AMBLER *v.* WHIPPLE.

1. Where an instrument prepared by one partner for signature by his copartner, with whom he has fallen out and quarrelled, contains mutual releases and assignments—each being the consideration of the other—it should, in order to be binding, be signed by both parties. The fact that the partner who did not prepare it has taken without objection from the other an unsigned counterpart after this other partner had signed the first counterpart, and left it in the hands of a third person to be delivered only when the unsigned counterpart was signed and delivered, does not give effect to the release.
2. Though bad character, drunkenness, and dishonesty on the part of one partner may be good grounds for dissolving a partnership, on the application of the other—this other not having known at the time of forming the partnership, these characteristics of his copartner—yet when *before* the partnership was formed they were known by the partner not guilty of them to have existed, they do not authorize such partner himself to treat the partnership as ended, and to take to himself all the benefits of the joint labor and joint property.
3. A partner who furnished capital, charged in a case strongly indicating injustice, with half profits in favor of another of inventive genius, and whom after valuable discoveries he sought to get rid of, alleging, even with truth, intemperate habits and bad character.

APPEAL from the Supreme Court of the District of Columbia.

Ambler filed a bill in the court just named against one Whipple and a certain Dickerson. A cross-bill and a supplemental bill, made additional pleadings.

The suit grew out of a copartnership between Ambler and Whipple, formed May 24th, 1869, for the purpose of experimenting with and bringing to perfection an invention by which gas, for lighting and heating and other useful purposes, was to be generated from petroleum; for obtaining a patent or patents for the result of their labor, and for the management of the business after such patent had been obtained.

The terms of the partnership were clearly stated in a memorandum of agreement signed by the parties, consisting of nine articles.

It sufficiently appeared from these articles that Ambler

Statement of the case.

was looked upon as the man of inventive genius, and Whipple as the man of business, and the source of the funds necessary to conduct the experiments and place the affair on a successful footing.

By these articles it was agreed that if success attended their efforts the profits were to be equally divided, after deducting the expenditures which Whipple might find necessary to be advanced. That Whipple might have full control of his branch of the joint venture, it was stipulated that Ambler should assign to him his interest in the patents which might issue, and in pursuance of this stipulation Ambler did execute an assignment of all his interest in the invention and in the patents which might be granted thereon. The articles of partnership were dated on the day when the partnership was formed, May 24th, 1869, and the assignment the day after.

In view of the present controversy the most important of these articles of agreement was the SIXTH, which was in the words following:

"That any and all letters-patent that may be obtained in this country and all other countries by virtue of said invention, or by reason of any improvement, or of any modification of the same by either party, shall be owned by and between the parties to this agreement in equal shares, to wit, one undivided half to each, and all proceeds of sale or sales of any and every kind and character shall be shared by and between the parties share and share alike."

The bill alleged that after experimenting three or four months a result was obtained and a patent issued in the name of Whipple and Ambler, No. 92,687, dated July 18th, 1869, and that while the patentees were experimenting under this patent and seeking remedies for apparent defects and for improvements in their invention, the true principle of success was developed about the 20th or 21st day of August; that immediately thereafter the defendant, Whipple, conceived the design of excluding the complainant from any benefit of the invention, and began a course of proceedings for the purpose of defrauding him of his rights; that in

pursuance of this scheme he ignored his rights and character as a joint owner and patentee in the invention; forcibly debarred him from the workshops where his invention was used, and denied him all interest in the result of his labors, and introduced the other defendant, Dickerson, in the absence of the complainant, to the place where the experiments had been made and to the machinery which had been used, and that in a few days Dickerson applied for a patent, afterwards issued (No. 95,665), which embodied the invention of Ambler, with only a colorable variation; that thereafter Whipple and Dickerson entered into a copartnership and successfully introduced the invention of the complainant into use, and by sales of particular States and districts had received in a short time over $100,000.

This was the substance of the bill of complaint, and the relief prayed was that Whipple and Dickerson might make discovery of the sales and profits; that they should be enjoined from the use of the complainant's invention, and that a decree be made in favor of the complainant for compensation and damages.

