

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of John  
Brown v. William Brown and another, from  
the Supreme Court of the State of New South  
Wales ; delivered the 3rd February 1911.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

LORD ROBSON.

[DELIVERED BY LORD ROBSON.]

In this case the Plaintiff, William Brown, seeks a dissolution of partnership in the business of merchants, shipowners, and colliery proprietors, carried on at Newcastle in New South Wales, and elsewhere, under the style or firm of J. and A. Brown. The Defendant, John Brown (the Appellant), contends that the business in question is carried on as a trust, for the benefit of the family to which both Plaintiff and Defendants belong, and that the Plaintiff's rights and interest in the business, being subject to that trust, are not such as to entitle him to a dissolution of the partnership.

The facts, so far as they are material to the point now raised, are as follows :—

In and prior to the year 1877 the firm of J. and A. Brown consisted of two brothers, Alexander and James Brown. On the 12th January 1877 Alexander Brown (referred to as the testator) made a will whereby he left his share in the business to his nephews Alexander Brown (referred to as Alexander Brown the elder), and the

Appellant, John Brown, who was the son of the other partner, James Brown, upon trust for the benefit of themselves and the remaining children of James Brown, viz., Alexander (the younger), William, and Stephen, as tenants in common. The will contained a declaration that it should not be competent for any of those devisees to sell or mortgage the property thereby given to him or for his use otherwise than to each other, nor to dispose of it by will except in favour of his issue, and on the death of any such devisee without having so disposed of his said interest, then such interest should be held by the trustees for the survivors of the said sons of James Brown in equal shares with the like restrictions as to disposal thereof.

The testator died shortly afterwards and his will was duly proved by the Appellant and Alexander Brown the elder. James Brown survived the testator and continued to carry on the business on behalf of himself and the beneficiaries under the testator's will.

In 1886, Alexander Brown the elder sold his interest to his uncle James, and it was by deed transferred in trust for him (James) to John and his brother Alexander Brown (referred to as Alexander Brown the younger), and the latter was appointed a trustee of the testator's will in place of Alexander the elder.

In 1887, James Brown retired, and under arrangements then made the business was carried on by the Appellant and Alexander Brown the younger on trust for themselves and their brothers William and Stephen.

James Brown died in 1895, and on 1st February 1896 an Indenture was executed to which all the four brothers who were beneficiaries, viz., the Appellant, Alexander Brown the younger, and William and Stephen were parties. It was by that deed agreed in express terms that William

Brown (the present Plaintiff) should take the place of Alexander Brown the younger as a partner in the business, and notices were accordingly published in the "Gazette" that Alexander Brown the younger had retired from the business and that William Brown had been admitted a partner therein. It is to be observed that although William Brown thus took the place of Alexander Brown in the business he did not take his place as trustee of the will of the testator.

There is a dispute as to the extent to which the Respondent William Brown thereafter took part in the management of the business. The Appellant contends that he (the Appellant) assumed, or continued, the sole control down to 1905, and that William Brown by his concurrence in that control, must be taken to have waived his own rights, if any, to be an active partner. William Brown himself alleges that for some years, viz., 1899 to 1904, while John Brown was (except for a short period) absent from Australia he (William) had sole control of the business; but, however this may be, there appears to be no evidence of any waiver which could carry with it such an abandonment by William Brown of his rights, as the Appellant alleges. Disputes arose between the parties (other than Stephen who makes no claim and submits to the order of the Board) as to the management of the business, and in February 1907 William Brown brought this action against John Brown for a declaration that he was entitled to an equal share in the business. John Brown pleaded that William Brown had waived his rights of management. In his replication William Brown met that plea by a denial and by the allegation that he was a trustee and so could not abandon his rights of management. It was then contended on behalf of John Brown that the interest conferred on William Brown was not that of a trustee, but that of a partner only.

