted Suzanne to resign, as there is evidence that she was conscious that although she had no day-to-day involvement in the business (she lived and worked in London) she was personally liable for its debts and that her personal assets were ultimately collectable by the bank. But her pleaded case was rather different, namely that Philip's treatment of her and attitude towards her while she was a partner, including his refusal to discuss partnership business with her and his insistence that she comply with his decisions without question, was such that she eventually felt compelled to resign. In the absence of any finding on the point by the Judge, I do not see how we can start drawing inferences ourselves about such matters, nor indeed do I see that it makes any difference to the legal analysis to know *why* she chose to resign. What matters is that she did, and that this was (at least ultimately) accepted by the other partners.

21. Nor do I think it matters what she was referring to when she said that Father had suggested she resign. We were told that no evidence had been found of any such suggestion subsequent to his letter of 26 September 2007, but the Judge did not make any finding as to whether this was what she was referring to, and again I do not think it makes any difference to the legal position.

22. The remaining facts can be shortly stated. The Judge found that it was agreed that the other partners (Father, Philip and James) would continue in partnership, taking over the former partnership's assets and liabilities (the 2022 Judgment at [225]) and continued (at [226]):

> "As I understood it, everyone was agreed that after Suzie's retirement and with effect from 8 July 2010 a partnership between the remaining partners (Father and the Brothers) continued, taking on the assets and liabilities of the Partnership as at 8 July 2010 and that, at least between the Partners as they were immediately prior to Suzie's retirement, she

was not responsible for Partnership debts incurred after that date."

23. In the partnership accounts for the year ended 5 April 2011 Suzanne's capital account is shown as having an opening balance of (£45,872) and a closing balance of (£45,639). The 2011 memorandum, after referring to Suzanne having retired and the bank having been informed of that, continued:

> "It is noted that at the close of the financial year ending 5th April 2011 the capital account of Miss S E Procter was some £45,872 in deficit.
>
> It is noted that this overdrawn account balance should be paid in full to the partnership directly. However, if this is not acceptable to Miss S E Procter then the partners are prepared to consider converting this outstanding sum into a loan in the said amount upon terms to be agreed.
>
> Should the outstanding sum not be paid to the partnership before the end of the following financial year (i.e. 5th April 2012) then it is deemed appropriate that the debt shall appear as a loan in the balance sheet forming part of the partnership accounts for the year ending 5th April 2012."

(The figure here given of £45,872 as the closing figure for the year ended 5 April 2011 appears to have in fact been the opening figure – or the closing figure for the year ended 5 April 2010 – but nothing turns on that.)

24. This memorandum shows what the continuing partners considered the position to be, but it is not suggested that it reflects anything in the nature of an agreement with Suzanne at the time, and when she issued proceedings in 2016 (below) one of her pleaded claims was that either she was under no liability to the partnership for the debit balance on her capital account (then said to be £42,357, having been slightly reduced by certain credits), or that any such liability would need to be based on a true valuation of the business and all its assets rather than book values. That pleading was amended in 2017 to expressly include the 1994 tenancy as one of the assets of the partnership if it were held to subsist and to be an AHA tenancy. Philip and James' Defence did not however assert that there had been any agreement in 2010 or 2011 by Suzanne to pay the debit balance; their pleaded case was simply that she had been liable for it before she resigned, and since it had not at any time been agreed that that liability should be extinguished she remained liable for it.

25. This issue was ultimately settled between the parties. An Order dated 19 October 2021 recites that it had been agreed between Suzanne and her brothers that she was liable to pay the £42,357 subject only to the outcome of her claim to a ¼ share in the value of the 1994 tenancy at the date of her retirement, and that that liability had been settled by payment by Suzanne to her brothers of a net sum of £14,631 (calculated by setting off a liability to her which they had agreed at £27,726). The effect, as the Judge records in the 2022 Judgment at [29] was that agreement had been reached as to all sums due between her and the partnership other than in relation to the 1994 tenancy.

26. The only issue before us therefore is as to whether she is entitled as a result of her resignation or retirement from the partnership to a payment in respect of the value of the 1994 tenancy.

Proceedings

27. Suzanne issued her proceedings in November 2016. The proceedings raised many complaints against her brothers and she sought wide-ranging relief in relation to the trusts, the estates and the partnership. In the 2019 Judgment at [3] the Judge summarised the main issues as follows:

> "The battle in this case as commenced was primarily over the question of who should be the trustees of certain family trusts, the question of the nature of the rights (if any) of a family partnership in relation to the Farm Inheritance, the question of sums owed to or by the family partnership, and sums said to be owed by each of the Brothers to their mother's estate. "

The claims included a claim that the owners of the 1975 Trust land should be receiving an income from the partnership which farmed it, and that the partnership should therefore be ordered to pay a proper market rent for it.

28. In their Defence Philip and James defended this claim by asserting that the 1975 Trust land was let to the partnership on an AHA tenancy. This was one of the issues tried at the first trial. In the 2019 Judgment the Judge held as follows (references here are to paragraphs of the 2019 Judgment):

(1) Before 1994 there had been a number of tenancies of various parts of the 1975 Trust land, initially granted to Father (or Father and Grandmother) but which had ended up being vested in Mother. These were however surrendered by three deeds dated 28 June 1994 to the freeholders, namely the trustees of Grandfather's will trusts, being then Father, Mother and Philip [136].

(2) The partnership however continued to farm the land, and paid, or was treated as having paid, rent each year. The rent was shown in the partnership accounts, although that did not reflect actual payment in cash – thus for example the half due to the 1975 Trust was treated as paid to the Trust, then as distributed to the three children as beneficiaries and then as contributed by them as partners back to the partnership; the Judge however held that although these were paper transactions they were real [211].

(3) In those circumstances the partnership had exclusive use, occupation and possession of the land in return for rent and the Judge was satisfied that a tenancy would have been created by conduct, subject to the points raised by Suzanne [225].

(4) But he accepted a submission that it was not possible for there to have been a tenancy as the putative lessors (the trustees of Grandfather's will trusts, namely Father, Mother and Philip) would have been letting to themselves and others (the then partners, namely Father, Mother and the three children) and it was not possible at common law for A to grant a tenancy to A and B, nor did s. 72 of the Law of Property Act 1925 (which enables the grant of a lease by A to A and B) apply as it only applies to a lease in writing [251]-[256].

