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DISSOLUTION OF PARTNERSHIP.[1]

The different Modes in which it may be dissolved.

A partnership is dissolved in the following ways:[2]

1. The expiration of the time for which it has been contracted. 2. The extinction of the thing or the completion of the business which constituted the object of the partnership. 3. The death, natural or civil, of one of the partners; his insolvency. 4. The wish of being no longer in the partnership.

[1] Translated from the Treatise of Pothier, 3 O'Euv. de Poth., p. 530, ed. 1825.

[2] According to our law a partnership for a limited time terminates at the expiration of that time The question, however, arises, when parties carry on the partnership business after the expiration of the time for which it was contracted, upon what terms is it to be considered as carried on? It has been decided that a presumption arises, in the absence of all acts and circumstances to vary and control it, that it is intended to be a new partnership upon the same terms as the original partnership, but for an indefinite period, and therefore determinable immediately at the will of any of the partners, although under the original partnership contract, notice of a dissolution was requisite; and the mere fact of there being unexpired leases of the premises, or contracts subsisting with workmen or others, is no sufficient ground for any presumption that the new partnership is intended to last either until the expiration of the leases or the completion of the contracts. Featherstonhaugh *vs.* Fenwich, Ves. 299, 307. Story on Partn. § 267, 4th ed.

§ I. *As to the Expiration of the Time.*

When the partnership has been contracted for a certain limited time, it terminates (*de plein droit*) at once by the expiration of that time.[1]

The parties may agree to prolong it beyond that time; but that prolongation by the French law can only be proved by a written deed, which the Ordonnance of 1673 subjects to the same formalities as the deed by which the partnership was contracted.

§ II. *The Extinction of the Thing which constitutes the Object of the Partnership, and of the Completion of the Business.*

When a partnership has been contracted in a certain thing, it is evident that it must end by the extinction of such thing.

For example, if two peasants buy in common an ass to carry their goods to market for sale, it is clear that, if the ass dies, their partnership in that ass will be at an end. *Neque enim ejus rei quæ jam nulla sit, quisquam socius est;* l. 63. § 10. *ff. Pro Soc.* Dig. lib. xvii. tit. 2. l. 63. § 10.

When partners have contracted a partnership, not in things themselves, but in the fruits arising from certain things belonging to one of them, in order that they may receive them in common, and make thereof a common profit during the continuance of the partnership; if such things perish, the partnership will be at an end; for, it being essential to the partnership, that each of the partners should contribute thereto, it can no longer exist when one of them has no longer anything wherewith to contribute thereto. For example, when two neighbors, who have each a cow, contract a partnership of all the produce and profits which should arise from them during a certain time; if, before its expiration, the cow of one of the partners dies, the partnership will terminate, because that partner has no longer any thing to contribute thereto.

When two persons have contracted a partnership to sell in common, certain things belonging to them, and they have not put the things themselves into the partnership, but the produce to arise

[1] Consult Story Partn. § 268, 269, 270, 4th ed.

from the sale; if, before the sale, the things belonging to one of the partners perish, the law decides that the partnership is extinguished. The reason is, that such partner, having no longer any thing to contribute thereto, it cannot exist.[1]

[1] The conclusion that Pothier has arrived at, that a party who has contracted to contribute his personal skill to a partnership, gives a just ground for its dissolution when he is unable, in consequence of illness, as paralysis, to fulfill his engagement, seems to be correct, and to be analogous in principle to the relief which a court of equity gives by terminating a partnership when one of the partners becomes incurably insane, although, in the latter case, there is an additional reason why a dissolution should take place. Lord Kenyon has well observed, "when there are two partners, both of whom are to contribute their skill and industry in carrying on the trade, the insanity of one of them, by which he is rendered incapable to contribute that skill and industry on his part, is a good ground to put an end to the partnership, not by the authority of either of the partners, but by application to a court of justice, and this for the sake of the partner who is rendered incapable, as well as of the other; for it would be a great hardship upon a person so disordered, if his property might be continued in a business which he could not control or inspect, and be subject to the imprudence of another." Sayer *vs.* Bennet, Mont. Part. vol. i. Appendix, p. 18. 1 Cox, 107.

