

RECENT ENGLISH DECISIONS.

Vice-Chancellor Wood's Court.

BELL v. NEVIN.

A deed of partnership contained a clause enabling one of the partners to determine the partnership on giving to the other three months' notice. In pursuance of this clause notice of intention to determine was given. Before the expiration of the three months the partner who gave the notice died.

Held, that the partnership was determined by and on the death of the partner, irrespective of the notice.

· THIS was a special case.

By articles of agreement, dated April 17th 1863, and made between William Milner and the plaintiff, William Bell, it was agreed that Milner and Bell, who had already carried on business together as fancy woollen manufacturers, since January 1st 1863, should continue partners for ten years from the last-mentioned date, subject to the provisions thereafter contained for earlier determining the partnership. The deed provided that Milner, who was the moneyed partner, should receive interest on his capital, and that Bell should receive a salary of £300 a year, whether there were profits or not, and that if there were profits, one-fifth part thereof should be invested in the concern for Bell's benefit, but he was not to have power to draw the same out of the business without Milner's consent. By the 11th clause of the articles Bell was prohibited from doing certain acts, matters, and things, and by the 12th clause power was given to Milner, in case Bell should commit any of the prohibited offences, to terminate the partnership. By the 13th clause it was provided that independently of the 12th clause, if Milner should at any time be desirous of determining and putting an end to the partnership, he should be at liberty to do so by giving to Bell three calendar months' notice in writing for that purpose in manner therein mentioned, and in case of the determination of the partnership by notice as aforesaid, the net profits of the business should be forthwith ascertained, as near as might be, and circumstances would admit of, up to the date of such dissolution, and one-fifth part thereof, with any salary which might be due to him at the same time, together with one year's salary in advance, and all moneys invested by him in the business, should be paid to Bell by Milner as soon as

the amounts thereof could be respectively ascertained, the one year's salary in advance to be paid to Bell on the expiration of the three months' notice dissolving the partnership, and on his signing certain documents therein mentioned. By the 16th clause it was provided that in the event of Milner's death before the affairs of the partnership should have been fully wound-up and settled, leaving Bell him surviving, then Bell should, in that case, permit and allow the executors or administrators of Milner to collect, get in, sue for, and recover in Bell's name, the property of the partnership, and to pay and divide the same according to the terms and provisions therein contained.

After the execution of the articles the business was carried on down to December 31st 1864. The plaintiff Bell never committed any of the offences prohibited by the 11th clause; and the following notice, which was served on Bell on the last-mentioned date, was given in pursuance of the 13th clause. The following were the terms of the notice:—

“As attorney for and on behalf of your partner Mr. William Milner, of, &c., I do hereby give you notice, pursuant, &c., that it is the intention of the said William Milner to determine the said copartnership on the expiration of three calendar months from the time of your being served with this notice.—Dated, &c.

“F. W. CLOUGH, Solicitor.”

According to this notice the partnership was to expire on the 31st March, 1865. Before that date, however—viz., on the 2d February—Milner died. The defendants to this special case were the executors of his will.

Soon after Milner's death the question now in dispute was raised between the plaintiffs and defendants; but, without prejudice to such question, the business was carried on until the 31st March, when the plaintiff was ready to execute the documents specified in the 13th clause.

The important questions submitted to the court were—1. whether, under the circumstances above stated, the partnership continued until, and was not determined before March 31st 1865, or whether the same was dissolved and put an end to by the death of Milner, irrespective of the notice of dissolution of the 31st day of December; and 2. whether the plaintiff was or was not entitled, in addition to the sum payable to him for capital,

profits and current salary, to the sum of £300 as one year's salary in advance.

Rolt, A. G., and H. M. Jackson, for the plaintiff, contended that the partnership must be considered as having been terminated by the notice, and not by the death of Milner. If no notice had been given, then the partnership would no doubt have been terminated by Milner's death; but, the notice being once given, the position of the parties must be determined by their act, and could not be prejudiced by any *ex post facto* event. Again, although when nothing was said about death in the partnership deed, it was clear law that the death of one of the partners terminated the partnership; yet, if it was implied by the deed that the partnership was to go on after such death, then the partnership would be considered as so going on. Such an implication, they contended, was to be found in the 16th clause.

W. M. James, Q. C., and W. F. Buchanan, for the defendants, were not called upon.

Wood, V. C., said that in this case there was nothing to lead the court to say that the partnership was not determined at and by the death of Mr. Milner. The notice given by Mr. Milner was very properly framed, expressing, as it did, his intention to determine the partnership at the expiration of the three months. All that the notice did was to express his intention to determine the partnership at a certain date, supposing him then to be a subsisting partner. In fact, just as the deed of partnership made arrangements, as far as possible, for continuing the partnership for ten years, so the notice made all possible arrangements for carrying on the partnership for three months from the date thereof. Death, however, intercepted these latter arrangements, and prevented Mr. Milner from carrying out the intention declared in his notice. As he must hold that the partnership was terminated, not under the notice, but by the death of Mr. Milner, the provisions of the 13th clause were not applicable, and the plaintiff would, consequently, not be entitled to his year's salary in advance. The costs of the special case would be borne by the plaintiff and the defendants in the proportion of the plaintiff's share in the profits of the business and that of Mr. Milner.