29. His decision on this point was appealed to this Court, where, as already referred to, the

appeal was allowed for the reasons given by Lewison LJ in a judgment handed down on 12 February 2021 (*Procter v Procter* [2021] EWCA Civ 167, [2021] Ch 395). Lewison LJ concluded that there was no objection to a tenancy being granted by A and B to A, B and C; he also held that the 1994 tenancy, although a tenancy at will (because not at the best rent reasonably obtainable), was protected by the AHA.

30. That therefore meant that Suzanne's claim to be entitled to a payment reflecting her interest in the partnership assets remained to be dealt with, along with a number of other issues which had not been resolved by the first trial. By 19 October 2021, as explained at paragraph 25 above, Suzanne's claim to a payment from the partnership had been narrowed to a claim to payment of ¼ of the value in 2010 of the 1994 tenancy.

The 2022 Judgment

31. This issue was one of those dealt with in the second trial and the 2022 Judgment.

32. The Judge dealt with it as follows (references here are to paragraphs of the 2022 Judgment):

(1) He found that it was quite clear that, at least ultimately, all the then partners agreed to Suzanne retiring from the partnership and ceasing to be a partner as from 8 July 2010 [223]. In those circumstances he did not need to consider whether the partnership was one at will or whether she otherwise had a right to retire unilaterally [224].

(2) The next issue argued was whether her retirement caused a dissolution of the partnership, technical or otherwise. He described the submissions on this point as seeming to him "ultimately to turn on semantics", the key question being the effects of such resignation, rather than the term used to describe them; but he held that there had been a dissolution, albeit one characterised by *Lindley & Banks on Partnership (**"Lindley"**)* as a "technical" dissolution, that is one that does not result in a full winding up, but where the agreement was that the non-retiring partners would continue in partnership taking over the former partnership's assets and liabilities [225].

(3) He then considered, and rejected in quite short order, a series of arguments advanced by Mr Peters. These were (i) that Suzanne's entitlement on retirement was limited by a clause in the Partnership Deed [229]; (ii) that there was an implied term to like effect in the Partnership Deed [230]; (iii) that the Partnership Deed was varied or amended by conduct by reference to what Mother took when she retired in 1997 [231]; (iv) that the way in which Philip and James had treated Suzanne's retirement had the effect of limiting her entitlement [232]; and (v) that there was an estoppel limiting Suzanne's entitlement to what Mother had received [233]. None of these points have been revived on appeal.

(4) He then identified the question which arose as follows [234]:

> "In my judgment, the question is what as a matter of general law a retiring partner will be entitled to on retirement in circumstances when the partnership is not the subject of a full

> winding up on such retirement but the non-retiring partners continue in partnership and effectively take over the partnership assets, liabilities and business."

(5) He regarded the answer as "fairly plain" [235]. He cited a passage in the then current edition of *Lindley* at §19-11 to the effect that in the absence of agreement the ongoing partners would be entitled to acquire the share of an outgoing partner at a valuation and for that purpose the Court would direct the necessary accounts and inquiries [238]. That was what Goff J had decided in *Sobell v Boston* [1975] 1 WLR 1587, which the Judge then cited at some length from [240]-[243]. He added [244]:

> "I need not discuss the jurisprudential basis of the result but it appears to me that it is based upon an implied contract or implied contractual term."

(6) He then expressed his conclusion as follows [245]:

> "As all other relevant liabilities and assets have been dealt with, it follows that on the face of it Suzie is entitled to be bought out by the ongoing Partnership of a one quarter of the value of the 1994 Tenancy owned by the Partnership and valued as at 8 July 2010. The Partnership accounts have no bearing on what value to place on the 1994 Tenancy (indeed, the 1994 Tenancy is not included as an asset within the balance sheet). In my judgment, market value is the appropriate value to be applied, but I will hear further argument if that is not agreed, if and when considering the terms of instruction of any expert."

(7) Having dealt with an issue about improvements he added in relation to interest [271]:

> "I did not understand Mr Peters to resist interest pursuant to s42 Partnership Act 1890 at 5% on the value of Suzie's share which should have been paid when she retired and such seems to follow from the relevant extract from the judgment of Goff J in the *Sobell* case that I have already cited."

(8) At the end of his judgment he summarised his conclusions on the point, namely that Suzanne became entitled to have her partnership share bought out, valued on the basis of a ¼ share of partnership assets and liabilities, and that other liabilities and assets having been dealt with by agreement, the only issue was the ¼ value of the 1994 tenancy for which she should receive value, assessed at its true value (rather than its book value of nil), to be determined by a valuation [341].

33. He gave effect to his judgment by an Order dated 20 September 2022, which among other things declared that:

(1) there had been a technical dissolution of the partnership on Suzanne's retirement on 8 July 2010 (paragraph 1.1);

(2) she was thereupon entitled to and liable for a ¼ share in the partnership assets and liabilities (paragraph 1.2);

(3) all other assets and liabilities having been dealt with, Philip and James should pay Suzanne the value of a ¼ share in the 1994 tenancy (paragraph 1.3);

(4) that value should not be assessed at book value (paragraph 1.5);

(5) there should be an inquiry as to such value (with directions for the taking of the inquiry) (paragraph 1.6);

(6) Suzanne was entitled to interest at 5% on the value of her share from 8 July 2010 until judgment on the inquiry (paragraph 1.9).

The Judge also gave Philip and James permission to appeal these paragraphs of the Order.

Grounds of Appeal

34. The Grounds of Appeal are that the Judge was wrong to hold that Suzanne was entitled to and liable for a ¼ share in the partnership assets and liabilities and hence entitled to a ¼ share in the value of the 1994 tenancy at the date of retirement, given that there was no express agreement to that effect; no basis for implying an agreement to that effect; and no other statutory or legal basis for any such entitlement. The Judge was therefore wrong to order an inquiry. The Judge was also wrong to hold that there was a technical dissolution on Suzanne's retirement.

