The appeal was heard by MEREDITH, C.J.C.P., MACMAHON and TEETZEL, JJ.

H. D. Gamble, K.C., and F. Erichsen Brown, for the appellant.

G. M. Clark, for plaintiffs.

The judgment of the Court was delivered by MEREDITH, C.J, who said that, in order to entitle the appellant to succeed it was incumbent on him to establish that a novation had taken place in respect of the indebtedness of the old firm.

He referred to sec. 17 (3) of the English Partnership Act, 1890 —"A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted"—and said there was in this case no such express agreement, and the question was whether such an agreement was to be be inferred as a fact from the acts of the parties.

[Reference to Harris v. Farwell, 15 Beav. 31, and Scarfe v. Jardine, 7 App. Cas. 345, distinguishing the latter.]

Being of opinion that upon the facts as found by the learned trial Judge a case of novation was not made out by the appellant, and being also of opinion that the findings of fact ought not to be disturbed, it followed that the judgment should, in his opinion, be affirmed and the appeal dismissed with costs.