

Ordinary's interlocutor of 27th May 1874, reserving to the Lord Ordinary to dispose of all questions of expenses incurred prior to that date; and remit to the Auditor to tax the amount of the said expenses now found due, and report to the Lord Ordinary, with power to his Lordship to decern therefor."

Counsel for the Pursuer—Solicitor-General (Watson) and Scott. Agent—George Begg, S.S.C.

Counsel for the Defender—Dean of Faculty (Clark), Q.C., and G. Smith. Agents—Wotherpoon & Mack.

Friday, November 13.

## FIRST DIVISION.

### PATTISON V. BALLINGAL.

#### Partnership—Contract—Firm-name.

A contract of copartnership fixed the respective shares of the partners, and further provided that, in the event of his surivance, the junior partner was to carry on the business under the firm-name, and was to be chargeable with the payment of certain sums to the representatives of the senior partner, but only after setting aside a yearly minimum sum from the profits of the concern as his own share. On the death of the senior partner, the junior, by the advice of his principal clients, entered into a fresh partnership with another firm, in which his share fell considerably short of the sum allotted to him under the former contract. Held that he was not bound to account to the representatives of his former partner, or to make any payment to them in respect of the business which his said clients transferred to the new firm.

The summons in this case was issued on 11th July 1871, at the instance of Mrs Annie Condie or Pattison, eldest daughter and executrix-dative of Mr James Condie, solicitor, Perth, and wife of Mr Frederick Hope Pattison, blacking-manufacturer in Glasgow, along with her husband, against Mr Andrew Hunter Ballingal, Writer to the Signet, of the firm of Messrs Geo. Condie, Conning, & Co., writers, Perth. The purpose of the summons was to have it declared that a contract of copartnership, entered into by Messrs Condie & Ballingal on 22d January 1869, and particularly the eleventh article thereof, was still a subsisting contract, and that Mr Ballingal was bound to fulfil the obligations which in that article were undertaken by him. The summons then contained a requisition for an account of the profits of the firm of Messrs Geo. Condie, Conning, & Co., from 12th May 1870, (the date of Mr Condie's death), till 19th July 1871, in order to decree against Mr Ballingal for £2000, or such sum as should for that period be found due to Mrs Pattison, as Mr Condie's legal representative. The summons also contained an alternative claim of damages to the amount of £5000 against Mr Ballingal, in case he should be found to have successfully evaded the contract of copartnership. In support of the summons the following articles of the contract of copartnership were relied upon, viz.—

"Sixth.—In the event of the business being carried on by Mr Ballingal after the death of Mr Condie, he shall pay to Mrs Alexandrina Condie,

widow of Mr George Condie, solicitor, Perth, (now Mrs Cross), the sum of £200 on 31st December in each year of the ten years immediately succeeding the death of Mr Condie, declaring that in the event of the death of Mrs George Condie (now Mrs Cross), the annuity shall be payable to her daughter Laura, or to her guardians during her minority.

"Eleventh.—In the event of Mr Condie predeceasing Mr Ballingal, it shall nevertheless be competent to Mr Ballingal to continue to carry on business under the firm of Condie & Ballingal but in that case the sum of £1000 shall annually be set aside for Mr Ballingal out of the free proceeds of the business after deduction of clerks' salaries and other expenses and the annuity before provided for, and the remainder only of the free proceeds shall be divided, and that into three equal portions,—of which two shall be paid to Mr Condie's legal representative, and the other third portion shall belong to Mr Ballingal.

"Twelfth.—It shall be understood that in the event of Mr Ballingal continuing the business after the death of Mr Condie, and its becoming expedient for him to assume a partner into the same, he shall give a preference to such one of the grandsons of Mr Condie as may qualify himself for the business."