"If the partnership proceed in reliance on such aid from a partner as any bodily illness he may be affected with may prevent, it would seem to be a justifiable cause for having the partnership judicially dissolved, or for renouncing the partnership, although there should be a fixed term of duration not yet arrived. Insanity has the effect, not only of depriving the partner of the power of aiding the partnership by his exertion, but it prevents him from controlling for his own safety, the proceedings of his copartners; and, accordingly, where there are two partners, both of whom are to contribute their skill and industry, the insanity of one of them, by which he is rendered incapable of contributing that skill and industry, seems to be a good ground to put an end to the partnership. At the same time, it may be observed that these are cases of infinite delicacy. There is no line of distinction by which it shall be ascertained how long a term of inability shall justify measures of this description. A broken leg, or an accidental blow, may incapacitate a partner for a time, as much as insanity, and the one may be as temporary as the other; and, perhaps, the nearest approximation to be made to a rule on the subject is, that a remedy and relief will be given only where the circumstances amount to a total and important failure in those essential points on which the success of the partnership depends. Cases may be supposed of danger so imminent, from bad health, lunacy, habits of intoxication, etc., as to make the continuance of the partnership likely to prove ruinous to all concerned; as in the case of uncontrollable habits of intoxication in the partner of a gunpowder manufactory. In cases of this description, there can be no doubt that such perils will afford ground for judicial interference to dissolve the company. But it may be doubted whether they would

Suppose a timber merchant has entered into partnership with a cooper to make and sell casks, to which partnership the merchant is to bring the wood, and the cooper his labor only in making the casks. The cooper having afterwards become paralytic, and con-

not justify the other partners in entering the act of dissolution in the books, to be followed up as soon as possible by judicial measures; for such a state of things may occur at the commencement of a long vacation, when no proper opportunity can be had of dissolving by judicial interposition." 2 Bell's Comm. b. 7, ch. 2, p. 634, 635, 5th ed.

So when a war breaks out between two different States, it will dissolve a partnership entered into between the subjects of those States. Griswold *vs.* Waddington, 16 Johns. 438, 490. Mr. Chancellor Kent, in his learned and able judgment, says, "The principle here is, that when one of the parties becomes disabled to act, or when the business of the association becomes impracticable, the law, as well as common reason, adjudges the partnership to be dissolved. Pothier, in his Treatise on Partnership, says, that every partnership is dissolved by the extinction of the business for which it was formed. This he illustrates in his usual manner, by a number of easy and familiar examples. Thus, if a partnership be formed between two or more persons, for bringing together and selling on joint account the produce of their farms, or of their live stock, and the produce or the stock of one of them should happen to fail, or be destroyed, the partnership ceases of course, for there can be no longer any partnership when one has nothing to contribute. So if two persons form a partnership in a particular business, and the one engages to furnish capital, or the raw materials, and the other his skill and labor, and the latter becomes disabled by palsy, the partnership is extinguished, because the object of the partnership cannot be fulfilled. So, again, if two or more persons form a partnership to buy and sell goods at a particular place, the partnership is dissolved whenever the business is terminated. *Extincto subjecto, tollitur adjunctum*, is the observation of Huberus, when speaking on this very point.

We can easily perceive with what force their doctrines apply to this case, for a partnership, formed between alien friends, must at once be defeated, when they become alien enemies. They can no more assist each other than if they were palsied in their limbs, or bereft of their understandings by the visitation of Providence. I have selected these principles of partnership from the treatise of Pothier because his reputation and great authority are known in this country. He has treated of the law of partnership, as he has of other civil contracts, with a clearness of perception, a precision of style, and a fullness of illustration, above all praise, beyond all example. If it should be asked, why is Pothier silent, like the English law, concerning the effect of war on a partnership between the subjects of two belligerent states? the answer may be given, that the possibility of such a question never could have occurred to a French lawyer, since it has been the law of France, for ages, that all intercourse, communication, and commerce between the subjects of France and her enemies, was prohibited upon pain of death."

sequently incapable of making casks, will the partnership in that case cease, and can it be said that the cooper has no longer any thing to contribute thereto? No! because by undertaking by the contract to make casks, he undertook to make them not himself only, but either himself or by his workmen; he can, therefore, although paralytic, cause them to be made by his workmen; and he has it in his power, consequently, to contribute to the partnership what he has agreed.