The Partnership Deed

35. Partnership is in essence a contractual arrangement, and it is therefore appropriate to set out, so far as relevant, what the parties agreed in the Partnership Deed of 1 October 1980.

36. The Deed was made between Father and Mother (together referred to as "the Senior Partners"), Philip and Suzanne.

37. Clause 1 provided:

> "1. THE Partners shall as from the 6th day of April 1979 be deemed to have carried on and shall continue to carry on the business of farmers in partnership on the terms of this Agreement".

38. Clause 3 provided:

> "3. SUBJECT to the provisions for dissolution hereinafter contained the partnership shall continue until determined pursuant to the provisions hereof notwithstanding the death of any individual partner".

39. Clause 6 provided for the profits and losses "including profits and losses of a capital nature" to belong to and be borne by the partners as to 7/12 for Father, 1/12 for Mother and 1/6 each for Philip and Suzanne.

40. Clause 14 provided:

> "14. (1) THE partnership shall be dissolved on the expiry of six months' notice of dissolution given in writing by the Senior Partners or the survivor of them to the remaining partners
>
> (2) In each of the undermentioned cases the partnership shall be dissolved as regards the partner in question (so he shall be deemed to have retired) but not otherwise:-
>
> (i) on the giving of one month's notice by the Senior Partners or the survivor of them that the partner in question's conduct is in the opinion of the person or persons giving such notice calculated to prejudicially affect the carrying on of the business of the partnership
>
> (ii) On the giving of one month's notice by the Senior Partners or the survivor of them that the partner in question's conduct is in wilful breach of the terms of the partnership (whether express or implied)
>
> (iii) If the partner in question becomes bankrupt and the Senior Partners give one month's notice that as a result thereof he should retire
>
> (iv) On the death of the partner in question
>
> (3) If a partner is deemed to retire by reason of any of the matters referred to in sub-clause 12(2) [sic] hereof other than by reason of his or her death he or she shall receive the following (in the remainder of this clause referred to as a "partnership share"):-
>
> (i) The amount standing to the credit of his or her capital account at the date of the retirement
>
> (ii) The amount standing to his or her credit on his or her current account
>
> (iii) The share of the profits of the partnership that he or she would have received if he or she had remained a partner until the end of the accounting period in which the retirement occurred".

41. Clause 1 of the Deed of 20 August 1987 by which James was admitted provided:

> "1. AS from the 5th day of April 1986 … James shall be a partner in the business carried on by G.W. Procter & Partners subject in all respects to the conditions stipulations and provisions of the Deed of Partnership except insofar as the same are hereby varied."

The only significant variation was in clause 2 which varied the partnership shares so that profits and losses (including profits and losses of a capital nature) should belong to and be borne by the partners as to ¼ for each of Father and Mother, and as to ⅙ for each of Philip, Suzanne and James.

Was there a technical dissolution?

42. I will consider first the question whether the Judge was right to say that Suzanne's retirement had brought about a "technical dissolution" of the partnership. Mr Peters spent little time on this in his oral submissions on the basis that it was a largely academic point with little practical consequence. Nevertheless I think it is a useful starting point for the analysis.

43. The Judge took the phrase from *Lindley*. In the current edition (21st edn, 2022) the relevant passage is at §§24-01ff where it is first pointed out that what is meant by the "dissolution" of a partnership is often misunderstood because the word is used in two distinct senses (§24-01); and then this is expanded on under the heading "Difference between a technical and general dissolution" at §24-03 to §24-04 as follows:

> "**24-03** It does not necessarily follow from the fact that a partnership has been dissolved that its affairs will fall to be wound up in the manner prescribed by the Partnership Act 1890. It has already been seen that, as a matter of law, a change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm; in such a case, the new firm will usually take on the assets and liabilities of the old, without any break in the continuity of the business. This is often referred to as a "technical" dissolution and is usually, but not always, the result of agreement. Such a dissolution will almost inevitably require the taking of accounts to ascertain the entitlement of the outgoing or deceased partner.
>
> **24-04** In contrast, the expression "general" dissolution is used to denote a dissolution involving a full scale winding up, which may well have been brought about at the instance of one partner against the wishes of the others."

44. That may be contrasted with the views expressed in *Blackett-Ord on Partnership Law* (6th edn, 2020), which are that there is no support in the Partnership Act 1890 for the view that any change in the membership of the firm causes some sort of dissolution, that the phrase "technical dissolution" is "best avoided" (at §16-1), and that dissolution envisages a cesser of the whole partnership (at §16-3).

45. There is no doubt that the Partnership Act 1890 (**"the Act"**) often uses "dissolution" (not defined in the Act) to mean what *Lindley* calls a "general dissolution". The clearest example is s. 33(1) which provides:

> "**33 Dissolution by bankruptcy, death or charge**
>
> (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner."

46. In other cases the Act does not expressly refer to a dissolution "as regards all the partners" but it is apparent from the context that this is what is meant. Thus for example, s. 32 provides:

> "**32 Dissolution by expiration or notice**
>
> Subject to any agreement between the partners, a partnership is dissolved—
>
> (a) If entered into for a fixed term, by the expiration of that term:
>
> (b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking:
>
> (c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.
>
> In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice."

In the cases specified in s. 32(a) and (b) it is apparent that the dissolution must be a general one as there is nothing to distinguish one partner from the others, the expiry of the term or termination of the venture applying equally to all of them. In those circumstances the same is no doubt true in the case of s. 32(c) as well. In the present case it was not suggested that Suzanne's letter resigning from the partnership could have taken, or did take, effect as a notice of dissolution under s. 32(c), no doubt rightly given the terms of clauses 3 and 14(1) of the Partnership Deed. These respectively provide that the partnership is to continue "until determined under the provisions hereof", and give the Senior Partners, but not the other partners, the power to dissolve the partnership.

47. Another example is in s. 37 of the Act which provides as follows:

> "**37 Right of partners to notify dissolution**
>
> On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence."

The reference to both dissolution of a partnership and retirement of a partner indicates that dissolution here is being used in the sense of a general dissolution and not as encompassing a retirement.

48. s. 39 of the Act provides as follows:

> "**39 Rights of partners as to application of partnership property**
>
> On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner

> or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

Again dissolution here must mean a general dissolution because of the provision for winding up of the business and affairs of the firm. It was common ground therefore between counsel that s. 39 had no application to the present case.

