

June 10. 1829. valuation being made, and upon a security being given. Now, the Sheriff has found, that there was no more straw upon the farm at that time than was requisite for the foddering of the cattle up to the period when the lease expired, on the severance of the crops. The tenant, therefore, was entitled to have retained possession of that straw for the purpose of foddering his cattle during the interval; and, according to what I have stated, if he had done so the manure would have been his property: it follows therefore, as a necessary consequence, that if the landlord chose to take possession of that straw at Whitsunday, and to convert it to his own use, he is bound to pay the value of it; and the Court below so thought. Upon both of these points, therefore, which have been considered as very important points by the learned Judges in the Court of Session, I must recommend to your Lordships to affirm the judgment of the Court of Session. I think that it is not at all inconsistent with any of the authorities which have been relied upon, and that it is a sound decision to which the Court came; and your Lordships will be more satisfied at arriving at this conclusion, when you are informed, that nineteen years ago, when this tenant took possession of this farm, he paid, as incoming tenant, to the outgoing tenant, for the value of the manure at that time on the premises. On these grounds I would recommend to your Lordships, that this judgment be affirmed, with L.100 costs.

*Appellant's Authorities.*—Duke of Roxburgh, 2. Bligh, p. 165.; Gordon, May 19. 1826, (2. Wilson and Shaw, p. 115.); Finnie, Jan. 27. 1767, (15,260.); Pringle, June 30. 1796, (6575.); Earl of Wemyss, June 16. 1801, (App. Tack, 7.); Forrester, Feb. 19. 1808, (App. Tack, 16.)

*Respondent's Authorities.*—1. Stair, 11. 4.; 2. Ersk. 6. 12.; 3. Ersk. 1. 18.; 1. Stair, 15. 6.; 2. Stair, 9. 31.; Haddo, Feb. 6. 1663, (7539.); 2. Bank. 9. 21.; 2. Ersk. 6. 39.; Bell on Leases, 3d Edit. p. 258.

SPOTTISWOODE and ROBERTSON—MONCREIFF, WEBSTER, and THOMPSON,—Solicitors.

No. 29. COMMERCIAL BANKING COMPANY OF SCOTLAND, Appellants.  
*Sugden—Lushington.*

JOHN POLLOCK'S TRUSTEES, Respondents.—*Adam—Stevens.*

*Mutual Contract—Master and Servant—Reparation.*—Where it was stipulated in the contract of a Banking Company, that the manager should be removable by two-thirds of the joint committee of management;—Held, 1. (affirming the judgment of the Court of Session), That the Company were entitled, by a resolution of two-thirds of the Committee, to remove a manager who was named and appointed in the contract; and, 2. (reversing the judgment), That the Company were not bound to shew proper cause for having done so, or liable in damages if they could not do so.

IN the year 1810, several persons resolved to establish a bank in Edinburgh by a joint stock subscription, under the firm of the Commercial Banking Company of Scotland. At this time John Pollock, (the constituent of the appellants), was a partner of Mr John Campbell, W. S. having been educated to the profession of the law. He was employed to prepare the articles and contract of copartnery, and a request was at the same time made, that he would take shares, and accept of the office of manager, and abandon his occupation as a writer. He agreed to do so; and the draft of a contract was prepared by him, in which it was required that the manager should hold at least forty shares of L. 500 each, and by which he was nominated manager with a salary of L. 1000 a-year; after which followed this clause: 'And as the said John Pollock has been invited to relinquish his professional connection and prospects to accept of the said situation, he shall, in case of his removal or resignation, receive from the Company, during his lifetime, such annuity or annual allowance as the committee of management for the first year, or any succeeding years, shall fix by a minute in the sederunt-book; and when so fixed, the same shall be equally binding. And the said John Pollock shall not be removable from the said situation, unless the whole other members of the ordinary committee of management for the time being shall concur in a motion for his removal.' Several share-holders having objected to the contract, it was at first proposed to make certain alterations upon it; but it was thought better to make out a new one. In regard to this subject one of the partners, Mr Sandeman, wrote, that 'a new contract is certainly a radical cure for all irregularities and misunderstandings, and, though troublesome, need not be very tedious. In a new contract, all the objectionable articles can be omitted, and the useful only retained.' A new deed was accordingly prepared and executed in place of the former, and in which Mr Pollock was named as manager; but it was declared, that on his removal, resignation, or death, all future managers should be named by the committee of management: 'And no manager shall be removable, unless two-third parts of the ordinary committee of management for the time being shall concur in a motion for his removal.' The provision of an annuity to Mr Pollock, in case of removal, was annulled.

