siderable profit. I can see no principle of justice on which, at the termination of such a period of speculation, during which the balance of 1852 became entirely absorbed and merged in operations of such magnitude, the Bank can be permitted to revive this claim, after the position, the assets, and the liabilities of the customers had undergone changes so material.

Holding this opinion, I think we should give effect to it at this stage of the proceedings. I see no ground for further enquiry, which could only put the party to additional and very great expense, without affecting the result. In regard to both these branches of the action, I am of opinion, taking the accounts themselves as an essential part of the pursuer's case, that there is, first, no relevant specification of loss as the result of the gross negligence libelled; and, secondly and mainly, that the state of the accounts, and the course of dealing which it discloses, exclude the claims.

III. *The Policies of Insurance.*—My remarks on this head may be very short. The amount sued for consists of sums paid as premiums of insurance under policies opened by the Bank on the lives of sundry debtors. This is a matter very different from those I have hitherto dealt with. These insurance transactions seem to have been practised by the Bank from a very early period of its history; and the accountant has reported on them very fully. It appears that as far as they consisted in taking assignations from debtors to subsisting policies of insurance in security of debts, on the whole they resulted in a considerable gain to the Bank. But in so far as they were opened by the Bank itself, without collateral security for payment of the premium, they seem to have resulted in a loss.

Opening such policies is certainly not ordinary banking business. But it is a different question whether there may not be circumstances in which the course might not be prudent and desirable. Your Lordships on a former occasion expressed yourselves much to that effect. I think the case on this branch resolves into an allegation of error in judgment, and rash or indiscreet administration, very similar to the illustrations put in some of the cases I have referred to. But, as it appears that since the stoppage of the Bank, the liquidator, without communication with William Baird, has sold these policies, I am of opinion that he has lost his recourse, even if otherwise it had been open to him.

I propose, therefore, that we should sustain the action as regards the open accounts which terminated in 1852, according to a schedule which I have prepared to the effect of farther enquiry, and dismiss it *quoad ultra*. In regard to the mode of proof, I am very clear that this is a case in no respect fitted for a jury. Each of these accounts forms a separate subject of enquiry, and questions may arise under each of them, as to the particulars to which I have referred, and as to the details of the accounting, which are specially within the province of a court of law. I think in regard to that branch of the claim we should order a proof before answer.

The other Judges concurred.

The following is the interlocutor as ultimately adjusted, and the relative schedule:—

"Repel the third and fourth pleas in law stated for the defenders, so far as founded on the alleged disqualification of the defender William Baird to be elected, or to continue to be, a Director of the Western Bank: Repel also the fifth plea stated for the defenders: Before answer, in regard to so much of the action as relates to the accounts of the parties named in the schedule appended to this interlocutor, allow both parties a proof of their respective averments relative thereto: Appoint the proof to be taken by Lord Cowan at such time and place as he may fix: *Quoad ultra* dismiss the action, and decern; and reserve all questions of expenses.

"SCHEDULE.

1. George Birrell, flesher, Cupar.
2. William Fulton & Co., Paisley.
3. David Husband, draper, Cupar.
4. Muir, Taylor, & Co., merchants, Montreal.
5. William M'Ewan & Co., sugar refiners, Glasgow.
6. Ralph and Risk.
7. William Scoon, Jedburgh.
8. St Andrew's Church, Greenock.
9. Michael Taylor, Glasgow.
10. D. M. Dewar, Western Bank.
11. J. & D. Macarthur, fish curers, Glasgow.
12. James Stirrat, thread manufacturer, Paisley.
13. Caird & Co., Greenock.
14. John Smith, Western Bank.
15. William Thomson, Western Bank, Glasgow.
16. Henderson & Innes, silk mercers, Glasgow.
17. James M'Innes, Edinburgh.
18. W. F. Campbell of Islay."

Counsel for Pursuers—Millar, Q.C., Shand, Balfour, and Asher. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Defenders—The Lord Advocate, Solicitor-General, Dean of Faculty, Watson, and Lee. Agents—Webster & Will, S.S.C.

Tuesday, December 10.

SECOND DIVISION.

[Lord Gifford, Ordinary.

PIRIE *v.* PIRIE.

Settlement—Construction—Voluntary Condition.

Where a deed of settlement contained a clause directing that so long as interest was paid regularly on a debt due by A, and in the event of B while alive being throughout a director of the firm in which the principal sum was invested, A should have the right to refrain from paying up the sum due for eight years after testator's death—*held* that the condition had not failed by A resigning his office of director in order to make fulfilment impossible.