49. But the usage in the Act is not entirely consistent. Thus s. 31(2) provides as follows:

> "**31 Rights of assignee of share in partnership**
>
> (1) …
>
> (2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

Here we find the Act referring to a partnership either being dissolved as respects all partners or as respects a single partner.

50. A similar usage can of course be found in the Partnership Deed in the present case where clause 14(2) refers to the partnership being:

> "dissolved as regards the partner in question (so he shall be deemed to have retired) but not otherwise".

(see paragraph 40 above). I think this is a perfectly understandable usage of the word "dissolved" and that it is therefore wrong to suggest that dissolution always means a general dissolution, or that it is a heresy to refer to the case of one partner leaving a firm as a dissolution.

51. This is particularly so given the legal nature of a partnership. The Act starts with s. 1(1) which provides:

> "**1 Definition of partnership**
>
> (1) Partnership is the relation which subsists between persons carrying on business in common with a view to profit."

Since partnership is a relationship between persons, it follows that it is the identity of the partners that defines a partnership. A relationship between A, B and C is self-evidently a different relationship to that between B and C, and hence in law a different partnership, even though they may carry on the same business under the same name.

52. The same point emerges from s. 4(1) of the Act, which provides:

> "**4 Meaning of firm**
>
> (1) Persons who have entered into partnership with one another are for

> the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name."

A "firm" is thus in law a way of referring collectively to the persons who make it up, and it follows that a firm consisting of A, B and C is different from a firm consisting of B and C. Similarly where proceedings are brought by or against partners in the name of a firm, this is a reference to those who were partners at the time the cause of action accrued (see Practice Direction 7A paragraphs 7 and 8).

53. This means that the legal conception of a partnership is very different from the commercial one: see *Lindley* where the distinction is explored at some length under the heading "The Commercial and Legal Views" at §§3-01ff. It is not necessary to cite from this passage extensively, but by way of illustration it refers to the usual commercial view of partnership as one that treats a firm in much the same way as a company, that is as an entity distinct from its members (§3-01); to there being a tendency to regard a firm's rights and obligations as unaffected by any change in its membership, the rights and obligations of the "old" firm prior to the change being automatically deemed to have been assumed by the "new" firm (§3-02); and to changes in a firm having no visible effect on its existence or on the continuity of its business – the partners may come and go, but the firm *appears* to go on (§3-03).

54. By contrast, the legal conception of a firm is "very different": in English law, the firm is not generally recognised as an entity distinct from the partners composing it (§3-05). At §3-06 the editors quote from Lord Lindley himself who "stated the orthodox legal view" as follows:

> "The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities."

55. It is not difficult to see why Lord Lindley says that any change in the partners "destroys the identity" of the firm. When one partner ceases to be a partner in a firm, the relationship of partnership between the outgoing partner and the other partners necessarily comes to an end, as does the firm of which they were a partner. Thus if A, B and C are in partnership and A ceases to be a partner, the relationship of partnership between A, B and C – and the firm consisting of A, B and C – also comes to an end. And logically this must be so whether or not B and C continue in partnership.

56. That explains why *Lindley* says at §24-03 that a change in the composition of a partnership "results in a dissolution of the existing firm and the creation of a new firm". Understood in this light, I see nothing wrong in referring to a case where A ceases to be a partner in the firm of A, B and C as a "dissolution": when A ceases to be a partner the relationship between him and B and C comes to an end, and the ending of that relationship can quite naturally be referred to as a dissolution of it.

57. And there are several examples in cases from this and other jurisdictions which adopt this terminology. *Lindley* at §3-07 cites from the judgment in New Zealand of Eichelbaum CJ in *Hadlee v Commissioner of Inland Revenue* [1989] NZLR 447 at 455:

> "In law the retirement of a partner or the admission of a new partner

> constitutes the dissolution of the old partnership, and the formation of a new partnership."

See also in England *HLB Kidsons v Lloyd's Underwriters subscribing to Policy No 621/PKID00101* [2008] EWHC 2415 (Comm), [2009] 1 All ER (Comm) at [16] where HHJ Mackie QC accepted that there had been "a series of technical dissolutions" arising not only from a merger but from the departure of partners from time to time; in Scotland *Eason v Miller* [2016] CSOH 59 at [24] where Lord Doherty accepted that on the retirement of a partner there is "at least a technical dissolution"; and in Western Australia *Rojoda Pty Ltd v Commissioner of State Revenue* [2018] WASCA 224 (***"Rojoda"***), albeit that *Lindley* points out that Murphy JA "correctly observed" that:

> "The reference to a 'technical' or 'notional' dissolution is somewhat of a misnomer because it is not the dissolution itself, but, at most, the winding up of the partnership which is notional. The partnership practising after the retirement of a partner is a different partnership than prior to that partner retiring, but the assets and responsibility for liabilities of the partnership are taken over by the remaining partners."

58. In those circumstances I do not think the Judge was wrong to say that there was a "technical dissolution" between Suzanne and the other partners when she resigned: she ceased to be a partner and the relationship or partnership between her and them came to an end. By referring to it as a technical dissolution, I think it is clear that what the Judge meant was that there was no general dissolution; one could also say, adapting the language of s. 31(2) of the Act – and this might be a clearer way of expressing the same idea – that there was no dissolution as respects all the partners, but only a dissolution as respects Suzanne as the outgoing partner. As this illustrates, the Judge was I think right, as both counsel in effect agreed, that this is in the end largely a semantic debate; but for the reasons I have given I would dismiss this ground of appeal, insofar as it is pursued as a separate ground of appeal at all.

Effect of retirement

59. Having cleared this point out of the way, it is now possible to consider the main issue. The starting point here is to identify what it is for a partner to resign or retire from a partnership. "Resign" was in fact the word used by both Father and Suzanne in 2007-2010 (see paragraphs 15 to 18 above), although in the 2011 memorandum Suzanne was recorded as having "retired". It was not suggested to us that there was any difference between these two terms.