He entered on the performance of his duty; but very soon he and the committee became dissatisfied with each other, and various proceedings, unnecessary to be noticed, took place, with

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 2D DIVISION.  
 Lord Pitmilley.

June 12. 1829. the view to his retirement by resignation. Having refused to resign, a meeting of the committee of management, on the 29th June 1812, removed him from the office, and appointed another in his place. Having declined to give up the keys, or obey the order, a petition, in name of the Bank, and several individual partners, was presented, on 9th July, to the Sheriff of the county of Edinburgh, praying for an interdict against him, and a warrant to take possession of the keys and documents. This petition was subscribed by all the members of the committee, with one exception; and these proceedings thereafter were approved of by a meeting of the proprietors, who declared, that from and after the 9th July 1812 Mr Pollock had ceased to be manager. An interim interdict was granted; and a counter petition was then presented by Pollock, for interdict against the appointment of a new manager; but in the meanwhile he gave up the keys. These processes having been conjoined, the Sheriff, on the 12th November 1812, continued the interdict against Pollock, and refused that which he had prayed for. He then brought the case into the Court of Session by advocation, and raised an action against the Company and the individual parties by whom he had been removed; and in which he concluded that it should be found and declared, ' that notwithstanding his unlawful suspension or removal therefrom, he has never ceased to have, and ' still has a just and lawful claim, right, and title, to the said ' office of manager for, and permanent director of the said Com- ' mercial Banking Company of Scotland, and to the whole ' salary, benefits, and privileges of said office, as originally en- ' joyed by him, which are already due and unpaid, or shall be- ' come due during the joint endurance of his natural life and ' of the current contract of copartnery of said Company, or until ' he shall be lawfully removed by the said copartnery from his ' said office ob culpam, or for malversation in office. And the ' said Company, and the above named and designed members of ' their ordinary committee of management, personally, ought to ' be decerned and ordained, by decree foresaid, forthwith to ' restore and reinstate the pursuer in said office, and in the full ' exercise of all his former functions, powers, and faculties, and ' in the full possession and enjoyment of all his former salary, ' benefits and privileges, pertaining to his said offices of manager ' for, and permanent director of the said Company, as the same ' are constituted, appointed, and regulated by said articles of co- ' partnership, and were originally possessed by him, both bygone, ' previous to, and since his said suspension or removal, and here-

