have transpired, induce the belief that a partnership existed. For my own part, the fact of the pursuer and defender having common clerks is of great weight; but when going a step further we find Morrison truly contributing funds to the common stock, that clears away much, if not all, of the difficulty in the case.

No doubt there was not, so far as can be seen, any arrangement as to the division of profits; but your Lordships will have observed that a reason may be found for this in the fact that the partnership did not endure long enough, nor was there money enough made to permit of such a division.

I have, on the whole matter, come to be of opinion that these two persons cannot have carried on their business on such a footing, and yet deny either to one another or to the outside public the existence of a partnership.

LORD ORMIDALE concurred.

LORD GIFFORD—I have come to the same conclusion.

It seems as if these two gentlemen had set themselves to make everything in connection with this partnership, and all the arrangements under which they carried on business together, as indefinite and ambiguous as possible, so as to make it almost impossible to tell what the agreement between them really was. When parties leave things in such an ambiguous position, neither can complain if the courts of law give effect to the preponderance of evidence although nothing is very clearly proved.

These gentlemen had for a long time been on very intimate terms, Morrison having been an apprentice of Service's father. Admittedly they had many joint transactions and many joint adventures together, and ultimately their relations in business were undoubtedly very close; and the question is, whether there was a partnership between them? The indications of this partnership are, I think, sufficient to establish it. They had a common office. This of itself is perhaps not very unusual, as they had separate rooms; but certainly when we find that they had clerks in common the case appears stronger, and still further when their whole business books are seen to have been in common.

I cannot understand that people with separate affairs and separate businesses should keep common books. The fact that the whole actings of the two parties—the whole work done by each— the whole cash received and disbursed—are recorded in common books by themselves or by their common clerks is hardly capable of being explained in any other way than that of an existing partnership. These gentlemen kept a common diary, which served as the day-books of the firm, and it speaks volumes when we find these two gentlemen each entering each piece of work in the same diary. And so with their other books.

It would require very strong evidence to overcome such facts as these.

Then it appears that Morrison had money—was, in short, the moneyed partner—and he made advances to a very considerable extent; and although it would be quite intelligible that he should make advances for a common partnership, still it is not likely that he would advance so much to Service himself. No doubt he took I O Us for the sums, but he had no security; and the vouchers were, I think, merely to enable the partners to adjust accounts *inter se*. It seems impossible that the parties would have acted in the manner disclosed if there had been no partnership between them.

On the whole, it would be unsafe to hold that these parties were not partners in the common business which they carried on.

This interlocutor was pronounced:—

"The Lords in respect the trustees on the sequestrated estate of the pursuer and defender have failed to sist themselves as parties to this action after the intimation of the dependence of the same, and having heard counsel in the appeal, Find that the pursuer has proved facts and circumstances sufficient to establish a partnership between him and the defender, and that from the month of August 1876 down to the date of raising the action: Therefore dismiss the appeal; affirm the judgment of the Sheriff; find the defender liable in the expenses of the appeal, and remit to the Auditor to tax the same and to report; and remit the cause to the Sheriff-Substitute to repone the defender against the decree of 8th August 1878 upon payment by him of £10, 10s. to account of the foresaid expenses, and decerns."

Counsel for Pursuer (Respondent)—Mair—Black. Agent—William Officer, S.S.C.

Counsel for Defender (Appellant)—Rhind—Baxter. Agent—George Begg, S.S.C.

Wednesday, July 2.

FIRST DIVISION.

[Sheriff of Argyleshire.

MURRAY *v.* CAMPBELL.

Lease—Shootings—Wooden Building—Where Landlord agreed to take "any Dwelling-house or Offices" off Tenant's Hand.

In the lease of an arable and grazing farm, which also included the shootings, it was stipulated that "should the tenant build any dwelling-house or offices for his accommodation, the same shall be taken up from him at the expiry of his tenure at their then value, not exceeding £200." The tenant built a cottage containing a kitchen and a bedroom, and erected against the gable of the cottage a wooden structure which contained no fireplace, and was used for the accommodation of summer visitors and for sporting purposes. *Held* that the landlord was liable under the above stipulation in payment of the value of the wooden erection.