60. "Resign" is not used in the Act but "retire" is used several times. I have already referred to one example in s. 37 (see paragraph 47 above), and other examples can be found in ss. 17, 36 and 43. Each of these is instructive, and although the Act contains no definition of retirement, I think it is not difficult when they are taken together to understand what the Act means by retirement. It is, as Mr Peters submitted, an ordinary English word and I accept his formulation at the outset of his submissions that in the context of a partnership it connotes the voluntary departure of a partner in circumstances where the remaining partners continue the firm. This is what *Lindley* says at §10-218 as follows:

> "The concept of "retirement" connotes a continuation of the firm."

61. It is also consistent with each of the provisions of the Act that I have referred to. They respectively provide as follows:

> "**17 Liabilities of incoming and outgoing partners**
>
> (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.
>
> (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
>
> (3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.
>
> **36 Rights of persons dealing with firm against apparent members of firm**
>
> (1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
>
> (2) An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the Belfast Gazette as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.
>
> (3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.
>
> **43 Retiring or deceased partner's share to be a debt**
>
> Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death."

It can be seen that both s. 17(3) (with its references to "the firm as newly constituted") and s. 36(3) (with its reference to "partnership debts contracted after the date of … retirement") contemplate that the firm will continue after the retirement of the outgoing partner. And s. 43, although it does not use "retiring" in the body of the section but only in the headnote, expresses the same idea by referring to the amount due from

"continuing partners" to an "outgoing partner".

62. In those circumstances it seems to me that the natural interpretation of what it is for a partner to resign or retire from a partnership is that they cease to be a partner while the remaining partners continue in partnership. So when a partner says that she wishes to resign from a firm, I would take that to be saying no more than that she wishes to cease to be a partner – that is, that she no longer wishes to carry on business in common with the other partners – albeit recognising that they will carry on the business themselves.

63. Whether a partner has a right unilaterally to resign in this way depends on the partnership agreement. If nothing else is agreed, it would seem that a partner can retire from a partnership at will on giving notice to the other partners under s. 26(1) of the Act, which provides as follows:

> "**26 Retirement from partnership at will**
>
> (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners."

This provision is not without its difficulties, partly because the headnote refers to "retirement" but the body of the section to "determine" (which suggests a general dissolution), and partly because of the apparent overlap with s. 32(c). It is not however necessary to consider them. There was some discussion before the Judge as to whether the partnership in the present case was a partnership at will and the section applied, but he said he did not need to decide the point; nor do we, and it was not extensively argued before us. For what it is worth, however, I think it unlikely that Suzanne could have invoked this provision because of the terms of clauses 3 and 14 of the Partnership Deed, which, as already referred to, provide for the partnership to continue until determined in accordance with its provisions and contain limited powers of determination. See eg *Blackett-Ord* at §7.6 to the effect that a partnership is not a partnership at will "where there is provision for notice of dissolution being given by certain of the partners in certain circumstances", which precisely fits the present case.

64. If s. 26 of the Act does not apply, a partner can only unilaterally retire if the partnership agreement provides for such a right. Otherwise the position is as stated in *Lindley* at §24-171 as follows:

> "**Lord Lindley's rules on retirement**
>
> Writing prior to the Partnership Act 1890, Lord Lindley formulated the following three rules, which still accurately summarise the position under the Act:
>
> 1. " …it is competent for a partner to retire with the consent of his co-partners at any time and upon any terms."
>
> 2. " …it is competent for him to retire without their consent by dissolving the firm, if he is in a position to dissolve it."
>
> 3. " …it is not competent for a partner to retire from a partnership which he cannot dissolve, and from which his co-partners are not

willing that he should retire."

> To rule 1 must be added the obvious rider that such consent may be granted prospectively, by the inclusion of an express right to retire in the partnership agreement."

In other words, Suzanne, contrary to Father's view at the time, probably did not have the right to resign or retire from the partnership simply because she wanted to. But this does not matter as the other partners, both on the pleadings and on the Judge's findings, in fact accepted her retirement, and this has not been disputed on appeal.

What is the effect of retirement on a partner's share?

65. So far I have only considered the effect of retirement on the relationship between the parties. The next question is what the effect is on the outgoing partner's share in the partnership property.

66. The starting point here is that in most if not all partnerships the partnership will own partnership property or partnership assets. *Lindley* at §18-02 quotes Lord Lindley's own definition as follows:

> "The expressions partnership property, partnership stock, partnership assets, joint stock, and joint estate, are used indiscriminately to denote everything to which the firm, or in other words *all* the partners composing it, can be considered to be entitled as such. The qualification *as such* is important; for persons may be entitled jointly or in common to property, and the same persons may be partners, and yet that property may not be partnership property; e.g. if several persons are partners in trade, and land is devised or a legacy is bequeathed to them jointly or in common, it will not necessarily become partnership property and form part of the common stock in which they are interested as partners."

67. To this can be added the definition in the Act in s. 20(1), as follows:

> "**20 Partnership property**
>
> (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement."

68. Since the firm is merely a collective name for the partners trading together, it is obvious that the partners together own the partnership assets, as there is no-one else to own them. That means that each partner has a proprietary interest in the partnership property. The precise nature of a partner's share in the partnership assets is notoriously difficult to define: see the discussion in *Lindley* under the heading "The Nature of a Partnership Share" which extends from §§19-01 to 19-29. But for present purposes it sufficiently appears from §19-08 which refers to Lord Lindley's own definition as

follows:

> "*The classic definition*
>
> Lord Lindley observed:
>
> > "What is meant by the *share* of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share; which under the old law was considered as *bona notabilia*; which on his bankruptcy passes to his trustee…".
>
> Although it would be more accurate to speak of a partner's entitlement to a proportion of the *net proceeds of sale* of the assets, the correctness of the statement of principle embodied in the above passage cannot seriously be questioned, reflecting as it does the proper application of sections 39 and 44 of the Partnership Act 1890."

To like effect are statements cited by *Lindley* at §§19-13 and 19-14 from *Rojoda* that the interest of a partner in partnership assets is not "an immediately ascertainable quantity", but an "indefinite and fluctuating interest consisting of the right to a proportion of the surplus after the realisation of the assets and payment of the debts and liabilities of the partnership".

