Remits to Mr Dewar to see prepared and executed the draft of a bond and disposition in security for the said sum of £1636, 2s. 6d., or of bonds and dispositions in security for amounts not exceeding in all the said sum of £1636, 2s. 6d. over the said entailed estate, or any portion thereof, so far as situated in the shire of Dumfries, other than as aforesaid, with interest thereon at a rate not exceeding five pounds per centum per annum from the date of the advance until payment, and with penalties in common form, such bond and disposition in security, or bonds and dispositions in security, binding the petitioner, and his heirs of entail in their order successively, to repay the principal sums therein, with interest and penalties as aforesaid, and containing a power of sale in ordinary form, and also all other clauses usual and necessary in bonds and dispositions in security granted over lands in Scotland held in fee-simple, but always with and under the provisions and declarations applicable to such bonds and dispositions in security contained in the statutes thereanent, and to report."

Counsel for Petitioner—Rankine. Agent—David Turnbull, W.S.

Saturday, November 27.

FIRST DIVISION.

[Lord Fraser, Ordinary.

MACCREDIE'S TRUSTEES *v.* LAMONDS.

Partnership—Dissolution—Accounting.

By contract of copartnery entered into between the two members of a firm of law-agents and their clerk, for the purpose of carrying on the business of law-agents and conveyancers, it was provided by the second article that "the capital of the company shall be £3000, of which £1000 shall be forthwith contributed by the third party in cash, and the balance shall be deemed to be satisfied by the value of the first and second parties' office furniture and law-books, and existing business connection." By the ninth article it was provided that in the event of the death or bankruptcy of any of the partners the business should devolve on and belong to the other partners in proportion to their interests; "and the amount due to the deceased or bankrupt partner shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death or bankruptcy (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation to be made by a competent valuator, and no allowance shall be made for business connection)." In an action of accounting brought by the trustees of the third party after his death—*held* that nothing contained in the ninth article of the contract of copartnery interfered with the application of the common law rule of partnership accounting, that out of the ascertained free assets of the company there fell to be repaid the capital contributed by the partners before any division of the free assets was made; that the sum at which the office furniture and books had been valued fell to be added to the assets of the copartnery; and that these assets were thereafter to be charged with the whole capital contributed by the three partners.

Partnership—Duty of Partner—Diligence Prestable by Partner in Company Affairs.

In the winding-up of the affairs of a partnership at the death of one partner, the survivors maintained that they were entitled to allowance as compensation for the deceased not having attended to the business during a portion of the partnership, and so thrown the whole conduct of the business upon them. *Held*, by Lord Fraser (Ordinary), and acquiesced in, that they ought, if the deceased were unable or unwilling to perform his part of the contract, to have sought their remedy by dissolution of the partnership when it became certain that the deceased could not perform his part.

Observations on the question whether a court of law will, in consequence of the inattention of the partner to business, interfere to alter the proportion of profits falling to him under the contract.

This was an action of accounting at the instance of the trustees of the deceased Andrew MacCredie, writer, Glasgow, who died on 9th August 1884, against Henry Lamond & Robert Peel Lamond, writers, Glasgow.

A contract of copartnery had been entered into between the deceased Andrew MacCredie and the defenders for the purpose of carrying on the business of law-agents and conveyancers, which was to subsist for seven years from 1st April 1880.

By the second article of said contract it was provided—"The capital of the company shall be £3000, of which £1000 shall be forthwith contributed by the third party in cash, and the balance shall be deemed to be satisfied by the value of the first and second parties' office furniture and law-books and existing business connections. Interest at the rate of five per cent. per annum shall be allowed before striking the profits of the business on the said cash payment, but no interest shall be allowed on the balance of the said capital. Should any further sum or sums of capital be contributed by any of the partners for the purposes of the business, interest shall be allowed thereon at the foresaid rate in favour of the partner contributing before striking the profits."

By the third article it was provided that the interest of each of the Messrs Lamond should be two-fifths and Mr MacCredie's interest one-fifth.

By the ninth article it was provided—"In the event of the death or bankruptcy of any of the partners during the period of the copartnership the business shall devolve on and belong to the other partners in proportion to their interests, and the amount due to the deceased as bankrupt partner shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death or bankruptcy (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation to be made by a competent valuator, and no allowance shall be made for business connection), and shall be paid out by promissory-notes signed by the surviving or solvent partners, by equal instalments of three, six, and nine months from the date of such death or bankruptcy, with interest at five per cent. per

annum from that date till paid."