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' after to fall due during the period foresaid, in the same manner,  
 ' and as fully and freely as if he had never been suspended  
 ' or removed from said office; or at least the said Company, and  
 ' whole partners thereof, jointly and severally, both as co-  
 ' partners and as individuals, and the above named and designed  
 ' individual members of the said ordinary committee of manage-  
 ' ment, personally, and conjunctly and severally, ought and  
 ' should be decerned and ordained to make payment to the  
 ' pursuer of the annual sum of L.1000 sterling, as the stipulat-  
 ' ed salary attached and pertaining to the offices of manager and  
 ' permanent director aforesaid, the duties of which he is ready  
 ' and willing to discharge.' He also concluded for L.1000 of  
 damages. Various pleas were stated in defence, but chiefly that  
 the Bank had, by the terms of the contract, power to remove  
 Pollock without any condition, except that two-thirds of the  
 committee of management should concur in removing him; and  
 that this condition had been observed. On the other hand,  
 Pollock maintained, that, under the peculiar circumstances of  
 his appointment, the Bank was not entitled, capriciously and  
 without proper cause shewn, to remove him from his office;  
 and he afterwards amended his libel, to the effect of alleging that  
 his removal had been accomplished by an illegal conspiracy.  
 The late Lord Meadowbank conjoined the advocacy with the  
 action; and ' being of opinion that the dismissal of the pursuer  
 ' from the situation of manager has taken place and received the  
 ' sanction of the defenders; and that, whether such dismissal pro-  
 ' ceeded on good grounds, or in a becoming manner or other-  
 ' wise, it cannot be objected to from any want of power in the  
 ' defenders, because a sufficiency of power to dismiss such an  
 ' officer, at pleasure, appears to be essential to such an esta-  
 ' blishment; but being also of opinion, that to turn off the pur-  
 ' suer from manager without premonition, and in the manner  
 ' that is here admitted to have happened, must be justified by  
 ' the resignation or other sufficient cause, or may entitle to  
 ' some recompense or reparation;' his Lordship appointed the  
 Bank, before answer, to give in a condescendence of what they  
 would undertake to prove as ' a just and sufficient cause for the  
 ' dismissal of the pursuer.'

The case having afterwards come before Lord Pitmilley, he  
 found, ' that the dismissal of the pursuer from the situation of  
 ' manager of the Commercial Bank is sufficiently instructed, and  
 ' cannot be objected to by the pursuer upon the ground of want  
 ' of power in the defenders to dismiss or remove the manager of

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‘ the banking establishment : That the defenders having removed  
‘ and dismissed the pursuer from his office against his consent,  
‘ must, in the circumstances under which his appointment took  
‘ place, and considering his situation previous thereto, be held  
‘ liable to indemnify him for the loss sustained by his dismissal  
‘ from office ; unless it can be proved by the defenders that the  
‘ pursuer was guilty of malversation in office ; or that he con-  
‘ tumaciously refused obedience to warnings given him by the  
‘ defenders, or their committee, and to regulations for his future  
‘ conduct in his official department, plainly laid down for him ;  
‘ or had become unfit, subsequent to his appointment, for the  
‘ discharge of his duties : but finds, that none of the articles in  
‘ the defenders’ condescendence, on this branch of the cause, are  
‘ relevant, or ought to be allowed to go to proof, in respect that  
‘ some of them assert an irregularity in the pursuer’s attendance  
‘ at the Bank, or allege his interference with the duties of other  
‘ officers of the Bank, or his occasional neglect of his own duties,  
‘ without alleging that these matters were made the subject of re-  
‘ monstrance with the pursuer, and of express regulation, and that  
‘ precise rules were laid down, which would have been parti-  
‘ cularly necessary in the commencement and infancy of such an  
‘ establishment ; and in respect that others of the articles of the  
‘ defenders’ condescendence state objections to the pursuer’s gene-  
‘ ral manner and conduct to customers and others, in the course  
‘ of his management of the Bank concerns, which could not  
‘ furnish just grounds for his removal by the defenders, who had  
‘ chosen him for the management when in the knowledge of his  
‘ general behaviour, and who do not allege that his conduct in  
‘ these particulars had altered after his appointment, and who  
‘ do not state the particular instances of misconduct to which  
‘ they refer, but content themselves with allegations too vague  
‘ and general to go to proof ; and in respect that other parts  
‘ of the defenders’ averments consist of objections to the pur-  
‘ suer’s conduct, which were discovered and known to the de-  
‘ fenders before his appointment of manager had been carried  
‘ into effect, and that others of their statements are sufficiently  
‘ explained by him in his answers ; and that no part of the conde-  
‘ scendence on this branch is relevant, or ought to be allowed to  
‘ go to proof, as affording grounds for the dismissal of the pursuer  
‘ from office without recompense or indemnification ; finds, there-  
‘ fore, that the pursuer is entitled to some recompense or repara-  
‘ tion from the defenders for the loss which he has suffered ; and,  
‘ before answer as to the amount thereof, ordains the pursuer to

