character of the Tobermory lease; and 3s. 6d. per bushel of mashing capacity was allowed to stand, because the magistrates had held it to be a fair value, and no one objected to it. In the present case the valuation committee of the Commissioners of Supply have raised the sum from 3s. 6d. to 5s. 6d., which they think to be a fair rate of valuation in regard to the Islay distilleries. What were the grounds upon which the magistrates of Campbeltown fixed upon 3s. 6d., or upon what grounds the valuation committee have fixed upon 5s. 6d., we have no information. I cannot tell whether these figures are reasonable or unreasonable, and in affirming the determination of the valuation committee in the present case I do no more than affirm that it is a competent mode of ascertaining annual value to take a rate per bushel of mashing capacity. If the rate is to be objected to as unreasonable, the materials for so doing must be laid before the Court. It is not enough for the appellant to say that 3s. 6d. per bushel was fixed for the Campbeltown distillery, and that therefore that should be also the rate for the Islay distillery. And this was the sole argument submitted in this case against the rate of 5s. 6d. It is necessary to go a little farther than this. It must be shown by evidence that this rate is unjust and unreasonable; and as there is no such evidence before us, we must affirm the determination of the valuation committee of the Commissioners of Supply.

The Court pronounced this judgment—The Judges being of opinion that it is in the case of unlet distilleries a lawful mode of ascertaining annual value to fix a rate per bushel of mashing capacity, and there being no evidence before them that the rate adopted by the Valuation Committee of the Commissioners of Supply is unfair or unreasonable in the circumstances of the case as stated, the Judges are of opinion that the determination of the Valuation Committee was right.

Counsel for Distillers—Dickson. Agents—Hamilton, Kinnear, & Beatson, W.S.

COURT OF SESSION.

Friday, March 20.

OUTER HOUSE.

[Lord Kinnear.

MENZIES *v.* GIRDWOOD & FORREST, AND ROBERT GIRDWOOD.

DONALD BLACK SENR. AND DONALD BLACK JUNR. *v.* GIRDWOOD & FORREST, AND ROBERT GIRDWOOD.

Partnership—Retiral—Notice of Retiral—Liability of Former Partner—Election.

G was a partner of a firm till 1878, when he retired, and the business continued to be carried on by the only other partner and a person whom he assumed as a partner. G's retiral was not duly announced to certain customers till 1884, and between G's retiral and that date they had dealings with the firm. The firm and the individual partners of it were sequestrated after G retired, and these customers claimed in the sequestration. Thereafter they sued G for their debts as jointly and severally liable along with the firm and the partners. *Held* that he was entitled to be assoilzied from the action as laid, since his liability, if any, was not joint with the firm and other partners, and the pursuers must elect whether to take as their debtor the firm and its partners, or G as a former partner who had not interpelled them from trusting to his credit.

Scarf v. *Jardine*, June 13, 1882, L.R., 7 Ap. Ca. 345, followed.

Question, whether by claiming in the sequestration the creditors had exercised their election?

These were two actions in which the pursuers sought to make Robert Girdwood, wool-broker, responsible for transactions they had with the firm of Girdwood & Forrest, wool-brokers, Glasgow. The pursuers, the Blacks, had consigned wool to Girdwood & Forrest in 1882 and 1883, and the pursuer Menzies had consigned wool to them in 1882 and 1884.

The estates of the firm of Girdwood & Forrest, and of Thomas Forrest and W. W. Sykes, as partners thereof and as individuals, were sequestrated on 11th October 1884, being then indebted to the pursuers. Mr Jackson, C.A., was elected trustee. The pursuers averred that they had all along believed that the defender Girdwood continued a partner in the firm, and that they had trusted to his credit. They brought these actions against Girdwood & Forrest as a company, Jackson as trustee thereon, Robert Girdwood, Thomas Forrest, and W. W. Sykes, as the individual partners thereof, as such partners and as individuals, and Jackson as trustee on the estates of Forrest and Sykes, conjunctly and severally.