A remit was made to an accountant to ascertain what sum was due to the pursuers. In the report of the accountant several questions were reserved for the decision of the Court, of which, however, one only came before the Inner House. It is thus stated and dealt with in the opinion of the Lord Ordinary (FRASER)—"The first of these has reference to a deduction claimed by the defenders from the sum apparently due to the pursuers, and which deduction is thus stated by the accountant—'One-fifth of £2000, the value put by defenders upon the business connections, office furniture, and books belonging to them at the beginning of the copartnery, £400.' By the contract of copartnery it was provided that the capital of the company should be £3000, of which £1000 should be contributed by MacCredie in cash, 'and the balance shall be deemed to be satisfied by the value of the first and second parties' office furniture and law books, and existing business connections. Interest at the rate of 5 per cent. per annum shall be allowed before striking the profits of the business, on the said cash payment, but no interest shall be allowed on the balance of the said capital.' In another article of the contract, which deals with the settlement between the partners, if the partnership should be dissolved by the death of any one of them, it was provided that the amount due to the deceased partner (in this case MacCredie) "shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death. . . (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation to be made by a competent valuator, and no allowance shall be made for business connection)." Now, the accountant has credited the pursuers with the £1000 advanced by MacCredie, but the defenders complain that he has not given them any credit for their capital of £2000, and that this can only be done by debiting the pursuers with one-fifth thereof. Now, the £1000 that MacCredie advanced was not a bonus paid by him for admission, but was capital upon which interest was to be paid, and that interest is credited to MacCredie in the yearly balance-sheets. On the death of MacCredie this capital was to be paid to his representatives, and so in like manner if either of the defenders had died, what was called their capital (viz., the office furniture and books) was to be valued, and the sum so brought out paid to their executors. It is not easy to understand why when MacCredie dies his executors should leave behind them to the defenders £400, being the one-fifth part of the assumed value of the office furniture and books. The pursuers leave all the furniture and books to the defenders. The claim must be rejected."

The Lord Ordinary accordingly, by interlocutor dated 27th February 1886, disallowed this deduction claimed by the defenders.

The pursuers reclaimed, and after hearing counsel the Court ordered a minute to be given in setting forth their contention. In this minute the defenders contended—"That in striking the final balance as at the dissolution there should be placed on the debit side of the account the liabilities of the firm of H. & R. Lamond & MacCredie, in the following order, viz.—firstly, the firm's liabilities to third parties; secondly, the firm's liabilities to its own partners for capital. This has been done in part in so far as the liabilities to third parties have been provided for, and Mr MacCredie's capital has also been charged against the firm, but the Messrs Lamonds' capital has not yet been charged as it ought to be in a state of affairs as at the dissolution of the firm. On the credit side of the account the assets of the firm of H. & R. Lamond & MacCredie have all to be placed, and this has been done with regard to all except the value of the furniture and books belonging to the dissolved firm, which has not yet been ascertained as provided in article 9. On deducting all the liabilities of the dissolved firm in their order, including the said £2000, from all the assets of the same firm, including the value of the furniture and books, the true balance payable to Mr MacCredie's executors, being his one-fifth of the surplus estate or profits after providing for all the liabilities of the dissolved firm, will appear. The surplus estate or profits belonging to the firm, with which the Lord Ordinary has dealt as divisible in the proportions of four-fifths to the Messrs Lamond and one-fifth to Mr MacCredie, is too large by the failure to charge the £2000 against the dissolved firm. The result of charging this £2000 upon the copartnery estate is, that four-fifths of that sum have to be provided out of the Messrs Lamonds' share of the surplus, and one-fifth of the same sum, or £400, has to be provided out of Mr MacCredie's share. On the other hand, the value of the furniture and books has, in terms of article 9, to be paid by the surviving partners to the firm of H. & R. Lamond & MacCredie, thereby increasing, in the first place, the assets of the firm, and so necessarily the divisible surplus." They referred to Lindley on Partnership, i. 806; Pollock on Partnership (3d edition), 104; *Nowell* v. *Nowell*, L.R., 7 Eq. 558; Bell's Com., ii. (7th edition) 507 (5th edition), 619.