Suppose, however, the merchant, who entered into the partnership solely from the confidence which he had in the skill of that workman, had inserted a clause in the partnership contract that the cooper should not cause any casks to be made by any persons except himself? In that case it may be said that the partnership is extinct, since that which such partner agreed to contribute thereto is extinct; being not only the mere manufacture of the casks, but also his personal labor, which he has agreed to contribute to the partnership, and which he can no longer contribute thereto. The merchant, nevertheless, would act prudently in giving him notice of a renunciation of the partnership.

When two or more persons enter into partnership for a certain business, that partnership will terminate when the business has been completed. For example, when two merchants have contracted a partnership to buy together a certain parcel of goods to sell at the fair of Guibray, it is clear that such partnership will terminate when they have sold all there.[1]

§ III. *As to the Death of one of the Partners, and his Insolvency.*

The partnership, whether it be universal, particular, indefinite, or for a certain limited time, is dissolved at once by the death of one of the partners.[2]

[1] Consult Story Partn., § 317, 4th ed.

[2] So, according to our law, a partnership, although it may be entered into for a definite period, will be dissolved before its expiration, by the death of one of the partners, unless there be an express stipulation to the contrary. Gillespie *vs.* Hamilton, 3 Madd. 254; Crawshay *vs.* Maule, 1 Swanst. 495, 509. One effect of

This dissolution of the community, which takes place by the death of one of the partners, has two effects. The *first* is, that the heir succeeds to the share which the deceased had at the time of his death in the partnership property, and to the share of the debts of the partnership by which the deceased was bound; but he does not succeed to the future rights of the partnership, save only to such as are necessary consequences of what has been done during the life of the partner to whom he succeeds; and even with regard to these he does not become a partner of the partner deceased, for he does not take his place, he is only in community with them.

According to these principles, if, after the death of one of the partners, the survivor has made some new advantageous bargain having relation to the commerce for which the partnership was contracted, the heir of the deceased partner can have no claim to any share of it; and if the bargain was disadvantageous, he cannot be compelled to bear any part of the loss.

The Roman jurisconsults have carried this principle so far, as to decide, that a person could not even when contracting a partnership enter into a valid agreement that the heir of such of the partners who happened to die during the continuance of the partnership should become a partner in the place of the deceased: *adeo morte socii solvitur societas, ut nec ab initio pacisci possimus, "ut hæres etiam succedat societati;"* l. 59. *ff. Pro. Soc.* Dig. lib. xvii. tit. 2. l. 59.[1]

The reason of this decision was, that the partnership being a right which is founded upon the friendship of the parties for each other, and upon the reciprocal confidence which each has in the fidelity

the dissolution of the partnership by the death of one of the partners is, that his representatives, although entitled to his share, do not succeed him in the partnership. See Collyer Partn., 5, 6, 118. Story on Partn. § 271, 4th ed.

[1] Our law, according to the doctrine contended for by Pothier, in opposition to the Roman law, lays no restraint on the period of partnership, or the description of persons to whom, on the death of the original partners, the benefit of the contract is reserved. 1 Swanst. 510. n.; Stuart *v.* Earl of Bute, 3 Ves. 212; Balmain *v.* Shore, 9 Ves. 500; Warner *v.* Cunningham, 3 Dow. 76; Coll. Partn. 5, 6; Story Partn. § 6.

and good qualities of the other; it is contrary to its nature that it could be contracted with an uncertain and an unknown person, and consequently with the heirs of the contracting parties, who at the time of the contract were uncertain, the partner not being able even to engage himself to adopt a certain person as his heir; l. 65. § 9. *ff. Dict. Tit.* Dig. lib. xvii. tit. 2. l. 65. § 9.

This reason does not appear to me to be very conclusive, and I believe there is more subtilty than solidity in it; I think, therefore, that in our law, although the partnership regularly terminates by the death of one of the partners, and his heir does not succeed him in the future rights of the partnership, nevertheless, a stipulation that he shall succeed, is binding.