Then, founding upon those articles, Mr and Mrs Pattison alleged that Mr Ballingal had, upon Mr Condie's death, adopted the device of changing the name of his firm from "Condie & Ballingal" to "Geo. Condie, Conning, & Co.," for the purpose of defrauding the representatives of Mr Condie of their just rights, and, if possible, of evading his obligations; that letters had been sent by him to Mr Condie's clients with the view of securing their business to himself, and of appropriating to himself the goodwill of the business of Condie & Ballingal, and the whole profits to be derived from the business; and that since Mr Condie's death he had continued to transact the business of the clients, and of the firm of Condie and Ballingal, in all respects as formerly, under colour of the name of "Geo. Condie, Conning & Co." Again, to meet the case of Mr Ballingal being found to have successfully evaded the contract of copartnership, Mr and Mrs Pattison alleged that Mr Ballingal had abused the position of trust in which he was placed, and that through his fraudulent conduct Mr Condie's representatives had sustained loss, for which he was responsible to the amount of at least £5000.

In reply, Mr Ballingal denied all Mrs Pattison's allegations, and explained that after Mr Condie's death he did not "continue to carry on business under the firm of Condie & Ballingal," but entered into an agreement of partnership with Messrs Conning & Hunter, writers, Perth; and that since 1st June 1870 the partnership thus formed had carried on business under the firm of "Geo. Condie, Conning, & Co.," the name of George Condie being used with the assent of his testamentary trustees, and also with the assent of his widow, Mrs Geo. Condie (now Mrs Cross), whose annuity had been continued and might be increased. At the same time, Mr Ballingal stated three preliminary objections to the action. In the first place, Mrs Pattison had no right to sue, because the trustee in Mr Condie's sequestration was the proper legal representative of Mr Condie under Messrs Condie & Ballingal's contract of copartnership. In the second place, assuming her to be the proper representative, her husband and she were not entitled to sue,

because he had been adjudicated a bankrupt, and a creditor's assignee appointed on his estate in 1864—they having been married since the year 1857. In the third place, Messrs Condie & Ballingal's contract of copartnership contained a clause of arbitration embracing all the questions raised, and these questions must, therefore, be disposed of by that means, and not in Court.

Proof having been ordered and led, Lord MURE on the 25th March, 1874, pronounced the following interlocutor—"Finds that after the death of the late Mr James Condie in May 1870, the business which had been carried on by him and Mr Ballingal under the contract of copartnership entered into between them on 22d January 1869, was carried on by Mr Ballingal during the period embraced in this action in conjunction with the business of Messrs Conning & Hunter, and the partners of that firm, under the name of Geo. Condie, Conning, & Co.: Finds, in these circumstances, that Mr Ballingal is bound, in terms of the eleventh article of the contract of copartnership, to account to Mr and Mrs Pattison, as representing the late Mr James Condie, for the profits of the business of Condie & Ballingal so carried on by him after Mr Condie's death, and appoints Mr Ballingal to put in an account of the profits from the date of Mr Condie's death.

"*Note.*—It does not, in the opinion of the Lord Ordinary, admit of doubt upon the evidence in this case that after the death of Mr Condie in 1870 the business belonging to the firm of Condie & Ballingal was carried on by the defender in conjunction with the business of Conning & Hunter, under the firm of George Condie, Conning & Company. This is proved by the oral evidence adduced, by excerpts from the books of the firms, by the way in which the balances were taken over upon the death of Mr Condie in 1870, and by the letters which the defender wrote to the different clients of Condie & Ballingal, in which he informs them that the business which is described sometimes as that of 'the late firm of Condie & Ballingal,' and at other times as 'Mr Condie's business,' is to be so carried on. And although it is not to be continued under the name of Condie & Ballingal, that change of name, for the reasons stated by the Lord Ordinary in the note to his interlocutor of the 18th of April 1873, does not appear to him to be of itself sufficient to exclude the claim now made on the part of the pursuer, and if the Lord Ordinary is right in this view, the main question remaining for consideration is, whether the circumstance that new partners were assumed, and a new copartnership formed in order to carry on, *inter alia*, the business of Condie & Ballingal, in the manner explained in the evidence, entitles the defender to maintain that he is not now bound to account, under the 11th head of the minute of agreement, for the profits of that business.