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‘ give in a condescence, without argument, stating the amount  
‘ of the sum demanded by him, and the grounds on which he pro-  
‘ ceeds in fixing the amount.’ And in reference to the said con-  
spiracy, found ‘ that the pursuer has not condescended on any  
‘ relevant matter, in support of his assertions that his removal  
‘ from office was occasioned by a corrupt combination, or con-  
‘ spiracy among certain of the defenders to bring about this  
‘ object.’ At this stage of the case Pollock died, and his trus-  
tees, the appellants, were sisted in his place. Both parties having  
reclaimed, the Court in hoc statu recalled the interlocutor, and  
remitted to the Lord Ordinary to receive from the Bank a specific  
condescence of the facts they averred and offered to prove, in  
justification of the removal of Mr Pollock from his office, with a  
view to a remit to the Jury Court. His Lordship having done so,  
and remitted the case to the Jury Court, that Court remitted it  
back to decide the question of relevancy; and having been reported  
on informations, the Court, on the 15th May 1822, found, ‘ that  
‘ although the defenders, under the subsisting contract, possess  
‘ power and authority to remove the manager from his office,  
‘ which he did not hold for his life, yet, under the peculiar cir-  
‘ cumstances attending his appointment, they were not justified  
‘ in the exercise of that power without reasonable cause; and  
‘ that it would be expedient to remit the whole process and pro-  
‘ ductions to the Jury Court, in order that an issue or issues  
‘ may be prepared and tried in terms of the statute.’

Against this judgment the Bank appealed, so far as it found that they were bound to shew cause for the removal; and Pollock's trustees appealed, in so far as it found that the Bank had power to remove, and also in so far as his allegations relative to a conspiracy had not been admitted to proof.

The preliminary point as to parties (ante, page 365.) having been decided, the case came on for discussion on the merits.

*Appellants, (the Bank).*—The contract, as originally prepared, provided, that Pollock's annual salary, to whatever extent it might be raised, should at no time be less than L. 1000; and that, on his removal or resignation, he should continue to receive, during life, the same salary as if he had remained in office. But by the regulating contract it is expressly provided, that the salary shall be fixed by the committee of management; and no allowance is to follow removal or resignation. Again, by the former, Pollock was not to be removable, unless the whole members of the committee concurred in a motion to that effect. But

June 12. 1829. by the regulating contract, Pollock, like all future managers, was removable if two-thirds of the committee agreed in the measure. Pollock, by departing from the terms of the contract prepared by himself, betook himself to the provisions of the subsisting one. He might have stipulated for the continuance of the first, or for better, if he chose; but not having made these more favourable terms part of the subsisting contract, by which all are bound, he has only to blame himself if he is disappointed. There is therefore no doubt as to the power of the Company to dismiss Pollock. But it is said that there is a distinction between the power and the right to dismiss; and the Court below adopted this distinction. A new condition is thus introduced, which is unwarranted by the terms of the contract. The power there is not restricted by reasonable, or any other cause; and it is not the province of a Court of justice to rear up new and different conditions from those agreed upon by the parties. The remit, therefore, to the Jury Court, as far as this qualification was introduced, was objectionable. Pollock held either at the appellants' pleasure, or by the year. If the first, they could remove him when they chose. If by the year, he had no ground of complaint, as they allowed him his salary until the second year terminated. There was nothing in the circumstances attending Pollock's appointment, which could alter or affect the bargain concluded between him and the Company. The latter may, at the time, have valued his services highly; but the opening came no less opportunely to him. He knew for what equivalent he was embarking in a new profession, and must be presumed to have thought the terms satisfactory. To go now into a proof of the circumstances in which he was previously placed, or which attended his appointment, would be admitting a vague investigation, which, if it resolved into any thing, would substitute a contract from a medley of previous facts, in place of the actual contract which the parties finally agreed to by writing. What Pollock expected, or relied upon, can only be known to the Court through the terms of the existing executed contract. But if Pollock were removable at pleasure, then, clearly, no damages can be due for removing him. Had the act of dismissal been accompanied by any wanton insult or contumely towards him, that might have afforded ground for reparation. In that case the reparation would not have rested on the dismissal, but on the manner of the dismissal. There was, however, no harshness used by the appellants. As to the cross appeal, there is no need to go into it if a reversal follows the original appeal. If not,