This is the opinion of the old practitioner Masuer, "On Partnerships," 28. n. 33. The Roman jurisconsults themselves admitted this agreement in partnerships for farming the public revenues. Why not admit it equally in ordinary partnerships? Despeisses is of the contrary opinion.

The second effect of the dissolution of community by the death of one of the partners is, that it dissolves it even between the surviving partners,[1] unless by the contract of partnership, it has been agreed to the contrary: *Morte unius socii societas dissolvitur, etsi consensu omnium coita sit, plures verò supersint; nisi in cöeunda societate aliter convenerit;* l. 65. § 9. *ff. Dict. Tit.* Dig. lib. xvii. tit. 2. l. 65. § 9.

The reason is, that the personal qualities of each of the partners are taken into consideration in the contract of partnership. I ought not then to be obliged, when one of my partners is dead, to remain in partnership with the others, because it may happen, that it was only in consideration of the personal qualities of the one who is dead, that I was willing to enter into it.

This principle admits of an exception with regard to partnerships for the farming of the public revenues which continue to subsist

[1] Our law is the same. Crawshay *v.* Maule, 1 Swanst. 495, 509; Gillespie *v.* Hamilton, 3 Madd. 254; Vulliamy *v.* Noble, 3 Mer. 614; Coll. Partn. 72, 73; Story Partn., § 317, 318, 319, 319a, 4th ed. Burwell *v.* Manderville, 2 How. S. C. Rep. 560, and cases there cited. Pitkin *v.* Pitkin, 9 Conn. 307.

between the survivors when one of the partners happens to die: *Hæc ita in privatis societatibus ait. In societate vectigalium manet societas et post mortem alicujus;* l. 59. Dig. lib. xvii. tit. 2. l. 59.

All that has been said of the case of the natural death of one of the partners, applies to the case of his civil death.[1] *Dissociamur renunciatione, morte, capitis diminutione;* l. 4. § 1. *ff. Dict. Tit.* Dig. lib. xvii. tit. 2. l. 4. § 1.

The insolvency of one of the partners also dissolves the partnership, in the same manner as his death.[2] *Dissociamur egestate;*

[1] According to our law a dissolution takes place when a person has lost his capacity to act *sui juris*, in consequence of his being outlawed or convicted and attainted of felony or treason; and moreover the Crown thereupon becomes entitled, not merely to the share of the offending, but also of the innocent partner; for by an absurd doctrine, still existing, though practically obsolete, it is held that, as it is beneath the dignity of the Crown to become a tenant in common or joint tenant with a subject, it is therefore entitled to the whole by virtue of its prerogative. See Watson Partn. 377, 378; Story Part.. § 304. Colly. on Part, b. 1. c. 2., § 2.; Gow on Partn. ch. v. § 1. p. 216, 3d ed.

It may be here mentioned that, according to our law, the marriage of a female partner will of itself operate as a dissolution of the partnership, because, in the absence of any contract reserving the wife's personal property to her separate use, it will belong to her husband absolutely; and, moreover, upon her marriage, except as regards property settled to her separate use, she becomes incapable of binding herself by any contracts. Nerot *v.* Burnard, 4 Russ. 247, 260. Gow on Partn. ch. v., § 1; Gow's Supp. p. 64, ed. 1841: 2 Bell's Comm. b. vii. ch. 2, p. 634, 5th ed.

[2] So, according to our law, the insolvency or bankruptcy of one or more of the partners will of necessity operate as a dissolution of the partnership, for as the property of a bankrupt passes to his assignees he becomes unable to fulfill the partnership contract, and with regard to the assignees the solvent partners are not obliged to admit them into, and their duties will not allow them to carry on the partnership. Fox *v.* Hanbury, Cowp. 445; Ex parte Smith, 5 Ves. 295; Wilson *v.* Greenwood, 1 Swanst. 471, 482, 483; Crawshay *v.* Collins, 15 Ves. 217, 223. Story on Partn. § 314, 4th ed., and cases there cited, 3 Kent Com. 59, 9th ed. Marquand *v.* Manu. Comp., 17 Johns. 525; Mumford *v.* McKay, 8 Wend. 442; Kingman *v.* Spurr, 7 Pick. 235. And in the event of bankruptcy the dissolution which takes effect immediately upon the adjudication of the bankruptcy will have relation back to the act of bankruptcy. Barker *v.* Goodair, 11 Ves. 78, 83; Dutton *v.* Morrison, 17 Ves. 194, 203. Waring *v.* Robinson, 1 Hoff. Ch. R. 524. Egberts *v.* Wood, 3 Paige, 521.

