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GILBERT HAMILTON, Merchant in Glasgow, for Himself and the Other Partners of the late Glasgow Glass-Work Company,	}	<i>Appellants ;</i>	HAMILTON, &c.
JOHN GEDDES, formerly Manager of the said Glass Work,	}	<i>Respondent.</i>	v. GEDDES.

House of Lords, 26th Feb. 1805.

**COPARTNERSHIP—SHARE—REMUNERATION.**—A partner in the Glasgow Glass and Bottle-Work Company had, by the written agreement of the company, a one-seventeenth share, and also £100 per annum, allowed him for the management of the concern. Subsequent to this agreement, separate and additional branches of business were undertaken, of which the management also devolved on him, with the approbation of the Company. On the dissolution of the concern, he claimed, in addition to the £100, a further emolument for the management of these concerns. Held him entitled to this.

The present question was an action raised by the appellant, for himself and the other partners of the Glasgow Glass-Work Company, against the respondent, as late manager of the Company, for payment of £650. 18s. 2d., due by him to the Company, conjoined with an action raised by the respondent (Mr. Geddes) against the appellant and Company, in which he claimed £911. 3s., as a balance alleged to be due to him as manager.

The facts appeared to be, that Mr. Geddes had been regularly bred to the art of glass making, and was engaged in the house of William Henderson and Co. of Glasgow, as superintendant of the preparation of glass for the manufacture of bottles, at a salary of £80. On the dissolution of that company in 1785, a new partnership was formed for continuing the manufacture of bottles, under the firm of the Glasgow Bottle-Work Company. In the arrangement of the new partnership, the respondent was retained as general manager of the manufactory, at a salary of £100 a year, with the benefit of a free house, coal, candles, and a thirteenth share of the profits of the concern. A short time thereafter, this Bottle-Work Company united with another Company, which then carried on the manufacture of Flint Glass at Verreville.

The contract in this new Company provided for the annual balancing of the books on 31st December of each year. It also provided,—“ That although, by the contract, the said John

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“ Geddes is admitted a partner, and holds one-seventeenth  
“ share in this Company, yet it is expressly declared and under-  
“ stood to be under the conditions and restrictions more par-  
“ ticularly specified in an agreement of this date, made and  
“ entered into between him and the Company, and to which  
“ all parties bind themselves to conform.”

The agreement here referred to was in these terms:—  
“ 1. That the said John Geddes shall take the management  
“ and direction of the business of the Company, for which  
“ he shall be allowed the sum of £100 sterling yearly out of  
“ the Company’s stock during his management, besides his  
“ one-seventeenth share of the profits or loss arising from  
“ the business, if any such be; as likewise the house usually  
“ occupied by the Company’s manager, and coals and  
“ candles for his family. 2. In consideration of which,  
“ the said John Geddes shall devote his whole time and  
“ attention to the affairs and business of the Company, and  
“ keep such regular books and accounts as necessarily be-  
“ long to the business of his department, and which shall  
“ be open to the inspection of the partners at all times.  
“ That he shall likewise *engage, or cause to be made,* all  
“ the *pots necessary for the business;* and, in short, *he*  
“ *hereby engages to do whatever else may be required of him*  
“ *for the interest and advantage of the Company.* 3. That  
“ it shall and may be competent, at all times, to and in fa-  
“ vour of a majority of the partners of the said Company,  
“ in point of interest, in case of difference, at pleasure to  
“ supersede the said John Geddes as manager, and to ap-  
“ point another in his stead, upon giving him six months  
“ previous notice, or in the Company’s option, instantly to  
“ supersede him, upon paying him £200; and likewise,  
“ that the said John Geddes shall, at all times, have it in his  
“ power to leave the said Company’s service on giving them  
“ six months previous notice, and, upon either event, he shall  
“ thereafter cease also to be a partner in the said Company.”

It was stated by the respondent, that when he entered into this agreement, the Company retained, and had in their service, a potmaker or manufacturer of large crucibles, in which the glass is made, at a yearly salary of fifty guineas, with the benefit of a free house, coal, and candles, and had also a clerk at the yearly salary of £40.

Soon after entering on these engagements, the potmaker died, and, in the early infancy of the manufacture at that period, another artist was not easily to be found. Fortunately, the respondent had occasionally devoted a part of his

attention to this subordinate branch of the business, and, to prevent an interruption of the Company's operations, he instantly set himself to work in the pot-loft, and submitted himself to the drudgery of constructing large crucibles.