The answer of Whipple admitted the original agreement and assignment, and the issue of the patent to Whipple and Ambler. It admitted also the partnership with Dickerson and the issue of the patent to Dickerson. It denied all intent to defraud the complainant, but admitted the sales or contracts for sale of the Dickerson patent. It denied the identity of the two patents or the inventions set forth in them. It averred that after a full experiment with the first patent it proved a total failure, and that the complainant abandoned all further effort with it and left the city of Washington, where the experiments had been conducted; that Dickerson, having been previously engaged in inquiries in the same direction, perfected an invention of great value which effected what he and Ambler had failed to do, and that he thereupon entered into a partnership with Dickerson in regard to that invention, as he had a right to do, and that in the sales, contracts, or profits growing out of this patent, the complainant had no interest whatever.

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The answer set up as a further defence that the complainant by his drunkenness, dishonesty, and general bad repute had rendered a continuance of the partnership impossible; and that through one Martin the defendant Whipple had purchased of Ambler all his interest in the patent of Whipple and Ambler, and in the partnership business in which they had been engaged. It also contained allegations of the fact that before the partnership began, the complainant had been convicted of a felony and was otherwise infamous, but neither in the answer nor in the cross-bill, where this matter was repeated, *was it stated that this fact came to the knowledge of Whipple, the defendant, after he had entered into the partnership.* It did not deny the allegation of the bill, that after the date specified in it the complainant had been excluded from the workshops.

The cross-bill filed by the defendant Whipple set up a release of Ambler, his improper conduct, the failure of the experiments with the original invention, and prayed that Ambler be enjoined from setting up any right or claim against him on account of said invention, or on account of the articles of agreement between them. To this Ambler answered, very fully denying the release and denying the failure of the invention and his abandonment of it.

Dickerson filed a separate answer, but it contained nothing of moment not included in Whipple's.

The supplemental bill averred that since the filing of the original bill an additional patent (No. 102,662) had issued to the defendants; that it was for the same invention, essentially as that made by Whipple and Ambler, and patented to them by patent No. 92,687.

The answer to this bill denied this, and asserted that the invention patented was one of Whipple and Dickerson.

The testimony occupied a large part of a record of four hundred and eighteen pages, and was contradictory. Notwithstanding its amount, however, some matters necessary to the best comprehension of the case in all its parts were not presented. Thus, though the pleadings referred largely to the patent to Whipple and Ambler (No. 92,687), and to

that one (No. 102,662) to Whipple and Dickerson, mentioned in the supplemental bill as having been granted, during the suit, and though the complainant alleged that the latter was for the same invention, with colorable differences, as the former, yet neither was set out in the evidence. Certain leading facts, however, were made sufficiently clear.

Thus the evidence tended plainly to show that after the grant of the patent of July 18th, 1869 (No. 92,687), a series of experiments were conducted through a term of three months, by Whipple and Ambler, in the same place and under their joint supervision, which finally resulted in the discovery of the important and before unknown principle, that the mingled vapors of water and petroleum, when held together at the temperature and under the pressure due to steam, would result in the production of a combustible gas, if such combination was continued long enough to enable the chemical reunion to take place. This discovery would seem to have been developed empirically, and apparently was not demonstrated in confirmation of an antecedent theory. In the first experiment of the partners, upon a practical scale, the endeavor was made to make a gas from the vapor of petroleum, evaporated by heat applied on the outside of a cylinder containing petroleum and fitted with a piston-head to force the gas, when evolved, through strainers of various porous materials placed above the cylinder. This piston-head was very loosely fitted, and steam entered the petroleum and became mingled with its vapor. After the machine for this purpose was made, it was soon observed, in experimenting with it, that while it made gas with a loose-fitting piston, it made little or none when the piston was fitted tightly, *i. e.*, packed, so as to be steam-tight. This led to the conclusion that the introduction of steam into the oil itself was essential to the proper development of gas in quantities practically sufficient, and a hole was then bored in the cylinder, allowing a free flow of steam through the petroleum, when of a sudden the invention appeared to be complete. Whipple said to a workman, "I am satisfied with it. There is a million of dollars in it."

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There was some conflict of testimony as to the precise time at which, and the persons by whose orders, this boring of the piston was done. Four witnesses, including Ambler and his son, stated that it was by direction of Ambler. Three (Whipple and two persons still in his employ) stated that it was by direction of Whipple.