Dict. Tit. § 1. *Bonis à creditoribus venditis unius socii, distrahi sociatem Labeo ait;* l. 65. § 1. *ff. Dict. Tit.* According to our law, it suffices that the insolvency be (*ouverte*) apparent.[1]

§ IV. *As to the Wish to be no longer a Partner.*

It is clear that the partnership can be dissolved by the mutual consent of all the partners.

Can one of them dissolve it by his sole will, on giving notice to his partners that he does not for the future intend to be in partnership? It is necessary, with respect to this, to distinguish between partnerships which have been contracted without any limitation of time, and those which have been contracted for a certain limited time.

With regard to the first, any one of the parties can dissolve the partnership by giving notice to his partners that he no longer intends to remain in the partnership. *Dissociamur renunciatione;* l. 4. § 1. *ff. Pro Soc.* Dig. lib. xvii. tit. 2. l. 4. § 1.

For this effect, it is necessary that two things should occur; 1st, that the renunciation of the partnership should be made in good faith; 2ndly, that it should not be made at an unseasonable time. *Debet esse facta bonâ fide, et tempestivè.*

The renunciation is not made in good faith, when the partner renounces in order to appropriate to himself alone the profit the

[1] A general assignment of all interest in the partnership property by one or more of the partners will, it seems, operate as a dissolution of the partnership: the person to whom the assignment is made, by that act, as we have seen, merely has a community of property with, but does not become a partner of, the other partners. If they do not consent to admit him to the partnership, he cannot compel them to do so; if they consent, then a new partnership is formed. See Story on Partn. § 272, 307. Horton's Appeal, 1 Harris, 67. Mason *v.* Connell, 1 Whart. 381. Cochran *v.* Perry, 8 Watts & Seg. 262.

An assignment by a partner to his copartner of all his interest in the concern from which the profits of the business (if any) are to arise, operates as a dissolution of the partnership, because the former thereby ceases to have a right to participate in the profits; and since a partnership, as between parties, results from the agreement to share in the profits, it ceases as soon as such right is determined. Per Lord Denman, in Heath *v.* Sansom, 4 Barn. & Ad. 175.

partners had proposed to make when they entered into the partnership.

For example, if two booksellers enter into partnership to buy together a library, from which there was a profit to be made, and before it has been bought on the partnership account, one of the partners, in order to buy it on his own private account, and alone to obtain the profits therefrom, gives notice to the other that he does not intend any longer to be in partnership with him; that renunciation of the partnership is made in bad faith, and does not discharge him who has made it from his obligation towards his partner, who can demand his share of the profits.

But, if that partner has renounced the partnership only because he had a dislike to the speculation to carry out which they had become partners, his renunciation is made in good faith, and is valid, the business being yet untouched. In this case the other partner can claim no damages against him.

This is what Paulus lays down :—*Si societatem ineamus ad aliquam rem emendam, deinde solus volueris eam emere, ideoque renunciaveris societati, ut solus emeres; teneberis, quanti interest mea: sed si ideo renunciaveris quia emptio tibi displicebat, non teneberis, quamvis ego emero, quia hic nulla fraus est;* l. 65. § 4. Dig. lib. xvii. tit. 2. l. 65. § 4.

Paulus gives another example :—During the continuance of a universal partnership, which I have contracted with you, one of my friends, being on his deathbed, gives me notice that he has instituted me his heir. I go quickly to give you notice that I intend no longer to be in partnership with you. That renunciation being made with the view of appropriating to myself the succession of my friend, which ought to have fallen into our partnership, is void, as being made in bad faith, and will not prevent that succession, if it be beneficial, from falling into the partnership. *Dict.* l. 65. 93.

In like manner, if two neighboring seigniors had contracted a partnership together to receive in common the revenues of their seigniories, and one of them having intelligence that a very considerable estate, held in fief of his seigniory, was upon the point of being sold, signifies to his partner his renunciation of the partner-

ship, in order to appropriate to himself the gross profit of the fifth to which that sale would give a right, that renunciation is made in bad faith, and it ought to be declared void, and that the partnership has continued, and profit accrued to it.

