CHANCERY.

Attwood v. Maude.

Partnership—Dissolution—Return of premium.

M., a solicitor, took A. into partnership for seven years, receiving a premium. Disputes afterwards arose between the partners, M. charging A., who had very little experience, with incompetency; and A. anticipated M. in filing a bill of dissolution, two years only of the term having elapsed.

The Court, being satisfied upon the evidence that M. had, when the agreement was made, been aware of A.'s inexperience, and had taken the premium on that account, decreed a return of premium proportionate to the unexpired term.

[16 W. R. 665; Feb. 21; March 11, 1868.]

The bill in this case prayed a dissolution of partnership and a return of a premium which had been paid by the plaintiff, or a proportionate part thereof.

The facts were as follows:—

In 1864 the plaintiff and defendant entered into a seven years' partnership as solicitors as from Jan. 1, 1864, under articles of agreement dated Jan. 7. 1864. The defendant at this time had practised on his own account for some years, but the plaintiff, having been but a short time admitted, had had very little experience of the conduct of a solicitor's business, and of this the defendant was aware.

The agreement provided that the plaintiff should pay the defendant £800 as purchase-money for one-third of the profit of the defendant's business, and a similar part of the office furniture, &c., the calculation being stated to be made on the basis of the defendant's business being worth £600 per annum. The plaintiff was to bring £200 into the firm as capital. There was also a clause providing for the event of either partner dying during the continuance of the partnership, and it was provided by this that if the plaintiff should die in the first year the defendant should repay to his representatives £200, and if in the second year £100; after two years no repayment of any premium to be made.

The £800 and £200 were duly paid by the plaintiff and the partnership commenced, but disagreements subsequently arose between the partners accompanied with much mutual recrimination, and the defendant charged the plaintiff with negligence and incompetence. At length, on Feb. 13, 1866, the defendant wrote the plaintiff a letter saying that it was evident that their partnership must be dissolved, and that he had already instructed counsel as to filing a bill. The plaintiff, however, anticipated the defendant by filing his own bill on Feb. 16 following. As to the charges made by the partners against each other there was some conflict of evidence.

Vice-Chancellor Stuart decreed a dissolution of the partnership, but, holding that its necessity had been occasioned by the plaintiff's conduct, refused to order repayment of any part of the premium: against this latter part of the decree the plaintiff appealed.

Kay, Q C. and *North*, for the appellant.—In the absence of fraud a dissolution does not enable one partner to put the whole premium into his pocket: *Bury* v. *Allen*, 1 Coll. 589; *Astle* v. *Wright*, 23 Beav. 81; *Featherstonhaugh* v. *Turner*, 25 Beav 382; *Pease* v. *Hewitt*, 31 Beav. 22, 10 W. R. 535; *Hamil* v. *Stokes*, 4 Price, 161. In the absence of fraud or misconduct on the part of the partner who paid the premium, the Court is accustomed to order a partial return proportioned according to the unexpired term of the partnership Here the defendant alleges neglect and incompetence on the plaintiff's part but no neglect is proved, and as to incompetence, the defendant well knew, when treating for the partnership, that the plaintiff had had but very little experience, and received from the plaintiff a premium to compensate him for the inconvenience which might be occasioned thereby In *Therman* v *Abell*. 2 Vern. 64, a return of premium was made in spite of misconduct of the party who paid it. In *Bury* v. *Allen* (*ubi sup*) the bill for dissolution was filed by the partner who claimed and obtained the return of premium.

Bacon, *Q C*., and *Whitehorne*, for the respondent.—The principles deducible from the cases are—(1) that if there be fraud on the part of the partner who received the premium, the whole is ordered to be returned; (2) if the partnership be otherwise determined by the act of the partner receiving the premium, there is a proportionate return, the amount being in the the of discretion Court; (3) if the partnership be determined by the act of the partner who paid the premium, or in consequence of something which was in the contemplation of the parties, when the partnership was formed there is no return of premium. Here the defendant has completely performed his side of the contract; the dissolution is the act of the plaintiff, the defendant's letter not amounting to a dissolution; but if that were otherwise, the court is bound to look at the whole state of circumstances which preceded the dissolution, and it was the plaintiff's conduct which occasioned it. In *Akhurst* v. *Jackson*. 1 Swanst. 85. the partnership was terminated by the bankruptcy of the partner who had received the premium, but the Court refused any return; and see *Lee* v. *Page*, 9 W. R. 754, 7 Jur. N. S 769. They also referred to *Airey* v. *Borham*, 29 Beav. 622; *Bullock* v. *Crockett*. 3 Giff. 507; and Lindley on Partnership, 2nd Ed. i. 79.

Kay, *Q C*., in reply.

March 11.—The judgment of the Court was delivered by—

Lord Cairns, L.C.* (after stating the facts):—This case belongs to a class which the Court is often called on to decide. In *Akhurst* v. *Jackson*, 1 Swanst. 85; *Freeland* v. *Stansfield*, 2 W R. 575, 2 Sm. & Giff 479; *Bury* v. *Allen*, 1 Coll. 589; *Astle* v. *Wright*, 23 Beav. 81; *Lee* v. *Page*, 9 W R. 754, 7 Jur. N. S. 769, the principles which guide the Court in questions as to the return of premiums have been laid down. The Court will not suffer a partner who has committed a breach of the agreement to take advantage of his own breach and retain a premium paid to him, though on the other hand, if the party who had paid the premium were himself the faulty person, no return of premium would be decreed. In this case there was neither bankruptcy nor an agreement to dissolve. The authority of the cases is not disputed, but it is said that the partnership was dissolved through the

* This case was argued before the Lords Justices (Lord Cairns and Sir C. J. Selwyn) on Feb. 21 and 22, when judgment was reserved. Subsequently to this Lord Cairns received the Great Seal, and on March 11 delivered the judgment of himself and Lord Justice Selwyn.