The argument of the pursuers appears from the opinion of the Lord Ordinary. They referred to Lindley on Partnership (4th edition), 840, 646; *Simmons* v. *Leonard*, 3 Hare 581.

At advising—

LORD PRESIDENT—The question to be decided has arisen in an action of count and reckoning which was raised for the purpose of settling the division of the estate of the firm of H. & R. Lamond & MacCredie. It was rendered necessary, by the death in August 1884 of Mr MacCredie, one of the partners of the firm, that a balance should be struck in accordance with the articles of copartnery, and the amount ascertained to be due paid over to the executors of the deceased partner.

The only part of the Lord Ordinary's judgment brought under review is that adverted to in the first part of his note, and my observations apply to it only. The Lord Ordinary has brought into account the capital contributed by MacCredie, but not that brought in by the Lamonds. In so doing, he has in my opinion committed an error. This error has arisen partly from a misunderstanding of the meaning of the contract, and partly from failure to attend to the rules of the common law as applicable to the partnership, and to the extent to which those rules have been modified by provisions of this contract. The partnership was that of law-agents in Glasgow; it commenced in 1881, and it was to continue

for seven years from that date. Mr MacCredie died in 1884, so that there were still three years of the partnership to run. The capital contributed by Mr MacCredie was £1000. The entire capital of the copartnery was declared to be £3000, and the other £2000 was "deemed to be satisfied" by the value of the Lamonds' office furniture and law books and existing business connections. In other words, these assets were for the purposes of the contract held to be equivalent to £2000. From this time forth the business connections, office furniture, and law books ceased to be the property of the Lamonds', and became the property of the firm; and in the same way MacCredie's £1000 ceased to be his property, and became the firm's property. MacCredie was not lending; he was giving his contribution to capital. The two items of capital were put together, and formed the capital of the firms, which from that date was £3000. The whole might have been lost within a very short time. In that case there could have been no repayment to either party. The partners of the firm could never receive back capital in competition with ordinary creditors. They are creditors of the firm, but postponed to outside creditors. It is by keeping these very obvious considerations in view that a solution of the questions here is to be sought.

The business was carried on, and large profits were made—upwards of £20,000 in four years—and the capital contributed by all the parties aided in achieving that fortunate result. Had there been no business connections to start with there would in all probability have been no profits. On the other hand, had there been no ready money, things could not have gone on so smoothly, so that MacCredie's money and the Lamonds' connections each contributed to the result. The question comes to be this. Suppose the business had come to its natural termination in 1884, what would have been the method of division? How could accounts between the parties have been made up? The first thing to do in such a case is to pay all outside creditors, if there is a balance; the next thing is to pay any super-advances made by any of the partners. Here there was nothing of that kind. Then the third thing is to pay back to the partners the capital contributed by them. That is paid to them by the firm out of assets, each partner being creditor of the firm to that extent. Now, could it have been contended, had matters stood thus, that the capital of one partner was to be repaid him while the capital of the other partners was not to be repaid them? Does it make any difference that one partner contributed money and another money's worth? Now, if it is quite clear that that makes no difference at common law, the next question is, what difference does the contract make in so far as it provides for the death or bankruptcy of the parties? The provision is —"In the event of the death or bankruptcy of any of the partners, during the period of the copartnersnip, the business shall devolve on and belong to the other partners, in proportion to their interests, and the amount due to the deceased or bankrupt partner shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death or bankruptcy (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation, to be made by a competent valuator, and no allowance shall be made for business connection), and shall be paid by promissory-notes signed by the surviving or solvent partners, by equal instalments of three, six, and nine months from the date of such death or bankruptcy, with interest at five per cent. per annum from that date till paid." I can find nothing else in the ninth article but these four provisions. It is said it is not well expressed. No doubt it is involved, but nothing else is to be extricated from it. What is the result? Does that article show that the ordinary rule of law is not to prevail? I look in vain for any such provision. There is nothing of the sort either in words or deducible from the words used.