By lease dated April 1857 Duncan M'Iver Campbell of Asknish let to Captain John H. Murray, R.N., the farm of Carricks, Argyleshire, for a term of nineteen years from Whitsunday 1857. The farm was both arable and pasture, and it was also "contracted that the said John Haliburton Murray is during the term of this lease to have the exclusive right to preserve the game, and the

exclusive right to shoot over the said lands." It was further provided that "should the tenant build any dwelling-house or offices for his accommodation on the said lands, the same shall be taken up from him at the expiry of his tenure at their then value, not exceeding £200 sterling, which valuation, within the limits of the said sum, when ascertained by parties mutually appointed, the proprietor binds himself and his foresaids to repay to the said John Haliburton Murray at his removal." During the lease Captain Murray built a stone and lime cottage containing a kitchen and bedroom, and subsequently he erected a wooden apartment against the gable of this cottage and connected with it by a covered passage. This wooden structure contained no fireplace, and was used for the reception of summer visitors and for sporting purposes. Valuators, to whom the Sheriff-Substitute subsequently remitted the case, were of opinion that "the wooden erection attached to the stone and lime building does not add to its value as a farmer's residence, owing to the perishable material it is constructed with, the expense of upholding it, and the want of fireplaces, rendering it uninhabitable in winter." At the end of the lease the landlord admitted liability for the stone cottage under the above-quoted provision, but declined to pay anything for the wooden erection, and in consequence this action was raised. The Sheriff-Substitute (Home) found the landlord liable. He added this note—

"*Note.*—It is provided for by the lease between the parties that the petitioner should be at liberty to build a house and office on the lands which he leased from the respondent, and that the respondent should be bound to take any house or office he should build off his hands at a price not exceeding £200. The petitioner built a cottage of stone and lime, and added afterwards a wooden chalet. The respondent is willing to pay for the stone and lime building but not for the wooden one, as not being the sort of house contemplated by the lease or suited to the climate, and a remit was asked to a man of skill to examine the building and to report.

"The Sheriff-Substitute does not however see his way to do this. The respondent pretty much admits his liability in his letter of 26th January 1876. The lease says in very broad terms 'any house' which the petitioner might build was to be taken off his hands, and the price to be paid by the respondent does not appear to the Sheriff-Substitute to be that of any very solid or permanent structure unless of a very small size. It may be true that the wooden chalet may be of very little use; in that case the valuators will naturally value it at very little. There is no dispute that a certain house has been built in terms of the lease which will have to be valued; it may even be that the valuators may hold that the rest of the building has no value, but if it does add to the value of the building at all, it seems to the Sheriff-Substitute that the respondent is bound to pay for it; of course in estimating this the valuators will take into account its suitability as a dwelling-house in climate, and as a residence upon the farm." . . .

The Sheriff (Forbes Irvine) adhered, and added this note—

"*Note.*— . . . As regards the buildings the expression in the lease 'any dwelling-house or offices for the accommodation of the said lands' is wide and comprehensive. There is no stipulation, such as is often found in similar contracts, that the houses shall be built of stone and lime or of other specified materials. This being so, and no decision of the Courts having fixed the legal meaning of the term dwelling-house, recourse must be had to the ordinary use of the word, which according to the recognised authorities means a place of residence or abode framed or built for shelter or protection, of any size and of any materials, such as wood, brick, or stone.

"In the present case it is not unimportant to observe that the lease gives to the tenant the right of shooting on the lands, and a class of buildings may there be appropriate which might scarcely fall within the class of 'meliorations' under an agricultural holding pure and simple. Cases may no doubt arise of buildings so extravagant in cost or so unsuitable in character as to be outside the bounds even of a description so general as that given in the lease; but these cases must be judged by their own circumstances, and in the present instance any question of extravagant cost seems excluded by the moderate limit specified as the utmost value for which the landlord is to be liable." . . .

The landlord appealed, and argued—This was primarily a sheep farm, and for the purposes of a sheep farmer this wooden building was useless—the landlord therefore ought not to be compelled to pay for what he never would have thought of erecting for himself.

Argued for the respondent—This was not merely a lease of the grazings; it also included the shootings; and the building in dispute plainly was of use for purposes of sport, and therefore to the landlord, who might let it to a new tenant. Indeed, he seemed to contemplate doing so. It was thus equitable that he should pay for it, and it certainly was within the terms of the lease.

At advising—

Lord President—The lease between the parties here is a lease both of grazings and shootings. It is no doubt over the same land, but it is impossible not to keep in view the various clauses which imply that the shootings were a material part of the subject to which the tenant acquired right for the full period of the lease. Now, it is by no means unusual in entering into a lease of shootings, even in combination with the grazings, to allow the tenant to build a house for the purposes of the shootings; but I must say I never saw a provision of this kind so extremely loose in its stipulation as that which we have here, and one which leaves it so entirely to the will of the tenant to decide what he is to do. He is to "be at liberty to erect a dwelling-house and offices for his accommodation on the said lands," and it is further provided that "should the tenant build any dwelling-house or offices for his accommodation on the said lands, the same shall be taken from him at the expiry of his tenure at their then value, not exceeding £200 sterling." Now, it is not stipulated here that the tenant is to build under the superintendence of the landlord. Any buildings which he may consider suitable for his own accommodation are to be taken over by the landlord at a valuation, and they may be built at any period during the lease—from the first to the last year—for aught that there is to the contrary in

the lease. Further, the buildings may be on any scale which the tenant may choose to adopt, provided that the sum which he asks the landlord to pay does not exceed £200. Lastly, and most important, the buildings may be of any materials, for there is not one word settling what are the materials of which the houses are to be built.