Girdwood was at first a wool-broker in Edinburgh, but subsequently opened a business also in Glasgow. In 1877 he assumed into the Glasgow business Forrest, formerly his manager there, and the firm was styled Girdwood & Forrest. In 1878 he sold to Forrest, as from 12th November 1878, his interest in Girdwood & Forrest, reserving right to re-enter the firm (under certain conditions) up to May 1882, which was not done. Sykes became a partner with Forrest in the firm of Girdwood & Forrest on 1st September 1881. In 1883 Girdwood issued a trade circular, which was duly posted to the pursuer Menzies properly addressed. It contained a statement of his retiral from the firm, and requested consignments for him to be sent to Edinburgh, but it was mainly occupied with other matters than the retiral from the firm, and did not bear to be a notice from Girdwood & Forrest of the dissolution of partnership. In May 1884 Girdwood sent out another circular, which was duly posted to the pursuer Menzies, and which was seen and read by the pursuers Black. By this circular the intimation of the retirement of Girdwood was made perfectly clear.

In this action Girdwood denied that the pursuers relied on his credit, and averred that he was not even aware till January 1884 of the partnership between Forrest and Sykes in the

firm of Girdwood & Forrest. He stated also that his retiral was well known in the trade from and after. 1878, and that the pursuers had lodged claims in the sequestration of Girdwood & Forrest setting forth that Forrest and Sykes were the only partners thereof.

He pleaded, *inter alia*—"(5) In respect of the circulars referred to, and the notice given to the pursuers that Mr Girdwood had retired from the firm, Mr Girdwood should be assoilzied. (6) The pursuers not having relied on this defender's credit, the latter should be assoilzied. (8) The pursuers having sued Messrs Girdwood & Forrest, and the two partners thereof, Messrs Forrest and Sykes, and claimed in their sequestration as condescended on, when they knew this defender had ceased to be a partner in the firm in 1878, or otherwise prior to 1881, they are not now entitled to sue this defender; *et separatim*, they are not entitled to sue all the defenders as conjunctly and severally liable, but must make their election as to whom they will sue."

The Lord Ordinary pronounced this interlocutor:—"Finds that prior to November 1878 the defender Robert Girdwood was a partner of the firm of Girdwood & Forrest, wool-brokers in Glasgow; that the only other partner of the said firm was the defender Thomas Forrest, and that in 1878 the said firm was dissolved: Finds that the said defender Robert Girdwood is not, and never was, a partner with the defenders Thomas Forrest and William Wade Sykes in the firm of Girdwood & Forrest, whose estates were sequestrated on the 11th of October 1884: Finds that the defender Girdwood is not liable jointly with the other defenders in the sums sued for, therefore assoilzies the defenders from the action as laid: Finds the defender Robert Girdwood entitled to expenses," &c.

"*Opinion.*—It is not disputed that the defender Mr Girdwood will still be liable to the pursuers in the same manner as if he had continued to be a partner of the firm of Girdwood & Forrest if he has failed to give due notice to them of the dissolution of the partnership between him and Mr Forrest, and if they have continued to deal with the firm as before in ignorance of the change. There can be no doubt that in a question with persons who have had previous dealings with the firm a *Gazette* notice is insufficient unless it can be brought home to the knowledge of the customer. The first question, therefore, is, whether the defender is relieved of his responsibility by reason of his having given direct notice of the dissolution to the pursuers, or either of them. It must be taken as settled that intimation by a circular letter traced to the possession of the customer, or duly posted with a proper address, is good notice; and upon the evidence I think it proved that the circulars of May 1883 and 1884 were properly addressed and duly posted to the pursuer Mr Menzies, and that the circular of May 1884, although it is not proved to have been sent to him by the defender, was seen by the pursuer Mr Black. Mr Menzies, however, denies that he received either of the circulars; and it does not appear to me that the circular of 1883 is so conceived as to throw upon him the *onus* of proving that, although duly posted, it was not in fact delivered at his address. It is a document of some length, and mainly concerned with other matters; it does not bear to proceed from the Glasgow firm of Girdwood & Forrest, and I think it very possible that it may have been opened and partially or cursorily read, although it could not have been attentively read through without the reader becoming aware that it contained an intimation of the dissolution of the firm. If it is incumbent upon a retiring partner to give notice of his retirement to the customers of the firm, I think it follows that he must do so in such a form as to call their attention to the statement of dissolution, or at least to the fact that the letter which he has addressed to them relates to the concerns of the firm. He is not entitled to assume that a printed document of some length, which bears on the face of it to be an ordinary trade circular as to markets, and does not bear to come from the firm, will be read from beginning to end by every customer to whom it may have been addressed. I am of opinion, therefore, that the circular of 1883 is not sufficient notice to relieve the defender of his responsibility; nor do I think that Mr Black is precluded from founding upon the defender's failure to give notice by reason of his having heard a rumour of the defender's retirement in 1883. He was entitled to expect that as a customer of the firm he would receive notice of the retirement, and was therefore entitled to assume that the rumour was unfounded or premature until he heard to the contrary from Mr Girdwood himself; and it is admitted that he received no notice from him until he had had an opportunity of seeing the circular of 1884.