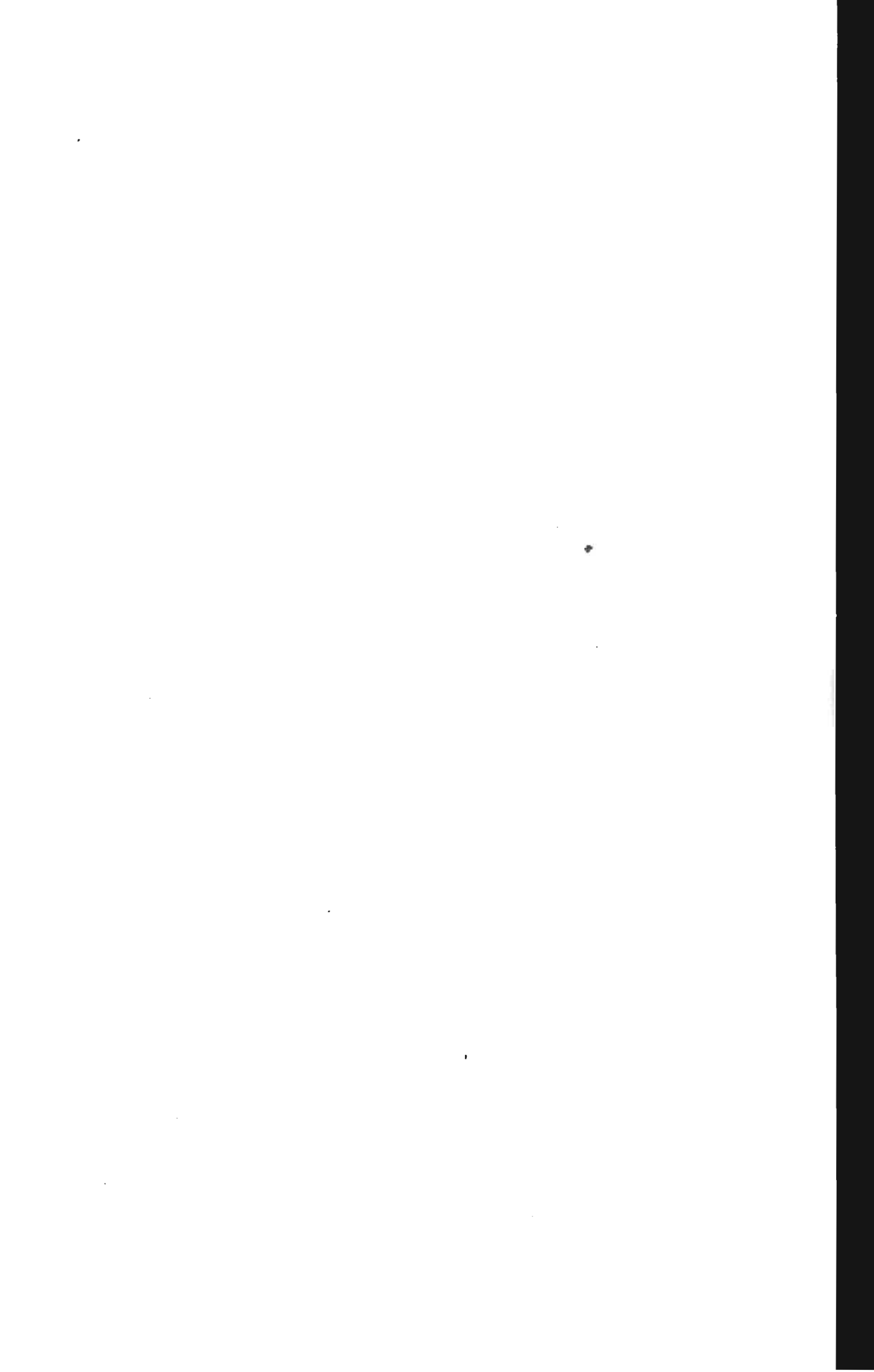
That point was ultimately decided against William Brown on appeal to His Majesty in Council, and by an Order in Council, dated the 21st December 1908, it was declared that William Brown was only a partner in the said business. He therefore amended his claim so as to ask for a decree of dissolution of partnership and Judgment was given in his favour by His Honour the Chief Judge in Equity. The Appellant now seeks to have that Judgment reversed. Instead of contending as heretofore that William Brown was not a trustee, but had been originally made a partner only, he now contends that no partnership "in the ordinary commercial sense" had ever existed between the parties. That depends on the terms of the Indenture of the 1st February 1896, whereby it was agreed between all the parties that William Brown should take the place of his brother Alexander Brown the younger as a partner in the business, and the question has been finally determined by the Order in Council of the 21st December 1908.

No term or period was agreed for the duration of the partnership so it must be treated as a partnership at will and William Brown is entitled to have it dissolved on notice.

Mr. Levett says that this would involve a sale of the business and would therefore be destructive of the trust, but the parties have not bound themselves to continue partners for the benefit of the Trust, and if, in consequence of their omission to do so the business should come to be sold, the terms of the trust will still subsist, and will apply to the proceeds of the business instead of to the business itself.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed with costs.

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In the Privy Council.

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JOHN BROWN

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