69. The next question is what happens to this proprietary interest when a partner retires. As with other aspects of partnership law, this primarily depends on what the parties have agreed, and the first port of call is therefore the partnership agreement. If this makes express provision for the outgoing partner to receive a payment in respect of their partnership share (or expressly provides that it shall vest in the continuing partners without payment), that is what they are entitled to. A series of decisions in this Court has made it clear that where there is such an express provision and it is open to more than one construction, the Court should not in construing it start from any particular presumption: see *re White decd* [2001] Ch 393 (***"White"***), *Drake v Harvey* [2011] EWCA Civ 838, [2012] 1 All ER (Comm) 617 (***"Drake"***), and *Ham v Ham* [2013] EWCA Civ 1301 (***"Ham"***).

70. A few references to this effect will suffice. In *White* Chadwick LJ said at [67]:

> "I doubt whether it is correct to approach the construction of a partnership agreement – or any other document – on the basis that the court leans towards one conclusion rather than another. The correct approach, as it seems to me, is to seek to ascertain what the parties intended by the words which they actually used, having proper regard to the circumstances in which they made their agreement."

See also per Peter Gibson LJ at [73].

71. Similarly in *Drake* Arden LJ said at [39] that it was:

> "crucial to examine the terms of the partnership deed and to interpret it

> in the normal way to ascertain whether it includes a provision as to the basis of valuation to be adopted on death. If it includes such a provision, that basis applies and the partnership deed does not have to displace a presumption, or default rule, that fair value applies… Interpretation is conducted according to the normal principles of contractual interpretation."

See also per Aikens LJ at [65].

72. And finally in *Ham* Lewison LJ said at [5]:

> "John's entitlement is a contractual entitlement. What it is therefore depends on the correct interpretation of the partnership deed. There are no special rules applicable to interpreting deeds of partnership in this respect. In particular there are no presumptions or default rules which point towards one basis of valuation of an outgoing partner's share rather than another."

See also per Briggs LJ at [41].

73. If there is no relevant provision in the partnership agreement, the next question is whether anything was agreed in relation to the outgoing partner's share at the time of their retirement. Again I would accept that if there were such an agreement, it would fall to be construed on normal principles without any particular presumption as to what had been agreed.

74. But that does not assist where there was no express agreement either in the partnership agreement or in an *ad hoc* agreement made at the time of retirement. In the present case, the Partnership Deed makes no provision for a partner to retire (other than the cases of forced or deemed retirement in clauses 14(2)(i)-(iii)), and so does not contain any agreement as to what a retiring partner should receive. The arguments that Suzanne was limited to the sums specified in clause 14(3) either by the express terms of the Partnership Deed or by virtue of an implied term were among those which were rejected by the Judge and which have not been revived on appeal (see paragraph 32(3) above). Nor is it suggested that there was any *ad hoc* agreement on the point.

75. That means that it is now common ground that no express agreement was made in relation to any payment for her share in the partnership assets. Mr Peters submitted that by agreeing to retire Suzanne was agreeing to surrender her interest in the partnership assets to the continuing partners; and that in the absence of any agreement that she should be paid, she was not entitled to any payment. She could not point to any express agreement to that effect, and no term could be implied to that effect because of the very wide variety of ways that such a payment could be calculated such that no one calculation could be said to be so obvious as to go without saying or to be necessary to give business efficacy to her agreement to retire. Nor, in the light of *White*, *Drake* and *Ham*, could it be said that there was some default rule or presumption that was applicable.

76. Mr Peters advanced this argument with skill but I do not accept it. I think it fails at the first step. Suzanne to my mind never agreed that she would hand over her share in the partnership assets to the other partners without payment, and never agreed the terms on

which she might do so. Mr Peters submitted that it was inherent in her agreement to retire that she was assigning or surrendering her interest in the partnership assets to the continuing partners. He cited the 5th (1888) edition of *Lindley* (the last edited by Lord Lindley himself) in which Lord Lindley said at 573 under the heading "Of the right to retire":

> "Subject to a qualification which will be presently mentioned, a member of an ordinary firm can surrender his share and interest in the firm to his co-partners, or any of them, upon any terms to which he and they may all agree."

But that seems to me to say no more than that a partner may agree to leave the firm on terms that he sell or surrender his interest to his partners. I do not think it follows that if a partner agrees to leave the firm without making any such agreement he is to be taken as agreeing to give it to them for nothing.

77. Similarly Mr Peters referred to *Blackett-Ord* at §16-37 for reference to a statement by Kekewich J in *Gray v Smith* (1889) 43 Ch D 208 at 213 that an agreement to retire implied two things: an assignment of the assets and an indemnity against liabilities. That I think is a good illustration of the constant danger of taking a statement out of a judgment without reference to the facts in issue. *Blackett-Ord* introduces the reference to *Gray v Smith* by saying that:

> "The retirement of a partner almost always involves the sale of his share to the continuing partners."

That is no doubt correct as a matter of fact, but tells one nothing about what is to be taken as agreed if there has been no agreement by the outgoing partner to sell his share. And reference to *Gray v Smith* shows that in that case there was in fact an agreement between the plaintiff Gray and the defendant Bennitt that the latter "should retire from the firm and should sell and transfer all his share and interest therein" to the former (see at 209). The argument was not over whether there was an agreement to that effect, but over whether a signed memorandum of it was sufficient to satisfy the Statute of Frauds, part of the partnership property consisting of leasehold premises. The memorandum recorded that Bennitt agreed to withdraw from the firm in return for payment of £1000 by 10 yearly instalments, and it was in that context that Kekewich J said that an agreement to withdraw implied an agreement by the outgoing partner to assign his interest in the assets and that the continuing partners should indemnify him against liabilities. I have no difficulty with that where it is agreed that a partner should retire in return for an agreed payment (or where it is agreed that a partner should retire without receiving any payment). It is indeed implicit in an agreement that a partner should withdraw from a partnership in return for a payment that the payment is for his share in the net assets, which implies both that he should transfer his interest in the assets to the continuing partners, and be indemnified against the liabilities by them. And the same would no doubt apply if there were an express agreement that a partner should retire without any payment for his share of the net assets; in many professional partnerships for example there are agreed provisions for retirement under which no payment is made to outgoing partners for their share of the net assets. But again I do not think one can draw from that the conclusion that a partner who retires without any agreement as to whether or not a payment should be made is to be taken as agreeing to surrender or assign her interest to the continuing partners without payment. There is all the

difference in the world between an agreement that nothing should be paid, and there being no agreement as to what, if anything, should be paid.