"This question is, in the opinion of the Lord Ordinary, attended with very considerable nicety; but, after viewing it in all its different bearings he has been unable to come to the conclusion that the defender is, in the circumstances, freed from all liability to account. The assumption of a new partner is not, as the Lord Ordinary conceives, sufficient, any more than the mere change of name, to take the case out of the provisions of the agreement. Because it was plainly in contemplation of the parties at the time the agreement was entered into that it might be necessary or expedient for

the defender to assume a partner after the death of Mr Condie. For this provision is made in the 12th head of the agreement, which contains a stipulation to the effect that, should a new partner be assumed, a preference was to be given to one of Mr Condie's grandsons. But that clause contains no restriction as to the use of the new partner's name, and no qualification as to the proportion in which the profits were to be divided under the 11th head of the agreement, thereby plainly implying that neither Mr Condie nor the defender anticipated that any difficulty would occur in dealing with the profits of the business formerly carried on by Condie & Ballingal, in terms of the agreement, in the event of a new partner being assumed. For that would only involve an adjustment between that new partner and the defender of the proportion of the profits of the business of Condie & Ballingal, which was to belong to the defender under the provision of the 11th head of the agreement.

"It appears from the evidence adduced that when the defender came to the conclusion after Mr Condie's death that it would be expedient for him to assume a partner, it was at one time proposed that Mr Hunter alone should be assumed, and if that had been done, the case, even if a change had been made in the name of the firm, would, in the opinion of the Lord Ordinary, have nevertheless fallen within the scope and spirit, although not perhaps within the very letter, of the provisions of the 11th and 12th articles of the heads of the agreement; and although the arrangement which was ultimately come to was of a somewhat different description, inasmuch as the business which had belonged to Condie & Ballingal was conjoined with that of Mr Hunter's firm—or rather the business of the latter firm was added to that of Condie & Ballingal—it appears to the Lord Ordinary that this transaction was in substance very much the assumption of a new partner in the shape of another firm, and as the defender has thus continued to carry on the business of Condie & Ballingal, the profits of that business, as distinct from those of the business which had belonged to Conning & Hunter, must, it is thought, be accounted for by the defender in terms of the 11th head of the agreement.

"A great deal of the evidence was directed to show that one object which the clients of Condie & Ballingal seem very properly to have had in bringing about the present arrangement was to secure a provision for the widow of Mr George Condie. That, however, in the view the Lord Ordinary takes of the case, does not materially effect the question now under consideration, because that provision was very effectually secured by Mr Condie under the 6th head of the minute of agreement, which seems to have been transferred in almost the same terms to the agreement between the defender and Messrs Conning & Hunter."

Mr Ballingal reclaimed, and, after hearing counsel the Court asked for an account of the average value of Mr Condie's business for the three years immediately prior to his death, an account of the value of Messrs Conning & Hunter's business for the same period, and statements of the proportions borne by the profits of those businesses respectively, one to the other, during the three subsequent years. In compliance with this, Messrs Lindsay, Jamieson, & Haldane, chartered accountants, Edinburgh, furnished the required accounts and statements on the part of Mr Ballingal, and corre-

sponding accounts and statements were subsequently made up by Mr James Hutton, accountant, Glasgow, on behalf of Mr and Mrs Pattison. The case was then finally debated.