For the renunciation, which one of the partners has made of the partnership, to be valid, it is necessary in the second place, that it should not be made at an unseasonable time; that is to say, at a time when things no longer remain in *statu quo*, and when it is the interest of the partnership to wait for a more favorable time to complete the business constituting the object of the partnership; as if, having contracted a commercial partnership with you, I should wish to dissolve the partnership at a time when it is the interest of the partnership to reserve the stock in trade which we have bought in common, and to wait for a more favorable time of sale. *Si emimus mancipia initâ societate, deinde renunties mihi eo tempore, quo vendere mancipia non expedit, hoc casu, quia deteriorem causam meam facis, teneri te pro socio judicio.* Dic. l. 65. § 5. Dig. lib. xvii. tit. 2. l. 65. § 5. Labeo.

Observe that, in order to judge whether a renunciation is made at an unseasonable time,[1] it is necessary to consider the common

[1] According to our law it is clear that, although a partnership may have been entered into *for a limited period*, it may be dissolved by the consent of all, but not it seems, by the mere will of one of the parties. Peacock *v.* Peacock, 16 Ves. 56.; Pearpont *v.* Graham, 4 Wash. 234; Bishop *v.* Breckles, 1 Hoff. Ch. Rep. 534; Terry *v.* Carter, 25 Miss. 168; Story on Partn. § 169, 173; Crawshay *v.* Maule, 1 Swanst. 495. Where, however, no time *has been fixed for its duration*, it is considered to be a mere partnership at will, and may consequently be dissolved upon one or more of the partners giving notice to the others, without reference to the distinction of the notice being seasonable or unseasonable. Master *v.* Kirton, 3 Ves. 74.; Miles *v.* Thomas, 9 Sim. 606, 609.; Nerot *v.* Burnard, 4 Russ. 247. 260. "I have always," observed Lord Eldon, "taken the rule to be that in case of a partnership not existing as to its duration by a contract between the parties, either party has the power of determining it when he may think proper, subject to a qualification I shall mention. There is, it is true, inconvenience in this; but what would be more convenient? In the case of a partnership expiring by effluxion of time, the parties may, by previous arrangement, provide against the consequences; but where the partnership is to endure so long as both partners shall live, all the inconvenience from a sudden determination occurs in that instance as much as in the other case." Peacock *v.* Peacock, 15 Ves. 56. But Mr. Swanston,

interest of the partnership, and not the private interest of him who opposes that renunciation, unless there be some agreement in the contract of partnership, which is opposed to the renunciation. *Hoc ita verum esse, si societatis intersit non dirimi societatem: semper enim non id, quod privatim interest unius ex sociis, servari solet, sed quod societati expedit; Hæc ità, accipienda sunt, si nihil de hoc in coëunda societate convenit.* Dig. lib. xvii. tit. 2. l. 65. § 5. Proculus.

We now pass to partnerships which are contracted for a certain limited time. In these partnerships the partners, by agreeing upon the time for which the partnership is to continue, are considered to agree not to dissolve it until after the expiration of that time, unless there happen some just cause for dissolving it sooner. Therefore one of them cannot, without just cause, dissolve the partnership before the time, to the prejudice of his partners:[1] *Qui societatem in tem-*

in his note to Crawshay *v.* Maule, 1 Swanst. 512., has observed that in one instance the Court of Chancery seems to have assumed jurisdiction to qualify the right of renunciation. See Chavany *v.* Van Sommer, 3 Woodd. Lect. 416, note. 3 Kent Comm. 54, 62, 9th ed.