This action is at the instance of Alexander George Pirie, Morland House, Skelmorlie, by Greenock, and is brought for recovery from Francis Logie Pirie, merchant and paper manufacturer, Aberdeen, of the sum of £24,000, under a personal bond by the defender to his deceased father. The

pursuer and defender are sons of the late Francis Pirie of Stoneywood House, Aberdeen, who was a partner of the extensive firm of Alexander Pirie & Sons, paper manufacturers, Stoneywood. The pursuer is the only child of Mr Pirie's first marriage, the defender being born of a second marriage. The parties are likewise members of the firm.

The pursuer states that the defender on 1st January 1865 received on loan from his father the sum of £21,000, and on 13th March 1868 a further sum of £3000. The defender granted a bond binding himself to repay these sums to his father or his heirs. The fourth article of the arrangement entered into between the defender and his father provided that so long as the defender regularly applied one-fourth of the share of his profits of the firm, annually at 31st December, towards payment of the sums in the bond, and also regularly paid the interest due thereon, it should not be lawful for his father, or others in his right, to demand payment of any further sums under the bond until 31st December 1871. Mr Pirie died on 1st August, leaving a will, dated 26th May of the same year, in which he conveyed his whole estate, real and personal, to the pursuer. This deed of settlement contained a clause directing that so long as interest was paid regularly on the sum of £24,000, and in the event of the pursuer while alive being throughout a director of the firm, the defender should have the right to refrain from paying up £15,000 of the sums contained in the bond for the period of eight years after the testator's death, or until 31st December 1879, if that be later. The pursuer was a director at the date of the settlement, and also when his father died. On 20th May 1871, however, the pursuer resigned his office, and on 6th September following he intimated to the defender that he required payment of the £24,000 on 31st December. The defender resists payment of £15,000 till 31st December 1879, and hence the present action. The pursuer maintains that, according to the construction of the deed, he, as executor-nominate of his father, is entitled to enforce payment of the bond as concluded for.

The defender explains that, on 26th March 1864, an agreement was entered into between him and his father to admit the defender a partner of the firm to the extent of three 24th parts of the business, in respect of which his contribution to the company's funds was £21,000. His father lent him that sum on certain conditions, and the defender granted a bond for it. New Articles of Association were subsequently adopted, so as to convert the firm into a Joint Stock Company, and increase the capital to £360,000, divided into 7200 shares of £50 each, of which £41, 13s. 4d. was held to be fully paid up. The defender had 900 shares, and, in order to enable him to comply with the new conditions, he required a further sum of £3000, which his father agreed to lend him on certain conditions. The bond for £21,000 was discharged, and a new bond for £24,000 was executed. Defender avers that he regularly paid to his father during life the interest due on the bond, and since his father's death he (defender) had paid a year's interest to the pursuer. In terms of the agreement he had further paid over one-half of the profits on the 900 shares yearly to his father; but he had not been required to pay one-fourth of the profits in reduction of the principal sum of the bond. After citing in his statement various clauses of the settlement to show what provision had been made for his mother, the defender says that since the father's death some rather painful correspondence passed between the pursuer and defender and his mother respecting the furniture bequeathed to her, and some other matters. After this correspondence, it is averred that the pursuer conceived the design of compelling the defender, if possible, immediately to pay up the £15,000, and thus deprive him of the benefit which his father intended to confer on him from a postponement of the term of payment. The defender further states that there were no grounds whatever for the pursuer's statement in a letter to his uncle as to pecuniary pressure upon him under his father's will, and pleads for *absolvitor* on the ground (1) that the statements of the pursuer are not relevant, or sufficient to support the conclusions of the summons; (2) that the defender under his father's settlement is entitled to refrain from paying £15,000 of the £24,000 till 31st December 1879; (3) that the pursuer having resigned his position as a director for the reasons set forth in the defender's statement, he is not entitled to found on the resignation to the effect of claiming the £15,000 at 31st December 1871; and (4), *separatim*, on a sound construction of the settlement, the pursuer's resignation, under the circumstances set forth by the defender, does not deprive the defender of his right to refrain from paying the £15,000 till 31st December 1879.