At advising—

LORD PRESIDENT—Mr Ballingal and the late Mr James Condie were carrying on business as solicitors in Perth at the time of Mr James Condie's death in the month of May 1870. Their contract of copartnership was dated in January 1869, and its endurance was stipulated to be for fifteen years; so that a very small part of the period of the contract had expired in May, when the partnership was dissolved in consequence of Mr Condie's death. The business which they carried on was in reality the business of Mr Condie,—Mr Ballingal having been assumed as a partner to aid Mr Condie, whose health was failing, and who was of pretty advanced age; and Mr Ballingal having had no business of his own or any influence in or connection with that part of the country. The arrangement was that the profits were to be divided in the proportion of thirteen shares to Mr Condie and seven to Mr Ballingal. It was provided also that the widow of Mr George Condie was to have an annuity during the subsistence of the partnership of £100 a-year, payable out of the business; and in the event of the business being carried on by Mr Ballingal after Mr Condie's death, this annuity was to be raised to £200 a-year; and in the event of Mrs George Condie's death, the annuity was to go to her daughter; and this arrangement was to continue during the fifteen years for which the partnership was to stand. The other provisions of the contract are not material in the present question, with the exception of the eleventh. In that article it is provided that in the event of Mr James Condie predeceasing Mr Ballingal, it shall nevertheless be competent to Mr Ballingal to continue to carry on the business under the firm of Condie & Ballingal; but in that case a sum of a thousand pounds shall be annually set aside for Mr Ballingal out of the free proceeds of the business, after deduction of expenses; and the remainder of the free proceeds shall be divided into three portions, of which two shall be paid to Mr Condie's representative, and one to Mr Ballingal. This action has been raised by Mrs Pattison, eldest daughter and executrix of Mr Condie, for the purpose of having it found that Mr Ballingal did, in terms of this eleventh article, continue to carry on the business in Perth, and to have him brought to account for the profits of the business, and there are petitory conclusions for payment of the balance. The question is, whether Mr Ballingal is in the position contemplated by this article of partnership, and is bound to account for the profits of the business, so as to divide the free proceeds, after setting aside £1000 for Mr Ballingal, in terms of this article. The language of this article is, that it is only in the event of Mr Ballingal continuing to carry on the business under the firm of Condie & Ballingal that the provision applies; but I have no idea that the mere dropping of that firm's name (Condie & Ballingal) would liberate Mr Ballingal from liability to account under this clause, if he was really carrying on the business which belonged to the firm of Condie & Ballingal. It was maintained for Mr and Mrs Pattison that Mr Ballingal did continue to carry on the business within the meaning of this article, and consequently is liable to account. The state of the facts seems to be

this:—When Mr Condie died, and when Mr Ballingal proceeded to consider what he should do, he found that the clients of Condie & Ballingal had not sufficient confidence in him individually to entrust their business entirely to his management, and they were not even prepared to give him their business upon the footing of his assuming a partner in the ordinary sense of the term, that is to say, assuming a partner in the manner contemplated in the twelfth article of the partnership, by bringing somebody in with no particular qualification, except a sufficient legal education, to aid him in the conduct of the business. What these clients desired and advised Mr Ballingal to do was to connect himself with some established firm in Perth, whose experience and character would be a sufficient guarantee to these clients that their business would be well conducted; and in giving that advice they so expressed themselves as to make it abundantly clear that if Mr Ballingal did not take their advice he would not take their business either. And, accordingly, Mr Ballingal was placed in the position of having this alternative before him, that he must either bid farewell to Perth altogether as the scene of his professional occupation, or he must accede to this suggestion of these clients, and establish a connection with some well-known firm of character in Perth; and indeed the particular firm was suggested by his clients,—the firm of Conning & Hunter. The result was that Mr Ballingal did make an arrangement with Messrs Conning & Hunter, and the result of the arrangement was that a partnership was formed by these three gentlemen—Mr Conning, Mr Hunter, and Mr Ballingal,—and the profits of the business, including the business of Mr Condie so far as it could be carried over to the new firm, were to be divided in this way:—Mr Conning was to have an annual allowance of £900, and the balance of the profits was to be divided equally between Mr Hunter and Mr Ballingal. When Lord Mure pronounced his interlocutor he was not made aware of what the practical effect of this was; but we have now an admission which enables us to see how Mr Ballingal is situated as a member of this new firm. Mr and Mrs Pattison admit that the account on this matter given by Mr Hutton, the accountant who was employed by them, is substantially correct; and so it appears that while Mr Conning derives an income of £900 a-year from the business, Mr Hunter and Mr Ballingal do not get more than about £700 each. Now, in these circumstances, the question comes to be whether Mr Ballingal is within the provisions of the eleventh article. If he had gone into partnership with Messrs Conning & Hunter, and had made a different or more favourable arrangement—such an arrangement as would give him a large income from that joint business—an income sufficient to enable him to set aside £1000 a-year for himself and the annuity to Mrs George Condie, which was also provided for under the contract of copartnership between Condie & Ballingal, and then leave a balance to be divided between himself and the representative of Mr James Condie, in terms of the eleventh article, very possibly one might have held that he was, within the meaning of the eleventh article, continuing to carry on the business in the manner contemplated. His taking a partner would not have prevented the application of the eleventh article, and his taking two partners would probably not have prevented the application of the