Now, that being so, it would be extremely difficult to sustain almost any objection taken by the landlord when the lease comes to an end. But what is the objection here? I do not see any, except that part of the structure is built of wood and contains no fireplace. The appellant says that he "is not bound and declines to pay the price or value of the wooden structure or chalet subsequently erected against the gable and walls of the said stone and mortar structure;" and he says further, that the petitioner found "the wooden apartment which he had raised against the gable of the said cottage for the reception of summer visitors and sporting purposes deficient and inconvenient." It was for the reception of summer visitors and sporting purposes that this lease was entered into. That is the statement of the appellant himself. Then he goes on—that for the purposes of convenience "he conceived the idea of making an extensive wooden covered-way, called a lobby, 33 feet in length and 7 feet broad, for no other purpose than securing a dry and sheltered passage from the chalet to a small kitchen and bedroom, which is all the accommodation the stone cottage contains, while the chalet has no vent or fireplace." Now, where a man makes a wooden structure such as this as an addition to a building containing nothing more than a bedroom and a fireplace, it is rather an unreasonable construction to hold that the wooden structure is not within the provision of the lease. I cannot hesitate to agree with the Sheriff. It appears to me impossible to deny that this wooden building was a part of the house which the tenant was entitled to erect at what was in fact his own caprice.

Lord Deas—I am not prepared to say entirely "at his own caprice," but there is very considerable latitude. My difficulty is that we do not know what was erected. The whole matter is in the dark. We do not know what was the number of sheep upon the farm, or what proportion the buildings bore to the size of the farm. But we get a good deal of light from the letter of Mr Campbell to Mr Murray, in which he says—"I had always looked upon the chalet as your exclusive property, and it was my intention that the incoming tenant was to take the chalet and its adjuncts at valuation from you." From this it is very clearly to be understood that the chalet falls within the lease, for I do not think that these buildings could be passed on to the incoming tenant if they could not be passed on to Mr Campbell himself.

Lord Mure—As I read the interlocutors of the Sheriffs, they hold these wooden buildings to be "offices." That is a wide word, and I am not prepared to differ, but I think the case a narrow one.

Lord Shand—I see no reason to differ from your Lordships. The determining elements are these—that this was a lease of the shootings as well as of the grazings, and that there is no limit as to the character of the house or as to the materials of which the tenant may build it. Therefore it may be merely such a house as a shooting tenant desires, and then wooden building comes up to that requirement.

The Court adhered.

Counsel for the Petitioner (Appellant)—Kinnear—J. P. B. Robertson. Agents—M'Neill & Sime, W.S.

Counsel for the Respondent—Dean of Faculty (Fraser)—Pearson. Agents—Murray, Beith, & Murray, W.S.

Friday, July 4.

SECOND DIVISION.

[Sheriff of Perthshire.

SHARP *v.* M'COWAN.

Process—Sheriff Court—Want of Signature to Petition—Complete Writ—Sheriff Courts Act 1876 (39 *and* 40 *Vict. cap.* 70), *sec.* 24.

An action was raised in a Sheriff Court, the pursuer's agent signing the pleas-in-law but not the petition or condescendence. The pursuer was successful, and the defender appealed to the Court of Session, where for the first time an objection to the competency of the action was taken on the ground that the petition was unsigned, that signature was essential, and that consequently there was no process. *Held* that the objection should have been taken in the Inferior Court, and an amendment allowed there, but that the Court might amend even at this stage; further, that there had been litiscontestation, and that was a good answer to the argument founded on the absence of a process.

Opinion (*per* Lord Gifford) that one signature at the end was sufficient for the whole record in such a process.

Friday, July 4.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*HOWE'S CASE*)—WILLIAM HOWE *v.* THE LIQUIDATORS AND ALEXANDER M'EWEN.

Agent and Principal—Ultra vires—*Misrepresentation—Fraud—Banking Company—Liability of Bank where Bank Officials arranged for Sale of the Bank Stock between Third Parties.*

M wished to sell certain stock which he held in a joint stock company, and intimated his intention at the head office of the company. H subsequently intimated in