78. I think the position therefore in the present case is that when Suzanne resigned, and the other partners agreed to accept that as a retirement from the firm, nothing was agreed about her share in the partnership assets. In essence, by saying that she resigned, all that she was saying was that she wished to cease being in partnership with her father and brothers, not that she was agreeing to give up her proprietary interest in the assets; and by accepting her retirement all that the other partners were agreeing to was that she should cease to be a partner. Mr Peters pointed out that she never suggested that she wanted any payment; but Mr Walker gave what to my mind was the simple answer to that which is that no-one at the time realised that the 1994 tenancy subsisted, let alone that it was an asset of substantial value. Now that her brothers have successfully established that the partnership does have a valuable asset in the shape of the 1994 tenancy (thereby also significantly reducing the value of the freehold interests), I see no reason why she should not assert that she never agreed to give her share of it up for nothing.

79. I have not overlooked the fact that the Judge said (see paragraph 22 above) that the agreement was that the non-retiring partners would continue in partnership "taking over the partnership's assets and liabilities" (the 2022 Judgment at [225]) and that everyone was agreed that a partnership between the remaining partners continued, "taking on the assets and liabilities of the Partnership as at 8 July 2010" (the 2022 Judgment at [226]). But I do not think he thereby meant that it was agreed that Suzanne was then and there assigning her interest in the net assets to the continuing partners (for nothing). That would be entirely contrary to the evidence.

80. At [234] the Judge referred to the continuing partners "effectively" taking over the partnership, assets and liabilities (see paragraph 32(4) above), and that I think explains what he means – by retiring from the partnership Suzanne was necessarily leaving the other partners in possession of the assets so that they could carry on the business, and would be responsible for paying the liabilities out of them (and out of future receipts). But that is not the same as saying that she was thereby giving up her interest in the existing assets to them; or conversely that they were thereby agreeing to indemnify her against the existing liabilities. Indeed the 2011 memorandum, which is relatively contemporaneous evidence of what the other partners understood the position to be, seems to me flatly inconsistent with them having agreed to indemnify her against the existing liabilities of the partnership. The debit balance shown on her capital account in the 2011 accounts (and those of the other partners, principally that of Father) matched the deficiency shown on the balance sheet, and that reflected the fact that the existing liabilities of the firm, in particular the bank loan of £565,000, exceeded the value of the assets there shown. If the other partners had in fact agreed to indemnify her against outstanding liabilities then I do not think they could have thought, as the 2011 memorandum shows they did, that she was still liable to pay the firm towards the deficiency. It is moreover noticeable that the Judge said (the 2022 Judgment at [226]) that Suzanne, at least as between the then partners, was not responsible for partnership debts "incurred after that date"; he does not suggest that they had also agreed that she should not, as between them, be responsible for debts incurred before that date.

81. In those circumstances I do not think that the parties in 2010-11 by agreeing that Suzanne should retire were either agreeing that she was there and then assigning her

interest in the partnership assets to the other partners, or that they were indemnifying her against the existing liabilities. Mr Peters at one point in his submissions said that what Suzanne was trying to do was to revisit the bargain she had made. I agree that if the position had been that she and the other partners had made a bargain that she should walk away from the firm without payment and without further liability, then she could not now reopen that bargain. But I do not think that was what the evidence showed or what the Judge found; rather the position is that there was no agreed bargain at all as to the financial terms on which she left.

Effect of there being no agreement as to terms

82. Where does that leave the parties? In my judgement the position is this. Suzanne had in 2010, albeit unknown to all concerned, a valuable asset in the shape of her interest in the partnership assets. She has not agreed to sell it, and she has not agreed to give it away. The other partners have in effect taken over the assets, but she has not assigned or lost her interest in the net assets as they stood in 2010. The continuing partners have therefore continued to use her share of the assets in the business without accounting to her for it. This is the position contemplated by s. 42(1) of the Act which provides:

> "**42 Right of outgoing partner in certain cases to share profits made after dissolution**
>
> (1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets."

This provision in terms only provides for the continuing partners in such a case to account for their use of the outgoing partner's property (either by a share of profits or by interest), which is no more than one would expect where one party uses another's property to make a profit, but it clearly assumes that the continuing partners are liable to account to the outgoing partner for her share of the partnership assets, and further that such share can be quantified (as otherwise there would be no figure to apply the 5% rate of interest to).

83. That admittedly does not indicate the basis on which the amount due to the outgoing partner should be calculated. I accept that there are many different ways in which such an amount could in principle be calculated: see *Lindley* at §10-329 which refers to there being "numerous bases on which the financial entitlement of an outgoing partner can be quantified". I also accept that the cases referred to above of *White*, *Drake* and *Ham* show that where it is a question of interpreting an agreement, there is no presumption or starting point and the agreement should be interpreted in the normal way. But where *ex hypothesi* there has been no agreement, there is nothing to interpret, and I do not think these cases assist. The Court either has to find some principle by which the

quantum of the outgoing partner's share of the assets can be accounted for, or abandon the attempt and simply allow the continuing partners to keep the outgoing partner's share of the assets without payment despite that never having been agreed. Faced with that choice, I have no real doubt that the principled answer is that the continuing partners who are using the outgoing partner's property in their ongoing business have to account to the outgoing partner for her share of the assets, and that in the absence of agreement the Court has to determine how that share is to be quantified.

84. How then is that to be done? Here I think one goes back to the nature of a partner's share in the partnership assets as defined by Lord Lindley (see paragraph 68 above), namely that it is his or her:

> "proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged."

On a general dissolution, this is what the outgoing partner would be entitled to receive, and for that purpose he would be entitled to have the business and affairs of the partnership wound up by virtue of s. 39 of the Act (see paragraph 48 above).