Since the action was raised the sum of £9000, admitted to be due on 31st December 1871, has been paid with interest, and the claim is now restricted to £15,000.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 25th June* 1872.—The Lord Ordinary having heard parties' procurators, and considered the closed record, proof adduced, and whole process: Finds that, according to the true intent and meaning of the *mortis causa* settlement of the late Mr Francis Pirie, dated 26th March 1870, the defender is not bound *hoc statu*, or at present, to pay to the pursuer the sum of £15,000, being part of the principal sum of £24,000 contained in the defender's personal bond to the deceased Francis Pirie, dated 13th March 1867, and to this effect assoilzies the defender from the declaratory conclusion of the action: Finds that the balance of the sum contained in the said bond, being £9000, with interest upon the whole sum, has been duly paid by the defender to the pursuer in terms of the minute of restriction, No. 17 of process, and finds that it is unnecessary farther to dispose of the petitory conclusion of the action: Therefore dismisses the same, and decerns; Finds the defender entitled to expenses, and remits the account thereof when lodged to the auditor of Court to tax the same and to report.

"*Note.*—It is now clearly and conclusively established by the proof that the pursuer voluntarily resigned his directorship in the firm of Alexander Pirie & Sons for the sole purpose of enabling him to enforce payment from the defender of the £15,000 now in question, and to deprive the defender of his right to retain that sum, paying interest thereon, till 1879. The pursuer was not compelled to resign, he did it voluntarily; he was not induced to resign by ill heath, by any inability to act, or by any unpleasantness arising between him and his partners. His sole purpose in resigning was to compel the defender to pay now the £15,000 which the defender has in the firm, and which the father of the parties

contemplated should remain in the firm till 1879, the defender paying interest at 5 per cent thereon. But for this object the pursuer would still have been a director of the firm, and, if he gets decree, there is nothing to prevent him becoming next day a director again."

"In the pursuer's own examination as a witness he admitted that his letter to his uncle of 12th May 1871, 'correctly sets forth the purpose which I had in resigning my directorship. . . . The object I had in view in resigning was to obtain money. . . . It was expressly and exclusively for the purpose of enabling me to raise money that I sent in my resignation. If I had not been pressed for money at that time I would not have taken such a step.'

"This evidence is quite fair and candid. It was given frankly and without the least hesitation, and it removes all doubt as to the purpose of the resignation, and the circumstances in which it was made, and it raises the pure question in point of law,—whether by such resignation,—the voluntary and arbitrary act of the pursuer himself,—the pursuer can bring about the condition which will deprive the defender of the postponement of the term of payment for which the father's settlement provides.

"The Lord Ordinary has again anxiously considered the terms of the settlement, and the argument of the pursuer, which excludes as irrelevant everything about the resignation but the mere fact, and asks the Court to apply the words of the provision, irrespective altogether of equitable construction, or of enquiry from the deeds themselves into the purpose and intention of the testator.

"The Lord Ordinary remains of the opinion indicated in his note of 30th ultimo. He thinks there is room for equitable construction. He thinks the Court are entitled and bound to look to the nature of the debt and the surrounding circumstances so far as these can be gathered from the contracts of copartnery, minutes of agreement, bond and settlement; and if it appear, as the Lord Ordinary thinks it does, that the condition in question was a condition for the pursuer's security, and not a condition which was to be entirely dependent upon the pursuer's mere pleasure, then he thinks that the pursuer was not entitled by his own arbitrary act to purify the condition as against the defender.

"The argument of the pursuer would lead to obvious injustice in many cases. On the one hand, and as against the pursuer, the Lord Ordinary does not think that the defender would be entitled to sell out his whole interest in the firm of Pirie & Sons, to withdraw his whole funds, and yet to insist upon retaining his brother's money, and use it in his own speculations for eight years. This would be to follow the letter of the provision to the destruction of its spirit, and the pursuer would be well entitled to resist such a construction. But then, on the other hand, while the money remains in the firm, and while the pursuer has or may have full control of the affairs if he choose to remain a director, he is not entitled, for the sole purpose of benefiting himself and of injuring the defender, to decline to be or to act as a director, or to exercise the control which everybody is willing he should have.

"The Lord Ordinary looks upon the condition as if the will had provided that the money should not be called up while the defender left it in the firm, and while the pursuer as a partner could look after it till 1879. The obvious purpose was that the testator's younger son should have a chance or opportunity of paying the sum out of the profits instead of being compelled to sell out the whole or the greater part of his capital in a concern so lucrative. If this purpose can be legitimately looked at, it seems to follow that the pursuer cannot arbitrarily defeat it.