[1] According to our law a partnership for a *limited time* may, upon sufficient cause being shown, be dissolved by the decree of a court of equity, although it may not be dissolvable either by mere operation of law, or by the parties themselves. Gratz *v.* Bayard, 11 Serg. & Rawle 48; 3 Kent Comm. 60, 69, 9th ed. In the first place, it may be dissolved from its commencement, when it originated in fraud, or misrepresentation, or oppression. Colt *v.* Wollaston, 2 P. Wms. 154.; Green *v.* Barrett, 1 Sim. 45. Another ground upon which the court will dissolve a partnership, in its origin unobjectionable, is the gross misconduct of one of the partners, amounting to a want of good faith, which is necessary to carry on the partnerthip concern, Chapman *v.* Beach, 1 J. & W. 594.; as, for instance, when a a partner raises money for his private use on the credit of the partnership firm, Marshall *v.* Coleman, 2 J. & W. 266.; or his conduct amounts to an entire exclusion of his partner from his interest in the partnership, Goodman *v.* Whitcomb, 1 J. & W. 593.: or if he receives moneys and does not enter the receipts in the books, or if he does not leave them open to the inspection of his partners (Ib.); or if, contrary to the opinion and wish of the partners, he allows a person to draw bills upon the partnership, and directs them to be paid out of the joint effects of the partnership, Master *v.* Kirton, 3 Ves. 74. So when the conduct of one of the partners is such as to prevent the concern from being carried on according to the contract, Waters *v.* Taylor, 2 V. & B. 304.; and it is stated in 7 Jarman's Conveyancing, p. 83., upon the authority of a MS. case, De Berenger *v.* Hamel,

pus coit, eam antè tempus renuntiando, socium à se, non se à socio liberat; l. 65. § 6. Dig. lib. xvii. tit. 2, l. 65. § 6.

But if the partner has a just cause for quitting the partnership

cor. Sir L. Shadwell, V. C., 13 Nov. 1829, that violent and lasting dissension, as when the parties refuse to meet each other upon matters of business—a state of things which precludes the possibility of the partnership from being conducted with advantage—will be a sufficient ground for a court of equity to decree a dissolution. But the court will not decree a dissolution for slight misconduct, especially if there has been acquiescence, on the ground of mere ill temper on the part of one of the partners. "Where parties differ," says Lord Eldon, "as they sometimes do when they enter into a different kind of partnership, they should recollect that they enter into it for better and worse, and this court has no jurisdiction to make a separation between them because one is more sullen or less good-tempered than the other. Another court, in the partnership to which I have alluded, cannot, nor can this court, in this kind of partnership, interfere, unless there is a cause of separation, which in the one case must amount to downright cruelty, and in the other must be conduct amounting to an entire exclusion of the other partner from his interest in the partnership. Goodman *v.* Witcomb, 1 J. & W. 592.; and see Wray *v.* Hutchinson, 2 My. & K. 235. Story on Partn. § 225, 229, 4th ed.

Moreover, the court will dissolve a partnership in some cases where no personal blame attaches upon any of the partners, as, for instance, where it has become impossible to carry it on according to the intent and meaning of the contract, Baring *v.* Dix, 1 Cox, 213. Thus where the partnership was originally entered into for spinning cotton under a patent, which totally failed, and was entirely given up, Lord Kenyon decided, that if, on a reference to the master, it was reported that the partnership could not be carried on, he would direct the premises to be sold, and would dissolve the partnership. And see Pearce *v.* Piper, 17 Ves. 1.; Buckley *v.* Cater, cited 17 Ves. 11, 15, 16; Reeve *v.* Parkins, 2 J. & W. 390. Another ground upon which the court will dissolve a partnership, is the incurable, and not merely temporary insanity of one of the partners, Sayer *v.* Bennett, 1 Cox, 107; Kirby *v.* Carr, 3 Y. & C. Excheq. Ca. 184; Wrexham *v.* Huddlestone, 1 Swanst. 504. n. Jones *v.* Noy, 2 My. & K. 125., of which proof of a person having been found a lunatic, under a commission, will be conclusive evidence, Milne *v.* Bartlett, 3 Jur. 358; 3 Kent Com. 58, 66, 9th ed.; Story on Partn. § 295, 296, 297, 297a; but in the absence of a stipulation for a dissolution in such an event at a particular time, Bagshaw *v.* Parker, 10 Beav. 532., the dissolution will only take place from the time of the decree. Besch *v.* Frolich, 1 Ph. 172.

