

TOURNIER -v- NATIONAL PROVINCIAL & UNION BANK OF ENGLAND [1924]

Court of Appeal

1st January, 1924

Judges: Banks LJ, Atkin LJ, Scrutton LJ

References: [1924] 1 KB 461, [1923] All ER Rep 550, 130 LT 682

The court considered the duty of confidentiality owed by a banker to his client. Banks LJ said:

“At the present day I think it may be asserted with confidence that the duty is a legal one arising out of contract, and that the duty is not absolute but qualified. It is not possible to frame any exhaustive definition of the duty. The most that can be done is to classify the qualification, and to indicate its limits.” and “In my opinion it is necessary in a case like the present to direct the jury what are the limits, and what are the qualifications of the contractual duty of secrecy implied in the relation of banker and customer. There appears to be no authority on the point. On principle I think that the qualifications can be classified under four heads:

- (a) Where disclosure is under compulsion by law;
- (b) where there is a duty to the public to disclose;
- (c) where the interests of the bank require disclosure;
- (d) where the disclosure is made by the express or implied consent of the customer.’

Scrutton LJ said:

“The Court will only imply terms which must necessarily have been in the contemplation of the parties in making the contract. Applying this principle to such knowledge of life as a judge is allowed to have, I have no doubt that it is an implied term of a banker’s contract with his customer that the banker shall not disclose the account, or transactions relating thereto, of his customers except in certain circumstances” and “I doubt whether it is sufficient excuse for disclosure, in the absence of the customer’s consent, that it was in the interests of the customer, where the customer can be consulted in reasonable time and his consent or dissent obtained.”

Scrutton LJ did not think that the ‘ancient formula’ set out in *Parmiter* for defamation was sufficient in all cases, because words might damage the reputation of a man as a business man which no one would connect with hatred, ridicule or contempt.

Atkin LJ said:

“The facts in this case as to the course of business of this bank do not appear to be in any degree unusual in general banking business. I come to the conclusion that one of the implied terms of the contract is that the bank enter into a qualified obligation with their customer to abstain from disclosing information as to his affairs without his consent.” and “I have already stated the obligation as an obligation not to disclose without the customer’s consent. It is an implied term, and may, therefore, be varied by express agreement. In any case the consent may be express or implied, and to the extent to which it is given the bank will be justified in acting. A common example of such consent would be where a customer gives a banker’s reference. The extent to which he authorises information to be given on such a reference must be a question to be determined on the facts of each case. I do not desire to express any final opinion on the practice of bankers to give one another information as to the affairs of their respective customers, except to say it appears to me that if it is justified it must be upon the basis of an implied consent of the customer.”

As to defamatory meaning, Atkin LJ said:

“I do not think that it is sufficient direction to a jury on what is meant by ‘defamatory’ to say, without more, that it means: were the words calculated to expose the plaintiff to hatred, ridicule or contempt, in the mind of a reasonable man? The formula is well known to lawyers but it is obvious that suggestions might be made very injurious to a man’s character in business which would not, in the ordinary sense, excite either hate, ridicule, or contempt – for example, an imputation of a clever fraud which, however much to be condemned morally and legally, might yet not excite what a member of the jury might understand as hatred or contempt.”

Case Cited:

- [*Parmiter -v- Coupland And Another*](#), [1840] EngR 168, (1840) 6 M & W 105, (1840 151 ER 340)