I think that the notion of hardship has had a great influence upon the Lord Ordinary's mind. I confess I do not see this hardship, if that means hardship against Mr MacCredie in particular. He happens to be the deceasing partner, and upon him article 9 is rather hard. But it is a mere matter of chance that he is the deceasing partner. Each took his chance of this. Suppose Mr H. Lamond had died, what would have been the result? The whole business connections, upon which more than anything else the ability to earn profits depends, would have passed to his brother and MacCredie. From that time forward the advantage Mr MacCredie would have had would have been the advantage now enjoyed by Mr Lamond. The capital contributed must be given back to those who put it in, at the termination of the partnership.

Taking all these matters into consideration, I think that the express terms of the contract must receive effect, and that the capital must be paid back, there being plenty of surplus assets.

Lord Mure concurred.

Lord Shand—I have found this case attended with difficulty, and undoubtedly the result is that MacCredie, or rather his representatives, suffer the loss of £400. This arises from the provisions of the contract. And the Messrs Lamond are in this position, that they put in what is deemed to be equivalent to £2000, and they get out not only the value of what they put in, but a larger amount. The whole difficulty of the case arises from the peculiarity of the provisions of the agreement. In the ordinary case there is no difficulty about such matters, and the rules as to the payments to creditors and partners in such a case as this are quite accurately stated at p. 806 of Lord Justice Lindley's work. If the partnership had come to a natural termination the ordinary rules would have applied, but Mr MacCredie has died, and the 9th article of the agreement comes into play. There it is provided that in striking a balance no allowance is to be made for business connection. Does that mean that no allowance is to be made for what they said was to be "deemed" as forming part of the equivalent to £2000, or does it mean that the partners taking over the business are to make no allowance? A good deal is to be said on both sides. Then in the balance-sheets MacCredie is treated as holder of the capital, and he is paid interest while the Lamonds are not. These difficulties rather support the construction of the words, which suggest that the Lamonds had just put in a nominal capital. On the other

hand, there are considerations which tend to clear the way, and as some of your Lordships have a very clear opinion on the point I am not prepared to differ.

I cannot wonder that the Lord Ordinary went wrong, for until the minute was put in the case was not intelligible.

Lord Adam—Ever since I understood this case I have had a clear opinion regarding it. The only doubts I have are occasioned by the Lord Ordinary's judgment, and by the fact that one of your Lordships is doubtful.

The only difficulty introduced by the ninth clause is as regards the valuation of the assets. How is a balance-sheet to be stated? In the first place, come the partnership debts. Then the next thing is to state the debts of the copartnery to the partners. That having been done, the next thing is to look to the value of the assets with a view to the proportions due to each of the partners. It is with a view to this that the words "no allowance shall be made for business connection" have meaning. Were these words not in the contract, the valuator would have put a value on the office furniture, books, &c., and this value when brought out would have been apportioned, one-fifth to MacCredie and four-fifths to the two Lamonds. The reason why no allowance is to be made is this, that the firm has bound itself that the business shall belong to the surviving partners. The only result is, that if it is not to be valued there is so much less to be divided. It has been said that the result is hard on MacCredie's representatives. I do not know whether it is or not, because I do not know whether he made a good or a bad bargain. You cannot look at one provision of a contract in judging of this. He must be taken as having considered all the provisions of the contract before he became a party to it. He might have been left sole surviving partner. But it is immaterial whether it is proved to demonstration that there was or was not hardship. It is enough that he agreed to the contract.