A partnership may be dissolved by the award of arbitrators, provided their powers are sufficient, for two reasons, either because it is the forum which the parties have themselves chosen, and by whose decision they must consequently be bound, or because such dissolution may be considered to have been made with the consent of the parties. Heath *v.* Sansum, 4 Barn. & Ad. 172; Street *v.* Rigby, 6 Ves. 815.; Story Partn. § 215, 299, 300, 301, 4th ed.

before the time, his renunciation of which he gives notice to his partners, is valid, and dissolves the partnership, even when there is an express clause in the contract of partnership that the partners shall not be able to withdraw themselves from the partnership before the time. *Pomponius* therefore observes, that such a clause is superfluous, because, even if it had not been expressed, one of the partners could not before the time withdraw himself from the partnership without a just cause, and if he has a just cause, that clause cannot prevent his withdrawal: *Quid tamen si hoc convenerit "ne abeatur," an valeat? Elegantèr Pomponus scripsit; frustra hoc convenire; nam etsi non convenerit, si tamen intempestivè renuntietur societati, esse pro socio actionem. Sed etsi convenerit "ne intra certum tempus societate abeatur," et antè tempus renuntietur, potest rationem habere renuntiatio;* l. 24. *ff. Pro Soc.* Dig. lib. xvii. tit. 2. l. 14. *Ulpian* gives many examples of the just causes a party may have for renouncing before the time; for instance, if his partner did not execute the conditions of the partnership; if he has proof that his partner refuses to allow him to enjoy in his turn the thing which they have put in partnership; if he has proof of the bad conduct of his partner in the management of the affairs of the partnership: *Non tenebitur pro socio, qui ideo renuntiavit, quia conditio quœdam, quâ societas erat coïta, ei non præstatur; aut quid, si ita injuriosus et damnosus socius sit, ut non expediat eum pati;* l. 14. *ff. Dict. Tit.* Dig. lib. xvii. tit. ii. l. 14.

Moreover, a partner will have just cause for renouncing the partnership before the time, when, in consequence of his being obliged to be absent during a long time on the service of the State, he can no longer give his attention to the affairs of the partnership, unless, indeed, the affairs of the partnership are such that there is no need of his being present; l. 16. *Dict. Tit.*

The same may be said in case of an inveterate infirmity which has seized upon one of the partners. It might be a just cause for his renouncing the partnership, if the affairs of the partnership were such as to require his personal attention.

In order that a renunciation of a partnership should operate as a dissolution, the partner, when so renouncing should give notice to

all the partners. This notification, in case it is not admitted by the partners to whom it has been made, ought to be proved by writing, either by a notice served by a huissier[1] on them personally, or at their domicile, or by a deed under private signature, by which they acknowledge that such notice has been given to them. But that deed not being evidence against third parties having an interest in the continuance of the partnership, (see Pothier on Obligations, n. 750), it is more prudent to give such notice by a huissier.

When the renunciation of the partnership is likely to be the subject of contest, it will be prudent for the party who has made it to summon his partners before the court, in order to establish its validity.[2]

For if, after his renunciation, the partners to whom it has been made, incur losses, they can object to him the defects of his renunciation, and if it is found to be made in bad faith, or unseasonably, he will be compelled to bear his share of the losses; while, on the contrary, if after the renunciation they have acquired profits, the partner who has made it cannot claim a share, it not being allowable for him to insist on the nullity of his own renunciation, and to oppose to it its defects. Hence the jurisconsults say, that the partner who renounces with bad faith, or unseasonably disengages his partner from himself, and does not disengage himself from his partner, *Antè tempus renuntiando, socium à se, non se à socio liberat;* l. 65, § 6. Dig. lib. xvii. tit. 2. l. 65, § 6.

[1] A sort of under sheriff, or summoner.

[2] It will be observed, that in the case of partnerships for *a limited time*, there exists a difference in the mode in which a dissolution of a partnership may be effected under the French law and our own. According to the former the partner may, by his own act, primarily insist upon a dissolution, which, however, is not valid, unless it be for a just cause, and is affirmed to be so by a court of justice; whereas our law does not allow the dissolution to be complete or effective until a court of justice has itself decreed the dissolution for a just cause. In substance, therefore, the rule is the same in both cases, although it is varied in its actual application. The rule of our law is quite as convenient as that of the French law, if, indeed, it be not more appropriate, just and equitable. Story Partn. § 298.