eleventh article, either. But when he takes two partners in this sense, and to this effect, that these two partners are running away with the great bulk of the profits derived from the business, and leave him but a small portion, and such a portion of the profits as could not possibly enable him to fulfil to the letter the provisions of the eleventh article, then a very different question arises; and it appears to me that in the circumstances in which Mr Ballingal is now placed he cannot be asked to account or pay under this eleventh article. I do not desire to give any opinion on what might have been the liability of Mr Ballingal, in circumstances any way different from those that have actually occurred; but in the circumstances that have occurred, when he is deriving from the joint-business only £700 a-year, and therefore cannot possibly get his thousand pounds a-year, which is preferable under the eleventh article, I cannot see how the *unpreferable* share, as I may call it, that is to go to the representatives of Mr Condie, can become due and payable to them; and therefore I am of opinion that Mr and Mrs Pattison are not entitled to the accounting they demand; for they admit that the accounting will not bring out such a result as will enable Mr Ballingal to set aside £1000 a-year for himself, and divide a balance with them. That being so, there is no use of going into an accounting, because an accounting is very useless which does not result in a payment; and there can be no payment in the circumstances as they stand at present. Whether hereafter any such claim may arise, it is not for me to say at present. I do not see very well how it can, because, if the income of this new firm were to be increased by the accession of new business, that would not be the business of Condie & Ballingal; and it is hardly to be supposed that the clients of this new firm will become so frightfully litigious, or make such additions to their estates as will make their business sufficiently valuable in time to come to furnish funds for division in terms of this eleventh article. But, however that may be, as the matter stands at present I think that Mr Ballingal is entitled to be absolved from the conclusions for accounting and payment. In regard to the declaratory conclusions of the summons, I do not see any necessity for disposing of them at all. I therefore think we should recall Lord Mure's interlocutor; and in doing so I am not expressing any opinion directly adverse to that interlocutor in the circumstances in which it was pronounced. We have had additional light thrown upon the case, and this now forms the principal ground of judgment.

LORD DEAS—It is better not to make any suggestions as to whether or not additional business coming to the new firm from other parties would be the business of Condie & Ballingal. I entirely agree with every word that your Lordship has said, as well as with the result at which your Lordship has arrived. It is, therefore, unnecessary for me to go into the circumstances of this case again. All Mr and Mrs Pattison can ask is, that it should be assumed, for the sake of argument, that they are right in maintaining that these conditions of the partnership between Mr Condie and Mr Ballingal are still in force, and that they apply to the circumstances as they exist. But, supposing that were all to be assumed, I would still come to be of opinion with your Lordship, that, so long