The Court pronounced this interlocutor:—

"Recal the Lord Ordinary's interlocutor of 27th February 1886: Find that the capital of the company was declared by the second article of the contract to be £3000, of which £1000 was contributed in cash by the deceased Andrew MacCredie, and the balance of £2000 was held satisfied by the value of the office furniture, books, and business connection contributed to the company's property by the Messrs Lamond: Find that no further contribution of capital was made by any of the partners: Find that on the 15th of May 1884 the company had no creditors, and were owing no moneys except to the individual partners: Find that according to the common law rule of partnership accounting upon a dissolution at the 15th May 1884, the whole assets of the company having been realised, and the free amount ascertained, the capital contributed by each partner fell to be repaid to each such partner, and the remaining balance fell to be divided between the partners according to their respective interests in the concern: But find that by the 9th article of the contract it is provided that on the death of one of the partners during the period of the copartnery—(First) the business shall devolve on and belong to the surviving partners; (second) that the balance due to the deceased partner shall be ascertained by a balance of the books at the date of his death; (third) that that part of the assets which consists of books and furniture shall be taken by the survivors at a valuation; and (fourth) that no allowance shall be made for the value of the business connection which devolves on and belongs to the surviving partners: Find that the only deviation from the ordinary rule of accounting on a dissolution introduced by the 9th article consists of the four particulars above enumerated, and that nothing contained in the said 9th article interferes with the application of the ordinary rule, that out of the ascertained free assets of the company there must be repaid the capital contributed by the partners before any division of such free assets is made: Find that the furniture and books have been taken over and valued at the sum of One hundred and seventy-five pounds, and that the result of adding this sum to the assets of the copartnery, and thereafter charging the assets with the whole capital contributed by the three partners, is that the sum due to the pursuers amounts to £3261, 0s. 2d., with the interest thereon from 31st March 1885." [Then follow further findings as to the accounting between the parties, and a decerniture in terms thereof.]

II. In the same case the Lord Ordinary also disallowed certain other deductions claimed by the defenders in the accounting, and which were reserved by the Accountant for his Lordship's consideration. On these points, as appears from the report *supra*, the judgment of the Lord Ordinary was acquiesced in. Two of them, the 3d and 4th, are of general importance, and are therefore here reported. They are thus explained in his Lordship's note—"III and IV. The third and fourth items of deduction raise questions of a somewhat novel character. It has been fixed by the interlocutor of the Court that the accounting is to be till the 15th of May 1884, upon the footing that the copartnery continued till that date, but it is averred as matter of fact that during the last two years of MacCredie's lifetime [he died 9th August 1884 as above mentioned] he was very inefficient and very remiss in his attendance at work; that this arose in consequence of his having acquired the habit of tippling, and that in consequence undue pressure and heavier labour were thrown upon the defenders as partners. They therefore claim deduction on these grounds of two sums of £720 and £960. The £720 is composed of what the defenders call Mr MacCredie's monthly 'salary' for two years, and the £960 is one-third more than what the defenders call their stipulated 'salaries' for two years. This mention of salaries has reference to the 8th article of the contract of copartnery, which declares that the defenders 'shall be entitled to draw from the partnership funds in anticipation of profits a monthly salary or allowance of £60, and the third party a monthly salary or allowance of £30, which respective salaries so far as drawn shall be imputed against their respective shares of profit at the annual balance.' This, in short, was

simply a right to draw monthly the profits to be declared at the end of the year, and the word 'salary' was so interpreted in the case of *Eadie, &c.*, v. *M'Bean's Curator Bonis*, 19th February 1885, 12 R. 660.

"A proof of the allegation as to MacCredie's inattention was allowed, but it was before answer, and the relevancy of the averment and the competency of the proof that was led are still open to argument. The pursuers denied that MacCredie did not do his sufficient *quota* of work, and if he were not so attentive and diligent during these two last years as he had previously been they allege that he had a sufficient excuse in failing health. The business of the firm consisted very largely in the promotion of railway schemes, and in the prosecution of this business the defenders found a most energetic assistant in MacCredie. It was for that reason, indeed, that in the year 1880 they elevated him from the position of a clerk in their office to be a partner. His department of the business consisted in outdoor work—in seeing contractors and surveyors, and in giving the necessary notices for railway bills. This kind of life undoubtedly offered great temptation to a man who had any tendency to drink, and upon the proof the Lord Ordinary must come to the conclusion that MacCredie did indulge in drink to a greater extent than was consistent with good health or diligent attention to business. He had come of a consumptive family, and the habit of tippling would no doubt aggravate the tendency to lung disease which was developed in the year 1883, and from which he died in August 1884. But if a partner of a firm does his work, the other partners have no reason to complain though when off business he indulges in drinking. It appears that besides the consumptive tendency of MacCredie his eyesight became impaired, and he was unable except with great difficulty to read letters addressed to him, and therefore required to have them read to him before he could answer them. During the year from 15th May 1882 down to June 1883 the 'blotter,' which contains a record of his work in the office, shows that he attended at the office 204 out of 223 working-days during which he was in Scotland. During six weeks of that year he was absent on a voyage to America undertaken for the benefit of his health. During the year 1882 down to September he had written or dictated three out of every six letters that were signed by him, and after September he dictated or wrote one out of every five till he left the office in confirmed bad health in the month of May 1883. In the month of June of that year he burst a blood-vessel, and except one letter on the firm's business he did not, between May 1883 and 15th May 1884, do any active work for the firm. Therefore for the year from May 1882 to May 1883 the conclusion in point of fact is that he did his work for the firm, and he did it in such a way that his partners, the defenders, never suspected that he was under any inability to work arising from drinking habits. They were very shrewd and acute men, and the marvellous thing is that it was only when Mr Pringle, an outsider, spoke of the matter to them that their suspicion was aroused as to his conduct. This is one of the circumstances that makes one hesitate in coming to a conclusion as to the extent to which the habit had grown upon him. Down to the 15th of May 1883, however, the Lord Ordinary sees no ground in fact for either deducting from the profits to which MacCredie was entitled, or for adding to the profits to which the defenders were entitled, any sum on account of inefficient work—supposing that were relevant—done by MacCredie.