"The Lord Ordinary does not rest his judgment upon that portion of the proof in which it was attempted to show that the pursuer had no very pressing need of money. It seems clear enough that at the utmost he wanted £1000 or £2000, and his accruing profits for a few months greatly exceed this sum. Even if there had been want of funds, however, for the pursuer's private purposes, the Lord Ordinary thinks this would not entitle him to defeat a provision which was intended for the benefit of his younger brother, and which the Lord Ordinary thinks must be construed fairly and equitably, so as to secure to the younger brother the benefit which his father intended to give him."

The pursuer reclaimed.

At advising—

LORD JUSTICE-CLERK—This case, which raises some questions of importance, turns on the construction of a clause in the settlement of Mr Francis Pirie, the father of the pursuer, and defender in the action. The testator was a partner, and had a very large interest, in the firm of Alexander Pirie & Sons, papermakers in Aberdeen. Before his death, in 1870, he had made over to his two sons, Alexander George Pirie and Francis Logie Pirie, a large share of that interest, so that they were themselves before that event partners in the firm. It appears that Alexander Pirie & Sons had in 1868 taken steps to convert their business into a limited liability company, but they had gone no farther than to adopt articles of association, and had not registered the new company. Prior to the death of Francis Pirie it appears that some disputes had arisen between the elder son and some of the other partners regarding the affairs of the concern, and particularly about the amount of dividend to be declared, and that the father took the side of his elder son. The trust-deed came into operation in 1870; prior to that the shares of the two brothers in the firm stood thus. Alexander Pirie, the elder, had received more than £100,000 worth of stock, and he had granted to his father bonds to the amount of £44,000 as the price. On the other hand, Francis Logie Pirie had received £36,000 worth of stock, and had granted a bond for £24,000 to his father, and come under certain other obligations. On the death of Mr Pirie the settlement came into operation, and the effect was that Alexander Pirie not only retained the amount of stock he held before, but became the creditor in his own bond for £44,000, and in his brother's bond for £24,000. On the other hand, in addition to the nine hundred shares he already held, Francis Logie Pirie acquired through his father's death three hundred more, worth about £12,500, but burdened with his mother's liferent provision for £750 a-year; and he acquired farther this benefit, that, in reference to £15,000 sterling of the capital contained in his personal bond to his father for £24,000, he should have right to refrain from paying up the said £15,000 for the period of eight years after his father's death, or until 31st December 1879 if that were later, but this on condition that the interest be regularly paid, and "in the event of the trus-

ter's elder son, the said Alexander George Pirie, while alive being throughout a director of the said firm of Alexander Pirie & Sons." The clause containing this provision is the one we have now to construe.

Now, the dispute that had arisen before the testator's death continued after that date, and seems still to exist. Alexander Pirie was not in the habit of taking an active part in the business of the firm, but he had always been a director. At the end of eight months, however, he wrote resigning his directorship in terms of the articles of association. In the present position of the firm there are only two other partners besides the pursuer and defender. The pursuer having taken this step, forthwith made a demand upon the defender for payment of the principal sum in his bond. And the question is, whether Francis Logie Pirie has lost his right to refrain from paying till the time mentioned by his father, or whether the condition of his right to refrain has failed. The Lord Ordinary thinks that the condition has not failed, and I am disposed to concur with him, though not in all the reasons given in his judgment.

What we have to consider is, Whether this condition has been violated? In the view I take of this question I do not suggest any other reading of the words than that which they reasonably and naturally admit of. A strictly ritual construction of them is impossible, for so read they would imply that the right would never commence until the period fixed for its termination, seeing that it cannot be known that the interest for these eight years is regularly paid, or that Alexander is a director throughout the whole of that period, until the period has expired. But of course the words, although inaccurate, must receive a construction according to their true meaning. And that meaning, however they may be read, plainly implies that, as long as the interest is regularly paid, and as long as Alexander is also a director, Alexander shall have no right to exact payment of this bond until 1878, and that Francis during the same period shall have right to refrain from paying it. As far as Francis is concerned the condition is rather resolutive than suspensive. His right to refrain from payment arose instantly on his father's death; but it was liable to be terminated by the failure of either of these conditions. On the other hand, Alexander acquired no right from his father to exact payment of the bond prior to 1878, unless he could show that the condition had failed.

