

Living was a co-partner or legally to refuse him his rights as such. Neither could Living be heard to say, as against persons dealing with the firm, that he was not a partner. When, therefore, the note was received by the plaintiffs, it was a note for good consideration, not overdue.

But then it is said that a failure of consideration accrued by reason of what took place between Fox and Living in July, 1908, when Living left the firm's place of business. What occurred at that time could have no greater effect than a dissolution of the partnership. If, as Living seems to think, it was a wrongful expulsion, that could not alter his right to be restored, or, if the conditions appeared to be such as to render impossible a continuance of the partnership, to a judgment for dissolution upon such terms as the circumstances justified. Whether Living considered that a dissolution was effected by what occurred, or considered that he was wrongfully expelled, he seems to have acquiesced and to have taken no steps either to be restored or to procure a taking of the partnership accounts.

The circumstance that Living paid or was paying a premium or bonus could not make no difference in this case, where there was no stipulation or agreement as to the time of the duration of the partnership.

Whether through oversight or inadvertence, there was no agreement that the partnership should continue for a specified time or definite period. But the partnership was in fact created; and, that being so, its subsequent termination would not create a total failure of consideration so as to affect its validity in the hands of either Fox or the plaintiffs; although, upon taking the partnership accounts, Living might be able to shew himself entitled to a return of part of the premium. The question is discussed at length in *Lindley on Partnership*, 7th ed., p. 625 et seq. . . .

The defendants' difficulty in this case is, that they have not shewn the circumstances attending the dissolution sufficiently to enable a decision to be given as to whether Living is entitled to a return of part of the premium. There are charges and counter-charges of misconduct on the part of Fox and Living, but they are not before the Court; and it was for the defendants, if they desired to avail themselves of the defence of partial failure, to have put the case in proper train for inquiry. Neither is there material upon which can be ascertained what, if any, proportion of the premium should be returned, nothing to reduce the amount of the indebtedness as represented by the note. The burden of shewing this was on the defendants, and it was