"Then comes the last year, from May 1883 to 15th May 1884—the period fixed by interlocutor to which the copartnership extended—and in regard to this period a question of some nicety relative to the law of partnership arises. The defenders bring the matter sharply to a point by their 6th plea-in-law, in the following terms:—'The defenders, failing the date of dissolution being fixed as at 31st December 1882, are entitled to have it found and determined as a principle of any accounting by them for profits, that they shall have such allowances in their accounts with the firm as may be just, by way of compensation to them for deceased's failure to perform his part under the contract, and for their being compelled to take sole charge and management of the business without his assistance.' Are the defenders entitled to such allowances? Is a court of law entitled in an accounting between partners to diminish the share of profits allocated by the contract of copartnery according to the diligence and assiduity of the *socii*. Assume that one of the partners remains in the office—working till six o'clock in the evening—and another leaves it at two o'clock. No matter what the cause of the latter's leaving so early may be—it may be for the purpose of innocent amusement or for the love of dissipation—the partnership is equally deprived of his services. Can a court of law gauge how much should be deducted from his share of the profits, and added to the share of the industrious partner, by reason of this cessation of attention and industry? This is a question that it is not easy to answer in the affirmative. A court of law will interfere by interdict to prevent any partner from infringing any one of the conditions of the contract, and a court of law will dissolve the contract for proper cause—Lindley on Partnership, vol. i., p. 227, and vol. ii., p. 998. Professor Bell lays it down that habitual intoxication rendering a person unfitted to attend to business is a good ground for dissolution of the contract—Bell's Comm. ii. 635. But courts have never yet attempted to fix the amount of deduction that ought to be made from the profits of a non-industrious *socius* and given to his more industrious brother. Smith, in his treatise on Mercantile Law, says (p. 30)—'Considering that each partner is the accredited agent of the rest, and has power to bind them to all contracts within the scope of the joint trade, no one can blame the strictness with which this good faith is required by courts of equity, which will even declare the partnership dissolved in case of any very flagrant breach thereof. This is, however, done with great reluctance, and the contract of partnership has been, not unaptly, compared by an eminent judge'—Lord Eldon in *Goodman* v. *Whitcomb*, 1 Jacob & Walter 589—'to that of marriage; since the parties to each take one another for better and for worse, and must not call at every turn upon the law to rectify the consequence of their own want of foresight.' Mr Justice Story in his Treatise on Partnership takes the same view (sec. 218), where he says

