

### **Case Facts / Summary**

Mr. Ingram and Mr Christmas were partners in a firm called ` Merry's `.

Ingram retired in 1947, effectively dissolving the partnership. Christmas promised to give notice of this to those dealing with firm. No advert placed in London Gazette but new notepaper printed omitting retired partner's name.

In 1948, Merry's ordered goods from Tower Cabinet using a piece of `old` notepaper with Ingram's ( retired partner ) name on it. Christmas signed it ` Manager `. Tower Cabinet had never dealt with Merry's before. The price was never paid so Tower Cabinets obtained judgement against Merry's.

In accordance with the laws of Agency at that time \* Merry's could choose one ( but only one ) of the partners ( agents ) to pursue. They sought to enforce it against Ingram saying that he ( Ingram ) was liable under Partnership Act 1890 and most specifically under following sections of the Act ;  
section 14 ( 1 ) ( i.e. "holding out" )

section 36 ss 1 ( i.e. treated as an "apparent" member / partner of firm )

section 36 ss 2 ( i.e. requirement of partners to give adequate notice of dissolution.

However in order to find for the pursuer the courts would need to satisfy themselves that Ingram had " knowingly " held himself out or allowed himself to be represented as a partner. Also use of the word " apparent " was required to be clarified as this would impact on what level of notice & liability was / was not required..

\* The Civil Liability ( Contributions ) Act 1978 now provides that a judgement against one partner does not bar a subsequent action against the other partners.

Reference may also have been made to the judgement passed in the previous case of *Court v Berlin* [ 1897 ] 2QB 396 where the Court of Appeal held that retiring partners may find themselves liable for debts after retirement. However as the debt involved in *Tower Cabinets Ltd v Ingram* [1949]2 KB 397 was incurred post-retirement any relevance here is questionable.

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### **The judgement**

The King's Bench Division held that Ingram was not liable under section 14 of the Partnership Act because he had never knowingly suffered / held or allowed himself to be represented or held out as a partner as was the case in *Hosie v Waddle* (1866)3 SLR 16.. The word 'knowingly' in the Partnership Act 1890 s.14(1) does not mean mere carelessness in allowing himself to be represented as a partner. Ingram was not liable under section 36(1) of the Partnership Act 1890 as an 'apparent' partner. Lynskey, J said;

“ apparent members means members who are apparently members to the person who is dealing with the firm, and they may be apparent either by the fact that the customer has had dealings with them before, or because of the use of their names on notepaper, or from some other sign outside the door, or because the customer has had some indirect information about them. “

As this was Tower Cabinet's first transaction with Ingram, which had occurred over eight months after his retirement, it could not be argued that the third party had any previous knowledge or information that Ingram had been a partner of the firm. Apparent in section 36(3) meant “ appeared to be members to persons dealing with the firm “ Therefore “ apparent” could not apply to members who were not known to the person ( third party ) concerned to be a partner of the firm.

This latter principal was applied in this case as Ingram was not known by Merry's prior to his retirement and there was no holding out. The case of *Graham v Hope (1792) Peake 208* set out that, in the case of persons dealing with the firm to whom the retiring partner was not known as a partner, no notice is necessary. However if Tower Cabinet had dealt with Mr Ingram previously as a partner of Merry's and had not received adequate notice of his retirement they could have sought to rely upon the fact that they had acted in good faith therein binding the partnership.

### **Commentary**

This case dealt with Law of partnership and specifically areas of; Change of constitution, Notice of dissociation, Advertisement, Rights of third parties dealing with the firm & definition of "Apparent" members.

The main source of law relied upon by the Court was the Partnership Act 1890 and specifically the sections and sub-sections as out-lined previously.

This judgement helped to clarify the liabilities of retiring partners which had been founded upon in the case of *Court v Berlin (1897)*. 2 QB 396

A retired partner normally only remains liable for obligations incurred by the partnership prior to retirement. However the retiring partner is required to take steps in order to avoid liability under the heading of 'apparent' partner.

*Tower Cabinets Ltd v Ingram [1949] 2 KB 397* also classified creditors into two distinct groups for the purposes of liability and notice required..

For creditors who knew members to be partners of the firm ( i.e. apparent ) notice must be issued to all.. This could be complied with via personal notice for individuals known to the firm or , for the public , an advertisement in the London Gazette. However to persons who had no previous dealings with the firm, and therefore no knowledge of the member being a partner , no such notice is necessary. This latter ruling was applied in this case. Failure of any retiring partner to effectively dissolve the partnership or ensure appropriate notice as outlined above may result in him being liable for debts incurred by the firm. This case reminded that liability could be incurred through “ holding out “. However in this respect it was noted that Ingram had effectively dissolved the partnership in that he no longer took part in managing the firm and that he had ceased to share equally in the capital & profits of the business.

Another affect of this case applies to retired partners who die in that there are obvious implications for the estate of the deceased in that definition of “apparent” would dictate if the estate could be held liable or not.

The principals and judgement expounded in the case of *Tower Cabinets Ltd v Ingram [1949]2 KB 397* remains central to present day partnership law and it has served to clarify and strengthen the Partnership Act 1890.

## Bibliography / Points of reference

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## Internet Resources

[www.westlaw.com](http://www.westlaw.com)