"This second circular is in a different position from the former, because it was impossible from its form and the manner in which it is printed that anyone who looked at it should fail to see that it contained a statement of the dissolution of the firm. It appears to me, therefore, to be perfectly sufficient. The result is that neither of the pursuers is entitled to hold the defender responsible for the transactions of the firm subsequent to May 1884, but that both will be entitled to hold him liable for transactions prior to that date, if they are not barred from maintaining their right by the manner in which they have stated their claims against him and against the sequestrated firm. But I am of opinion that assuming Mr Girdwood's liability to the extent I have mentioned, the pursuers are not entitled to decree in the actions as laid.

"It appears that after Mr Girdwood's retirement, Mr Forrest, who had acquired his interest in the business, assumed a new partner, Mr Sykes, and continued to carry on the business in partnership with him under the old firm name. Mr Girdwood was never a partner of the new firm so constituted, and knew nothing of the assumption of Mr Sykes until January 1884. The new firm, of which Forrest and Sykes were the sole partners, was sequestrated in October 1884, and it is in consequence of their bankruptcy that the question has arisen. Before raising the present actions each of the pursuers claimed in the sequestration for the sums for which they now sue, setting forth in their affidavits that Messrs Forrest and Sykes are the sole partners of the firm of Girdwood & Forrest. In each of the actions the conclusions are directed against the firm of Girdwood & Forrest, and Thomas Jackson, the trustee on the sequestrated estates thereof, and against Girdwood, Forrest, and

Sykes as the individual partners of the said firm, conjunctly and severally.

"I think it clear that as against Mr Girdwood these actions are not well laid. He is not, and never was, a partner of the sequestrated firm of Girdwood & Forrest. He may be barred from denying his liability for the debts of the former firm of Girdwood & Forrest by reason of his failure to give notice of his retirement. But he is not liable as a partner of the sequestrated firm, and it follows, for the reasons explained by the learned Lords who decided the case of *Scarf* v. *Jardine* (June 13, 1882, L.R., 7 Ap. Ca. 345), that he cannot be liable jointly with that firm or its partners. The doctrine laid down by the House of Lords in that case is directly applicable. Although the pursuers in the transactions out of which these actions arose were in fact dealing with the old firm, it may be their right to insist that the old firm of which Girdwood was a partner shall be held to have contracted with them, but they cannot hold their contract to have been made with both firms. They cannot, therefore, sue both firms together, but are put to their election, and must choose between the old firm and the new. It is true that there are material differences between the English and the Scottish law of partnership; but they are differences which in no way affect the reasoning of the learned Lords who took part in the judgment to which I have referred. The principles upon which they proceeded are common to the law of both countries.

"The defender maintains that the right to elect has been determined by reason of the pursuers having claimed in the sequestration; but that question does not arise and cannot be decided in this action."

Counsel for Pursuers—Pearson—C. N. Johnston. Agent—N. Briggs Constable, W.S.

Counsel for Defender—Mackintosh—Dickson. Agents—Skene, Edwards, & Bilton, W.S.