

***Cheema v Jones and others* [2017] EWCA Civ 1706**

Cheema and Jones were doctors who had practised in partnership together and had subsequently invited three more partners to join the partnership. Negotiations on the terms of the new partnership continued after the three new partners had started work. When the relationship between Cheema and Jones broke down, Jones sought to prevent Cheema from practising as a doctor at the practice. Cheema claimed that the partnership of five partners had never been formed and was granted an interim injunction to restrain Jones from preventing him to exercise his rights under the original partnership agreement. Jones then purported to give notice dissolving the partnership at will between the five partners.

At first instance the judge held that the five doctors had entered into an oral partnership agreement with the future intention of entering into a written partnership agreement, and that it was a partnership at will which had therefore been validly dissolved by the notice. Cheema's application for a permanent injunction thus failed. The judge also noted that, had it been necessary to decide on whether it was just and equitable to order the dissolution of the partnership under s35(f) of the Partnership Act 1890, it would have done so, because it was not practical for the five doctors to continue working together in circumstances where their mutual relationship of trust and confidence had broken down.

The Court of Appeal agreed that a new partnership at will between the five partners had come into existence, and that it had been validly dissolved by the giving of notice. It therefore considered it unnecessary to examine whether it would have exercised its discretion under s35(f).

The Court of Appeal held that since the discussions about the new partnership were focussed on a new agreement and there was no reference to the old agreement as a fall-back position, it was to be inferred that Jones and Cheema intended to abandon the old agreement and enter into a new contractual relationship which would supersede the old partnership. The fact that no new agreement was signed did not affect that inference. This was consistent with the judgment in *Firth v Amslake*, and with the commentary in *Lindley & Banks on Partnership* and *Blackett-Ord & Haren*. In *Firth* two doctors who had carried on partnership under an agreement which provided for it to continue for their joint lives agreed in principle to enter into a partnership with a third doctor, but the draft deed was never signed. The two original partners subsequently gave notice of dissolution of the new partnership to the third partner. The court held that the new partnership had superseded the old partnership, and was a partnership at will because no agreement had been reached on its duration. It could therefore be validly dissolved by notice. The court of Appeal held that although dicta in *Austen v Boys* suggested that if a new partner was taken into a partnership without specifying the terms on which he became a partner, the original partnership agreement would govern the new relationship, that dicta concerned the different situation of a new partner being admitted in the absence of any intention by either the existing or the new partners to enter into a new agreement. The Court of Appeal also

held that there was no evidence that the new partners intended to be bound by the original agreement, or even that they had all seen it.

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