the defence is, that the condescence of the charges of combination and conspiracy, which Pollock's trustees seek to prove, is irrelevant. June 12. 1829.

*Respondents*, (Pollock's trustees).—Pollock, while enjoying the advantages of a lucrative and confidential situation, was induced, by the persuasion of the projectors of the Banking Company, to accept the office of manager. Looking to the prosperity he was enjoying, and the prospects he abandoned, and to the avowed high opinion entertained of him by the appellants, it is impossible that any of the parties could have contemplated that he was about to embark in a profession from which he might be driven in a moment, at the caprice and will of individuals over whom he retained no controul. Indeed, these very circumstances import a right to demand, and imply an agreement to give, an adequate consideration; and if he be removed, what more adequate consideration can be given than the damage he has sustained? But, in fact, Pollock's interests had been protected by the appellants in the first contract; and these stipulations never were intended to be infringed on or impaired by the terms of the second contract. This is a very special case; because Pollock was not merely manager,—he was the managing partner; and it formed one of the conditions of the contract that he should be so. The distinction between power and right is well known, and of everyday occurrence. A man may make a promise, and yet, without cause, may refuse to fulfil his engagement. He has the power to resile; but he must pay damages. In like manner, the appellants may have had power (supposing the second contract to be taken as the *contractus regulans*) to remove their manager; but if they had, by holding out views of permanent employment, induced him to sacrifice a lucrative profession, they must give, in the shape of damages, a remuneration equal to what the circumstances demand;—and that is precisely a question for a jury. As to the cross appeal, a relevant condescence of facts has been made, sufficient to infer a corrupt combination or conspiracy to deprive Pollock of the office; and a proof of these allegations ought to have been allowed.

The House of Lords found, (in regard to the interlocutor of the 15th May 1822, complained of in the said original appeal), that the defenders had authority, at their discretion, to remove the manager from his office, and that they were justified in law in doing so; and it is therefore ordered and adjudged, that the



June 12. 1829. said interlocutor, in so far as it is consistent with these findings, be affirmed; and in so far as it is inconsistent with the same, be reversed. And it is further ordered, that the cause be remitted back to the Court of Session in Scotland, to proceed further therein as may be consistent with this judgment, and as may be just. And it is further ordered and adjudged, that the said cross appeal be dismissed this House, and that the interlocutors therein complained of be affirmed.

LORD CHANCELLOR.—My Lords, There was a case argued some time since at your Lordships' Bar, on appeal from the Court of Session in Scotland, between a person of the name of Pollock and a society that is well known by the name of the 'Commercial Bank of Scotland.' The facts of the case are shortly these:—In the year 1810 a number of persons associated themselves together, for the purpose of forming a Bank at Edinburgh; which Bank was distinguished by the name of the 'Commercial Bank of Scotland.' They applied to Mr Pollock, (who was at the time a writer to the signet, carrying on business in partnership with a person of the name of Campbell, as law-agents in Edinburgh), to assist them in forming this establishment, and to hold the office of manager when the establishment should be complete. Mr Pollock assented to the proposal. He acted in the formation of this Company; and a treaty was carried on for the purpose of ascertaining and fixing the nature of the office he was to hold in the establishment, and the amount and extent of remuneration he was to receive. A contract was finally entered into, which contract was drawn by Mr Pollock himself. That contract formed the articles of partnership which were intended to be entered into.