It was stated by the respondent that the above contract or agreement was not final as to ascertaining his emoluments as manager; and that, in point of fact, no agreement, written or verbal, was entered into to that effect; while, on the other hand, when the separate business carried on by the company at Verreville (managed by a separate manager with a salary of £100 per annum, and a clerk with a salary of £50) was transferred from Verreville to the Bottle-work, and carried on there, the manager of that business (flint glass) was dismissed, and both branches of manufacture were placed under the direction of the respondent. Further, after he had entered on the duties of this double management, it was resolved by the committee of management to employ the works at Verreville, which had been for some time unoccupied, in a separate manufacture of bottles. This scheme was carried into execution early in the year 1787, and the superintendance of this third glass-house was also committed to him. It was, however, given up in the following year. But the other branches continued managed by him, together with the duties of pot-maker, until the dissolution of the concern in 1793.

In these circumstances, the present question arose, the respondent claiming, in addition to the £100 for management, as at the time agreed on, also emolument for the separate branches subsequently imposed on him, and undertaken and managed by him with the approbation of the company.

The defence to this claim was, that the respondent's salary, and other emoluments, had been limited by a positive and valid agreement. And, independently of this agreement, the reward which he thus received was fully adequate to the value of his services.

After various procedure, and a report from men acquainted with such business, the Court of Session finally pronounced this interlocutor:—“ Find the said John Geddes July 11, 1800.  
 “ entitled to an allowance, including all his claims for salary,  
 “ extraordinary trouble, or for the expenses of entertain-  
 “ ments in his house, at the rate of £226. 18s. 5½d. sterling,  
 “ per annum, during six years and a half that he acted as  
 “ manager for the petitioners Gilbert Hamilton and others,

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 ——— " hear parties on any claims of compensation, and all other  
 HAMILTON, &c. " points of the cause, and to do therein as he shall see  
 v. " just."  
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 June 2, 1801. On reclaiming petition the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

*Pleaded for the Appellants.*—The salary of Mr. Geddes, as settled when the Glasgow Bottle Work and the Flint Glass Company were united into one copartnery by a contract bearing date 1st September 1785, which was to take effect in June 1786, was £100 per annum, besides a house, coal, and candles. That this was the salary settled between the parties, and actually received by the one and paid by the other, during the whole period of their connection, is established not only by the agreement, extended on stamped paper, and which is referred to in the contract of copartnership signed by Mr. Geddes, and the other partners, but is also established by the books of the company, kept by Mr. Geddes himself, or under his direction. The precise amount of salary, calculated for years, for months, and for days, in pounds, shillings and pence, appears stated in these books, in conformity to which the money was actually paid and received by Mr. Geddes. That no additional salary was ever stipulated for, follows from the written minutes of copartnery, where, though steps appear to have been taken for enabling Mr. Geddes to carry on the business with assistance, nothing is ever said about allowing him an additional salary or recompence for past trouble. Nor is there any writing whatever tending to establish that any additional salary was to be granted, or that it ever was stipulated for by Mr. Geddes.

Besides the salary of £100 a year, a house, and coal and candle, Mr. Geddes, the manager, had, as a partner, a share of the profits; and when the two Glass Work Companies were united in 1786, there was conferred upon him a greater proportion of those profits (his interest changed from a thirteenth to a seventeenth share) than upon the other partners. It is often the case, that partners of a company judge it most expedient to make the emoluments of their manager depend, not so much upon salary as upon the profits of their trade. By this means he is stimulated to be active, industrious, and attentive to the concerns of the company; for his interest is interwoven with that of the company, and

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made to depend upon it; whereas, when managers have large salaries, they often become careless about the concerns of trading companies, and are indifferent whether their affairs prosper or not. To guard against this evil, the company made Mr. Geddes a partner, entitled to a share of the profits, and they increased his share in 1786 to a seventeenth share, in place of conferring upon him a large salary. If Mr. Geddes denies this to be the arrangement, then it lies on him to show the contrary, and to prove what positive and fixed sum was allowed. Because it is the duty of a partner to perform the business of his department in the concern without claim of any sort beyond his profits as a partner, and he ought to be content with his seventeenth share of the profits of the concern, unless he can show clearly that a further allowance was distinctly bargained for.

*Pleaded for the Respondent.*—The recompence due by the Glasgow Glass Work Company to the respondent as their manager, had not been limited and ascertained by any previous and binding agreement. And, in the deficiency of a positive agreement, the recompence due to the respondent belonged to be ascertained by the nature, and proportioned to the extent of his services, according to the just and ordinary rate of recompence in similar cases. The justice of the claim, and the mode of adjusting it on the part of the Court of Session, by reference to the judgment and opinion of men of experience in the trade and in such matters, whose report and award it could rely upon, was unexceptionable, and the sum awarded by them fair and moderate, in the circumstances.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors therein complained of be affirmed.

For the Appellants, *Wm. Adam, Wm. Alexander, Ar. Campbell.*

For the Respondent, *Samuel Romilly, Thos. Thomson.*

NOTE.—Unreported in the Court of Session.