as the business does not afford to Mr Ballingal his £1000 a-year, and to the lady (Mrs George Condie) the allowance of £200 a-year provided for her,—so long as that is the case, the 11th article of the partnership, supposing it to be in force, leaves no room for this action. The only way in which room for this action could exist would be if something had been done by Mr Ballingal in bad faith, in order to defeat the agreement. Now, I am very clearly of opinion—as I understand your Lordship to be of opinion—that there is nothing that can be said to have been done in bad faith in the entering into this new partnership, and in entering into it upon the terms and conditions in reference to pecuniary results upon which it has been entered into. I think that was all fairly and rightly done; and, therefore, there can be no ground for this claim of Mr and Mrs Pattison, until, at all events, the increase of the income of the firm shall be such as to put matters in a different position from what they are in now. This probability raises a question, on which I can give no opinion whatever, as to what may arise in the future. We cannot decide that question now. There probably never may be sufficient profits to put Mr Ballingal in that position. That disposes of the first question which is raised in the action—that, namely, as to the petitory conclusions. And, then, as regards the declaratory conclusions, there are two very good reasons for not giving effect to that. In the first place, the circumstances have not arisen calling for declarator; and, in the second place, there is absolutely no declaratory conclusion at all. I entirely agree with the views of your Lordship, that in the circumstances we should dismiss the petitory conclusions of the summons, and that we should find it unnecessary to do anything else in the case.

LORD ARDMILLAN—I am of the same opinion. The words of the eleventh clause of this contract of copartnership, if read with reference to the circumstances in which this action has occurred, and as now ascertained, and if read apart from all averments of fraud, unfairness, or evasion, or devices, cannot, in my opinion, sustain the demands of Mr and Mrs Pattison; and I am perfectly satisfied that there is no ground whatever for such an imputation, and, indeed, such an imputation has not been *really* made. I do not attach any weight to the mere alteration or changing of the name of the firm; but, in point of fact, it is now ascertained very satisfactorily since Lord Mure's interlocutor was pronounced, that the circumstances in which Mr Ballingal is placed in regard to the profits of the business are not such as were contemplated under the eleventh article; and the carrying out of the eleventh article in its terms is, therefore, quite impossible in the present position of matters. I find that the conjoining of the firm of Condie & Ballingal with that of Conning & Hunter was evidently a change for the benefit of the business. The intention of this contract, under the eleventh section, was that Mr Ballingal should have what I may call the control of the business. But Mr Ballingal is not, I think, in that position, because of the requirements of important clients,—of men who, by the withholding or giving of their employment, could make or mar the firm,—and who agreed that Mr Ballingal, being a young man, and professionally unknown there, was not likely to carry on their business successfully, and that he

was not equal to the business to be conducted. And, therefore, they recommended him to unite in partnership with a better-known and highly-respectable firm in Perth; and that was done. I look upon that as the doing of these clients, and as in no degree an evasion or device by Mr Ballingal to escape from the obligations under this contract. Well, if that is the case, the eleventh section is put out of the way by no act of Mr Ballingal, and by no mere device; but necessarily put out of the way by the circumstances of the case, by the conduct of these employers of Condie & Ballingal; and the result now is, that you cannot carry out the eleventh clause in its terms. That leads, I think, to the absolvitor of Mr Ballingal from the petitory conclusions of this action. As to the declaratory conclusions of this action, I think the wise course is to find it unnecessary to say anything whatever about it in the circumstances.