that in such cases 'as in some other relations in life, we enter into the connection for better or for worse.' The idea indeed is much older than both these authorities, for it is laid down by Gaius in the Pandects, in stating that only reasonable diligence is owing by one partner to another; he adds, 'and this because he who takes to himself a partner who is little diligent has himself to blame—Quia qui parum diligentem sibi socium adquirit de se queri debet' (Dig. xvii. 2, 72). In an English case (*Wilson* v. *Johnston*, L.R., 16 Eq. 610) Vice-Chancellor Wickens said—'A third case, which is either analogous to or identical with the second, is recognised by the authorities where the claimant has been guilty of gross misconduct, necessitating the dissolution of the partnership contract. Unfortunately there is nothing, I think, in the authorities to define what misconduct would be gross enough for this purpose. You may find it in cases where it has been held it is gross enough, but it is never defined in principle, and it is extremely difficult to find a principle by which it can be defined. This Court does not punish people by fining them for acts of immorality in the abstract, nor even fraud in the abstract; it does not take away their pecuniary rights on that ground. A partner, however erring, does not forfeit his right to share in the assets although he may have committed every sort of atrocity during the partnership, and there may be a suit by his copartner which is unavoidable and cannot be resisted in any way. However fraudulent or however bad he may have been, he does not by that merely forfeit a right to a share in the partnership assets; nor, I believe, if the premium were reserved in the way of yearly rent during the term, would it be possible for the Court in any way to direct that the partnership should cease, but that future payments of the premium should go on. Suppose a man had paid £10,000 for ten years' premium, and at the end of the first year committed a pecuniary fraud unconnected with the business of the firm, and that he was prosecuted and imprisoned for it, this might, and probably would, entitle the other partner to a decree for dissolution of the partnership; but it is extremely difficult to say that that would be misconduct which this Court would punish by forfeiting the other £9000 for the benefit of the partner who got himself released.' But a decision to a contrary effect is referred to by the defenders—*Airey* v. *Borham*, 22d May, 1861, 29 Beav. 620. This was a judgment by Lord Romilly, Master of the Rolls. Two partners had agreed to devote their whole time to the business, which was that of medical practitioners. Having quarrelled, one of them left the business altogether unattended to, and the partnership was ultimately dissolved and the affairs wound up. The non-attending partner claimed a return of the premium that he had paid, and also to have compensation awarded to him for damages alleged to have been sustained by him. Lord Romilly held that no damage whatever was proved, and refused to make any order for return of the premium. The whole that Lord Romilly said in regard to the point now under consideration was this—'An account must be taken of the profits made during that period, and, in case it shall appear that the plaintiff has during any portion of that time discontinued his services at the surgery of the partnership, inquire what is proper to be allowed to the defendant in respect of the business having been exclusively conducted by him during that period.' If this were to be held as good law, it must be considered as somewhat of authority in support of the defenders' plea. There is, however, this distinction between the case before Lord Romilly and the present one, that the abstention from business by the partner in the one case was wilful, and in the present case it was not so, but arose from bad health. The remedy that the defenders ought to have adopted was to have sought dissolution of the contract at May 1883, when MacCredie left the office suffering under mortal disease, and as that remedy was not resorted to, the defenders must just count and reckon upon the footing that MacCredie, whose capital at all events was still in the firm, was a partner entitled to accounting under the contract.

"During the years 1883-84 (whatever might have been the case in previous years) there is no evidence to show that MacCredie in any way was given to drink. The man was then under the disease from which he died, and he had neither the strength to indulge in any dissipation nor the desire for it. During the whole of that year of disablement he was ill with this disease, and it was that and that alone which prevented him from discharging the active duties of the partnership. Now, it is, according to a consensus of opinion, a good ground for the dissolution of the partnership that there is a disability to perform its duties in consequence of disease. Insanity, which is only one form of physical disease, has been always recognised as a ground for the dissolution of the society. Any other corporeal disease unfitting the person for active duty gives to the healthy party an equal right of getting quit of his *socius* (Bell's Comm. ii. 635). This remedy was not resorted to by the defenders. On the contrary, so far from wishing to get rid of him, they seemed (judging from a kindly letter by Robert Lamond) to have deeply sympathised with him in his distress, and it is too late now to ask that the accounting should be had upon the same footing as if the partnership had been dissolved at May 1883.

"What has just been said disposes of the other claims for extra labour had by the defenders in consequence of the cessation of active work by MacCredie. It is settled law that unless there be a special stipulation to the contrary no partner is entitled to remuneration for extra labour. His zeal is the result, not of expectation of extra pay, but a regard for his own interests in the division of the profits. Where, as in the case of *Anderson* v. *Anderson*, 22d November 1869, 8 Macph. 160, remuneration was allowed to a manager, the decision turned entirely upon a specialty, and the general rule was emphatically recognised—See also *Campbell and Others* v. *Beath*, 3d March 1826, 2 W. & S. 25; *M'Whirter* v. *Guthrie*, 26th January 1821, Hume 760; *Webster* v. *Bray*, 7 Hare 178.

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