85. By retiring, and thereby accepting that the other partners will be at liberty to carry on the business, an outgoing partner necessarily gives up any right to have a general dissolution and to have the firm actually wound up. But I do not see why the outgoing partner, in the absence of agreement to the contrary (either in the partnership agreement or in an *ad hoc* agreement at the time of retirement), should be regarded as agreeing also that her share in the assets should be reduced, or quantified at any less a figure than it would have been had there been a general dissolution. As the discussion above on technical dissolution shows, there is some force in the point that as between the outgoing partner and the others there *is* a form of dissolution, albeit not a general one. I think it follows that if the other partners wish to continue the business with the outgoing partner's share of the assets they should account to her for the value of her share – that is, what she would have received had the business been wound up. In practice that means that her share is to be assessed by a valuation of the assets and liabilities at the date of retirement.

86. I have reached this conclusion as a matter of principle without regard to the decision of Goff J in *Sobell v Boston*, or the commentary in *Lindley* and *Blackett-Ord* which is largely based on his decision. But in fact the conclusion I have come to is entirely in line with *Sobell v Boston*. The plaintiff, Mr Sobell, was in partnership with the three defendants as solicitors. It was agreed that he should leave the firm. The plaintiff said that the agreement was that the firm would be dissolved and wound up; the defendants that the plaintiff should retire, leaving the defendants to continue in business together. There was a conflict of evidence on the point which Goff J, who was hearing a motion by the plaintiff for the appointment of a receiver, could not resolve on affidavit, but he thought the evidence *prima facie* indicated that the agreement was that the plaintiff should retire. The plaintiff said that even if it was a case of retirement it was silent as to the terms on which his share of the assets was to be acquired and he was still entitled to a sale. That was rejected by Goff J. At 1591A-B he referred to a passage in the then edition of *Lindley* (13th edn, 1971) to the effect that where a partner retires without agreement as to how his share was to be acquired by the continuing partners then the retiring partner is, in the absence of agreement, entitled "if necessary by an order for

sale" to receive his appropriate share of the assets. He said however that once it is found that a partner has retired he did not see how as a general rule he could be entitled to a sale, this being inconsistent with retirement, and continued (at 1591D):

> "In my judgment, what he is entitled to is the value of his share at the date of his retirement, including, of course, the then goodwill, the ascertainment of which must at all events normally be a matter of inquiry, accounting and valuation, not sale."

87. For the reasons I have sought to give above, this seems to me to be right. It is reflected in *Lindley* at §19-22 as follows:

> "In the absence of any *express* provision in the partnership agreement or in an ad hoc agreement between the partners, the entitlement of the deceased or outgoing partner in respect of his share will, in the normal way, strictly be represented by his proportionate share in the net proceeds remaining after all the partnership assets have been sold and the partnership debts and liabilities paid and discharged. However, where there is an implied recognition on the part of the outgoing partner that the other partners will continue the business, those other partners will be treated as entitled to acquire his share at a valuation and the court will direct the necessary accounts and inquiries for that purpose."

88. To like effect is *Blackett-Ord* at §18.34:

> "If a partner has left the firm but the firm continues without winding up, the implication is that he has retired and that there will be no sale of the partnership assets but he will be paid out at a valuation."

89. It is implicit in all these formulations that the valuation will be based on the actual value of the relevant assets at the relevant time, not the book value at which they have been entered into the accounts, which is likely to be based on their historic cost, and in the case of an asset like the 1994 tenancy may well be nil.

90. I think the Judge was therefore right to regard *Sobell v Boston* as covering the present case and as providing the answer, namely that Suzanne is entitled to a ¼ share in the value of the 1994 tenancy, to be paid by Philip and James, such value to be determined by an inquiry and not based on the book value of nil, together with 5% interest from 8 July 2010.

91. I do not think it necessary to consider the correct jurisprudential basis for this conclusion, and whether, as the Judge thought, it is attributable to an implied term. Mr Walker was inclined to support his reasoning on this, but there are some difficulties with it. Since there was in my view no agreement reached at all as to the financial consequences of Suzanne's retirement, I think it is difficult to say that a term should be implied into the agreement, that being limited to her retirement, that is that she should cease to be in business with the others. And as Mr Peters said, there are competing considerations as to how a retiring partner should be paid out which may vary from case to case. In the case of a farming partnership, which may be asset rich but cash poor, a payment at a valuation (using actual values at the date of retirement rather than book values) may lead to a substantial payment having to be made for unrealised capital

profits which would place a strain on the continuing partners. So it is difficult to say that any particular term is so obvious that it goes without saying, or needed to give business efficacy to the bargain (which, to repeat myself, did not exist anyway).

92. I prefer to say that the right of the outgoing partner to payment for her share of the net assets is simply a recognition of the fact that her interest is measured by her "right to a proportion of the surplus after the realisation of the assets and payment of the debts and liabilities of the partnership" (see paragraph 68 above), and that if the other partners have taken over and used her property without payment, they should pay her for that interest.

93. If this causes difficulties in a partnership such as the present, I do not think the solution is to deny her any payment for her property. I think it is for those who set up family farming partnerships, often for tax reasons, to consider carefully how to reconcile the interests of those partners who wish to carry on farming, and of those who wish to realise their property, and make provision accordingly, either in the partnership agreement or in an *ad hoc* agreement when one of them wishes to withdraw.

Conclusion

94. I would dismiss the appeal.

Lady Justice Falk:

95. I agree.

Lord Justice Peter Jackson:

96. I also agree.

97. I add a word about the future. Even after two substantial trials and two substantial judgments on appeal, these parties still have to engage in the valuation process provided for by the judge. We were told that disputes continue about the basis of valuation and about interest. Before those go any further, I hope the parties might reflect on what this sad family breakdown has cost them already (and I speak only in financial terms). When we asked, we were told that the legal costs of the proceedings leading to the 2022 judgment and to this appeal already exceed £850,000. If the costs of the proceedings leading to the 2019 judgment and appeal are added, the total costs are very much higher than that. Whatever the value of a quarter share in the AHA tenancy, the cost of further litigation about it is likely to be disproportionate. These assets were built up by the grandparents and parents for the benefit of their children. The older generations may have had an aversion to paying tax, but the younger generation's litigation habit is at least as great a threat to the family's hopes. The remaining disputes cry out for mediation.