That part of the contract which related to Mr Pollock's situation, so far as it is necessary to be stated with reference to the present question, was in these terms:—[His Lordship then read the clause quoted *ante*, p. 431.]—That was the article contained in the original deed of partnership which was drawn up by him, or under his advice, and under his direction. That instrument, however, was not signed by all the partners; but Mr Campbell having been consulted, and his advice having been taken, many objections were made as to parts of this partnership deed; and in particular it appears, by a letter of Mr Sandeman's, stated in the appellants' case, that that part of it which related to Mr Pollock was a subject of consideration and discussion. Many alterations were proposed, and it was suggested by Mr Campbell, that those alterations should be made, and that a deed of ratification of the instrument so altered should be signed by the persons who had already executed the original instrument; and that the instrument so altered should be signed by the rest of the parties. That plan was, however, ultimately abandoned; and instead

of it a new partnership deed was executed, containing the alterations which were intended to be introduced. June 12. 1829.

That part of the new partnership deed which relates to Mr Pollock's situation and remuneration, is in these terms:—' The manager must be possessed of at least forty shares of the capital stock of the Company, and shall receive such yearly salary or allowance from the Company as shall be fixed and regulated by the committee of management for the time being; and the said John Pollock is hereby appointed first manager. That on the removal, or resignation, or death of the said John Pollock, all future managers shall be nominated and appointed by the ordinary committee of management for the time being;' and then a stipulation is made as to the amount of shares that any future manager is to hold. It then goes on thus:—' And no manager shall be removable, unless two-third parts of the ordinary committee of management for the time shall concur in a motion for his removal.' This was the contract of partnership, which was completed and executed by all the partners, and among the rest by Mr Pollock, the manager.

Mr Pollock, in pursuance of this agreement, entered into the discharge of the duties of his office, and continued for some time to perform them. The committee of management, however, were not satisfied entirely with his conduct, and, after some difference between them, the committee of management at length removed him. There is no doubt that he was removed with the concurrence of two-thirds of the committee of management; and this was approved of by the proprietors in general.

Mr Pollock contends, in the first place, that they had no power or authority to remove him; and, in the next place, that, if they did remove him, they were bound to make him compensation for the loss and injury which he thereby sustained. Now it is quite obvious that this must depend upon the terms of the contract. He was the servant of the Company, and in order to ascertain whether or not he was liable to be removed by the Company, and if so, under what circumstances, and upon what terms, we must refer to the contract.

It appears to me absolutely impossible for a moment to assert, that the Company had not a right to remove him; because, even in the first contract, to which I have adverted, and which was drawn by Mr Pollock himself, it is expressly provided, ' That the said John Pollock shall not be removable from the said situation, unless the whole other members of the ordinary committee of management for the time being shall concur in a motion for his removal.' He was therefore removable under the first contract, provided all the members of the committee of management concurred in the propriety of his removal. Under the second contract, so far as related to his removal, the only alteration that was introduced was this,—' And no manager shall be removable unless two-third parts of the ordinary committee of management for the time being shall concur in a motion for his

June 12. 1829. 'removal.' So that under the first contract he was liable to be removed with the unanimous concurrence of the committee of management: Under the second contract he was liable to be removed if two-thirds of the committee of management concurred in his removal. It appears to me, therefore, impossible to contend for a moment that he was not liable to be removed. The Court below decided clearly that he was liable to be removed.