LORD MURE—I agree with the judgment at which your Lordships have arrived in this case upon the accounting, as now laid before the Court, since the case was last before me. When I first had to deal with these matters, after the question founded on the clause of arbitration was removed, it was strongly pleaded on the part of Mr Ballingal that the action was an irrelevant one, because the business was not carried on under the firm of Condie & Ballingal; and, under the eleventh article of the partnership that was the condition on which alone the eleventh head of the agreement was to come into operation. I declined to give effect to that view; and therefore formally pronounced an interlocutor on the 18th of April 1873, allowing the parties a proof of their respective averments, applicable to the formation of the firm of Condie & Ballingal, and the way in which that business had been carried on since the death of Mr Condie; and I explained in my note that I intended them to confine the proof to the simple question as to the transference of the business of Condie & Ballingal to the new firm, and that I did not think it was desirable that we should at that stage of the case go into any proof about the profits of the business, because I was unwilling that the business profits and affairs of the new firm should be made matter of exposure until it was ascertained whether or not, in the circumstances, Mr Ballingal in reality carried on the business of Condie & Ballingal under the new firm of "Geo. Condie, Conning, & Co." And, accordingly, that proof was led; and it is plain from my note to my former interlocutor that I never contemplated that any questions would be gone into in regard to the allegations of fraud that were sprinkled in the most extraordinary way through this record, in various places, and which appeared to me to be substantially made with the view to found a claim of damages, altogether away from the question as to what was the precise meaning of the eleventh head of the agreement, or whether there had been any violation of the eleventh head of the agreement in the way in which the new firm had been formed. And, accordingly, I do not think there was any attempt on the part of Mr and Mrs Pattison afterwards to maintain that there had been in the mere matter of the formation of the new firm any actual fraud. And, accordingly, I distinctly intimated my opinion, that there was no proof whatever of that in the note to my interlocutor; and I repeat that again now. It came out perfectly clear that,

upon the advice of a number of clients, he had taken that course conjointly with Mr Conning and Mr Hunter, or with Messrs Conning & Hunter, and then that the new firm was carried on by them. If I recollect aright, when the proof was taken before me attempts were made to go into the question of accounting, which I rather discountenanced, for the reason that I stated in that interlocutor,—that I did not think it right to go into the question at that stage of the case. I pronounced an interlocutor thereafter, simply finding that, *in point of fact*, the business of Condie & Ballingal was carried on by the new firm of Geo. Condie, Conning, & Co., without at the time knowing anything about the profits of the business, and that, *in these circumstances*, Mr Ballingal was bound to give an accounting of the profits of the new firm. And, accordingly, that was the state of the case when it came here; and, in the course of the argument here, your Lordships ordered a state and abstract of the profits of the new firm for three years ending with 1873, to be lodged, and upon that state it has come out that in the division of the profits of the new firm Mr Ballingal gets a share which is considerably within the thousand pounds a-year which is the sum provided for him under the eleventh head of the agreement. I am quite satisfied that, in these circumstances, the eleventh article does not apply, and does not bring any of the profits to Mrs Pattison, because what Mr Condie contemplated was, that before any portion of the profits of the business carried on by Mr Ballingal, either by himself, or with a new copartnership, should be divided amongst his representatives, Mrs George Condie should get her annuity, and Mr Ballingal should get his thousand pounds a-year, which the state put in shows that he has never done, and can not do for the present, and probably the best mode of disposing of the question is, as your Lordships suggest, to find it unnecessary to deal with the declaratory conclusions of the summons, and to dismiss the petitory conclusions.

The Court pronounced the following interlocutor—

"The Lords having heard counsel on the reclaiming note for the defenders against Lord Mure's interlocutor, dated 25th March 1874, Recall the said interlocutor; assoilzie the defenders from the conclusions of the summons, with the exception of the declaratory conclusion, and decern; find it unnecessary to dispose of the said declaratory conclusion, and *quoad* the said last-mentioned conclusion, dismiss the action and decern; find the defenders entitled to expenses to the extent of three-fourth parts of the taxed amount thereof allow an account of said expenses to be given in, and remit the same, when lodged, to the Auditor to tax and report."

Counsel for Mr and Mrs Pattison—Solicitor-General (Watson) and Rhind. Agent—William Officer, S.S.C.

Counsel for Mr Ballingal—Dean of Faculty (Rutherford Clark), Q.C., and Keir. Agents—Dundas & Wilson, W.S.