Conditions of this kind, resolutive of testamentary gifts or bequests, which truly partake of the nature of a penalty, are, when they are what are called voluntary or potestative conditions, to be construed favourably for the donee, and according to the spirit and direction of the object which the testator had in contemplation. Lord Stair clearly states the distinction between such conditions and those which are casual. He says, "These uncertain conditions are of two kinds,—voluntary, which depend on the free will of some persons; and casual, which depend on the casual events of that which cannot naturally be foreknown" (1. 3. 8). Whatever may be the rule in regard to casual conditions, which depend on events indifferent to the subject of the grant, and over which no one concerned has power; in regard to potestative conditions, which depend on the will of the party bound, or on that of a third party, it is essential to look to the relation of the condition to the subject of the gift, and the effect which it was intended by the testator to operate. Such conditions need not always be performed in times, or specifically. In some cases, equivalents may be sufficient fulfilment. In others, fulfilment of part may suffice instead of complete fulfilment, and in others, again, the condition need not be performed at all. These results all depend on the substance of the condition more than on the mere words in which it may be expressed. I cannot better explain what I take to be the law in regard to this matter than in the words of a celebrated French jurist on this very subject. Writing on potestative conditions in testaments, Domat says (3. 1. 8. 24)—"It follows from the preceding rules that where testators have burdened their heirs or legatees with conditions dependant partly on their own act, and partly on that of others, it is impossible to lay down any general rule as to whether the gift is null, if the condition is not strictly performed, or whether the condition will be held as accomplished, if it be not the fault of the heir or legatee that it has not been satisfied. For there are cases in which such conditions are held as accomplished although they have not been fully, so, in respect the party bound has done all in his power to fulfil them; and there are others in which it is essential that they should be absolutely performed. But the general rule is, and one common to all these sorts of conditions, that their nature must be judged of by the quality of the acts on which they depend, by the interest of the persons which the testator was providing for, and the motives which he had in view." "And it is by all these views, and others, by which the intention of the testator may be ascertained, that one can judge of the effect of such conditions, giving them such effect as that intention may seem to demand."

Looking then at this condition in the light of these views, it appears that this was a voluntary or potestative condition. The right to confer or to withhold this office of director was a matter partly within the power of Francis himself, and partly within that of two or three other persons, partners of the company. I infer from this that the bestowal of this office was the consideration or counterpart which Alexander was to receive in respect of the postponement of his right to realise the bond; and that the testator's object was, by this inducement, and by giving his brother a motive to maintain him in that position, to protect or secure Alexander in the enjoyment of it. About this there can be little doubt.

It might have been doubtful, if, contrary to the remonstrances of Francis, the other partners had removed Alexander from the direction, under which of the categories mentioned by Domat the case would have fallen. I incline to think that the election of the pursuer as a director was essential to the condition. The testator, however, knew that if the two brothers were agreed the exclusion of the pursuer was substantially impossible, because the amount of stock which they held gave them a potential voice in the company. But I am very clearly of opinion that it was no part of the condition, and was not implied in it, that Alexander should accept the consideration. It was enough that he had it in his power. It was open to him to accept or refuse it. The condition being one for his benefit, he might abandon or discharge it as he pleased. In the same way, he might, if he chose, decline to accept the interest. It was enough if payment was offered. The condition about the

directorate was not a matter left in Alexander's choice. It was a benefit of which he was to be the recipient at the hands of others. When the others tendered it the condition was performed.

Whatever construction, therefore, may be put on the words, it is impossible to spell out of them a merely casual condition. It is by no means necessary to support this view that we should hold that Alexander was a director when he was not a director. But it is quite reasonable to hold that he has renounced the benefit of the condition by refusing to accept of its fulfilment. If he had agreed with his brother to postpone payment of the interest for a term, it might be quite truly alleged that the interest had not been regularly paid, but it would be equally true that the condition had not failed. As it is, those on whose will the condition depended have exercised it in conformity with the condition, and that is all which the testator, in my opinion, intended. The case, however, may be solved on a simpler and more general rule, applicable to all conditions, whether in obligations or in contracts. The condition has been fulfilled, because the pursuer, who had the sole interest in its not being fulfilled, has, by his voluntary act, and intentionally, made it, as circumstances at present stand, impossible to fulfil it.

No one else had any interest in this condition. The partners had none, for the choice of directors lay absolutely with them; and it signified nothing to them whether the bond was paid up or not. The pursuer admits that his resignation was intended for no other purpose than to make the condition fail.