The next question is, whether he is entitled to any compensation in consequence of his having been removed? That must depend upon the terms of the contract. I do not find in the contract any definite stipulation in this respect, except what is contained in the article of the original deed of contract. There I find, that 'in case of his removal or resignation, he shall receive from the Company, for his lifetime, such annuity or pecuniary annual allowance as the committee of management for the first year, or any succeeding year, shall fix by a minute in their sederunt-book.' This was an article prepared by Mr Pollock himself, who was at that time acting as the adviser of the Company, who assisted in forming these articles of partnership; and undoubtedly, if they had continued to be the subsisting contract between these parties, Mr Pollock would have been entitled, in the event of his being removed from the office, to call upon the committee of management to hold a meeting for the purpose of fixing the amount of the remuneration he was to receive in the shape of retiring provision; but that contract was entirely done away with in consequence of the subsequent contract to which I have referred.

I have already stated, that it appears, by a letter of Mr Sandeman's, contained in the case of the appellant, that the situation and circumstances of the office held by Mr Pollock were a subject of consideration at the time when objections were made to the original contract;—a new contract was formed, and in the article relating to Mr Pollock, where it is stated no manager shall be removed unless two-third parts of the ordinary committee of management for the time being shall concur in the measure of his removal, I find no stipulation whatever,—no clause whatever,—entitling Mr Pollock to the benefit of any compensation, or any retiring provision, in the event of his being removed. I find, therefore, no subsisting contract which entitles Mr Pollock to a compensation. In the absence of any subsisting contract, it appears to me that he can have no claim in point of law to any compensation, if he is removed by the committee of management.

Taking, then, the whole of these circumstances together, and considering what the nature of the contract was between these parties, it appears to me clear that the committee of management had an absolute discretion to remove Mr Pollock when they thought proper,—that they were not responsible for the manner in which they exercised that discretion,—and that they were not bound to make any compensation or remuneration to Mr Pollock for the loss he sustained in consequence of that removal. Mr Pollock appears to have placed himself at their

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discretion. He had this security, and it was his only security, that having been once appointed to that office, he could not be removed from it unless two-thirds of the committee of management concurred in the propriety of his removal. If two-thirds of the committee of management did concur in the propriety of his removal, it appears to me that he was validly, in point of law, legally and effectually removed from the office, and that he has no claim for compensation.

It is the more important to advert to what appears upon the articles of partnership, from the consideration that this was a company the shares of which were assignable, and any person purchasing a share would look at the articles of partnership, for the purpose of knowing in what situation he stood, and what were his obligations; and therefore it was natural to expect, indeed it was proper, for the purpose of guarding against imposition and fraud, that the precise terms of the stipulation should appear on the partnership deed, and such appears to have been the understanding between these parties.

I am of opinion, therefore, that the judgment of the Court below was correct, as far as relates to the decision that this gentleman, Mr Pollock, was removable at the discretion of two-thirds of the committee of management; but I think that they went too far in stating, that it was their opinion that Mr Pollock was entitled to compensation in the event of his removal. I am therefore of opinion, as far as relates to the former part of the judgment, that it should be affirmed, and that it should be reversed as far as relates to the latter.

With regard to the cross appeal in this case, Lord Pitmilley was of opinion that there was not sufficient ground to sustain the charge, or to make out a *prima facie* case. With respect to the charge, as far as related to a supposed conspiracy, I have looked through the papers, and I am quite satisfied that there is no sufficient ground to make out that charge, which relates to the merits of the cross appeal; and that decides the whole case.

MONCREIFF, WEBSTER, and THOMPSON—RICHARDSON and  
CONNELL,—Solicitors.

JAMES CAMPBELL of Kilberry, and Others, Appellants.  
*Lushington—Hunter.*

No. 30.

DONALD BROWN, Respondent.—*Spankie—Napier.*

*Jurisdiction—Statute.*—Held, (affirming the judgment of the Court of Session),—

1. That the Court of Session have jurisdiction to review, and set aside, the proceedings of a presbytery, under the 43. Geo. II. c. 54. where these proceedings have been irregular and informal. 2. That the omission to take in writing the evidence led before the Presbytery, is an informality inconsistent with the enactment of the statute, and open to correction by the Court of Session.