There can be no higher authority on such a question quoted in this Court than the rules and principles of the Civil Law. Far more scientific than the Law of England, and far more copious than our own, the Civil Law in this case, as in many others, furnishes the only repository where such difficulties are satisfactorily solved. To this authority I shall shortly refer, and I think it clear and conclusive.

There are three texts in the Digest on this subject. The first is in l. 35, tit. 1. 81, in relation to conditions in testaments—"*Tune demum pro impleta habetur conditio, cum per eum stat qui, si impleta esset, debiturus erat.*" The second is in l. 45, tit. 1. § 85–7, and relates to conditions in contracts. —"*Quicunque sub conditione obligatus, curaverit ne conditio existeret, nihilominus obligetur.*" The third is in the 161st law of the last title *De Regulis Juris*, and is of general import. It is in these terms—"*In jure civili receptum est quotiens per eum cujus interest conditionem non impleri, fiat quonimus impleatur, perinde haberi ac si impleta conditio fecisset; quod ad libertatem, et legata, et ad heredum institutiones perducitur.*"

These texts, for my present purpose, require no comment at all. They are perfectly precise, and to the purpose. They have, however, been very fully illustrated by the commentators. The whole body of law contained in the Pandects on this subject will be found in Pothier's methodized work on the Pandects, under the l. 35, tit. 1. §§ 11 to 20; and a great number of instructive examples are there given. Pothier states the law relative to contracts in the same terms in his treatise on Obligations, part 2. chap. 3. § 212; and repeats the doctrine as regards legacies in his work on the Customs of Orleans (introduction to tit. 16. § 5. 2). Domat thus expresses himself (Civil Law, 1. 5. 16) —"If the occurrence or accomplishment of a condition is prevented by that one of the persons contracting who has an interest that it should not arrive, whether it depend on his own act or not, the condition, as far as he is concerned, shall be held as accomplished; and he shall be held to that which he was bound to do, to give, or to suffer, as if the condition had been accomplished."

It is of less moment what the law of England is on this head, for we follow the Civil Law, and the distinction between law and equity introduces an element perplexing to us; but I imagine the principle to be the same. In the case of *Hotham* v. *E. India Co.*, in 1778 (see Langdell's Cases on Contracts, from which this is taken), I find Mr Justice Ashurst thus expressed himself—"It is unnecessary to say whether the clause relative to the certificate be a condition precedent or not; for granting it to be a condition precedent, yet the plaintiff having taken all proper steps to obtain the certificate, and it being rendered impossible to be performed by the neglect and default of the company's agents, which the jury have found to be the case, it is equal to performance. If it were necessary to cite any case for this, which is evident from common sense, it was so held in Rollis' Abridgement, p. 455, and many other books." Storey also, in his work on Contracts, holds similar language, and quotes many American cases in support of it.

These authorities appear to me to be conclusive of this case. It is true that the civilians also lay down that it is not every act by the debtor making the condition impossible which will be held as fulfilment; and that if the result be only indirect, or in the assertion or maintenance of a separate right, it may not have that effect. But this cannot avail the pursuer. It is very clearly proved that in resigning his office as director he acted with no object but that of making fulfilment of the condition impossible. I do not even think it proved that he was only acting as a prudent man, for the purpose of obtaining money which was necessary or important to him. I doubt if he was in any urgent need of funds, seeing that his interest in the company is worth more than £100,000. He has the interest of £15,000 at 5 per cent., and he had £9000 paid over to him at his father's death. The impressions produced on my mind, and I regret to say it, has been that his primary, if not his sole object, was to deprive his brother of the benefit his father intended for him. He has failed in this, and, in my opinion, has deservedly failed.

The other Judges concurred.

The Court pronounced the following interlocutor:—

> "Finds that, as the pursuer has voluntarily renounced and resigned his position as a director of the company of Alexander Pirie & Sons, he is not thereby entitled to demand present payment of the bond libelled, but that, in respect the specific implement of the condition expressed in the settlement of Francis Pirie has been prevented by his own act, it must be held as accomplished. and to that extent and effect adhere to the Lord Ordinary's interlocutor; also find the defender entitled to additional expenses."

Counsel for Pursuer—Solicitor-General (CLARK) and Watson. Agents—Webster & Will, S.S.C.

Counsel for Defender—A. B. Shand and Asher. Agents—Steuart & Cheyne, W.S.