The decisive experiment just abovementioned was made about the 21st of August, 1869.

There were now certain *undisputed* facts in the case; facts referred to by this court, in its opinion, as such.* They were these:

"The book of accounts of expenditures made by Whipple and kept under his direction showed that up to that date Whipple and Ambler's names had been used in charging up the items. On the 23d Ambler's name was dropped and it was all charged to Whipple. Many declarations of his were proved about this time, that he would make a great fortune; and it was proved by one Holden, with whom Ambler had been boarding, that up to this time Whipple had paid for Ambler's board without objection, but shortly after gave him, Holden, notice that he would do so no longer. It appeared from Dickerson's supplemental and amended answer that in the months of June and July Whipple was in Chicago and tried to interest him in the matter in which he and Ambler were engaged. It was also shown that on the 3d of September, within less than two weeks after the purpose of Whipple to get rid of Ambler was alleged to have been fully conceived, Dickerson, who was not a man of science, but a person having money, made his appearance in Washington, coming from Chicago, and was taken by Whipple to the shop where the recent experiment had been made. This was in the absence of Ambler from the city. Precisely what took place between Whipple and Dickerson was not shown by the testimony. *That* was to be judged of by the results which followed.

"The first of these was that, on the 16th day of September,

* *Infra*, pp. 558, 559.

only thirteen days after his first sight of the machinery in the workshops, and his first interview in Washington with Whipple, Mr. Dickerson filed in the Patent Office an application for a patent, the specification and claims of which were so nearly like those of Ambler and Whipple, and so nearly embodied the results of their experiments as to leave little doubt that it originated in the Whipple-Ambler experiments, however much it might differ in some particulars from their patent. This application was pressed so successfully that a patent was issued on it to Dickerson and Whipple on the 12th of October. In the meantime Dickerson and Whipple had entered into a partnership in the matter, and Ambler was excluded from all control."

These facts, as already said, were undisputed, and there was much other testimony of a direct character tending to prove the purpose of Whipple to put Ambler wholly aside and out of the way, and that with this purpose he went after Dickerson, an old acquaintance of his own, and that with this purpose Dickerson came to Washington.

The testimony was voluminous. The whole case involving chiefly questions of intent and of fact, and thus ministering no great deal anywhere to juridical science, the *results* of it, as they appeared to the reporter and as they were assumed by the court, are alone given.

It appeared sufficiently plain that Ambler was a man of intemperate habits, not at all constantly affected by liquor, but getting into drunken debauches from time to time, and, when in that state especially, given to lying and to various degraded habits. The evidence showed, however, that Whipple had known him since 1864, five years before the partnership between him and Ambler was formed, and that the habits were generally known; known in fact by almost everybody who knew Ambler at all. They knew him to be a man of genius, with both the weaknesses and the vices in a full measure by which genius is sometimes disfigured. During a part of the month of August it seemed that he left Washington for eight or ten days. When he came home Whipple would not allow him to enter the workshops.

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A principal defence of the defendants was the alleged release by Ambler.

The original of the alleged release was in the possession of a person named Martin, already referred to. It was dated September 24th, 1869.

It recited the issuing of the patent No. 92,687, the assignment of it to Whipple, the articles of partnership, and that a disagreement existed between Ambler and Whipple in regard to the construction of the invention; that Ambler was anxious to be released from his obligations to Whipple, and was willing to convey all his interest in the invention to Whipple, and then declared that in consideration of the full discharge of $1000 due by Ambler to Whipple, Ambler sold and conveyed all his interest in the invention, and in all improvements made, or which might be made by Whipple; and that Whipple released Ambler from all obligation on account of the contract, and from the payment of the $1000.

Martin stated that he had got the paper from Whipple at the request of Ambler; that the paper was drawn by him, Martin, at Whipple's request, and signed by Whipple on the 24th of September, 1869, the day of its date; that after getting the paper he could not find Ambler for some time, though he had called at his lodgings and written a letter, &c. However, on the 24th of October he saw Ambler. The witness proceeded:

"Ambler introduced the subject of the release from Whipple to him, and stated that his wife objected to his signing it, and said he ought to hold on; 'But,' said he, 'I differ in opinion with her, and I will sign the agreement.' . . . I handed Mr. Ambler the original of the contract, in my own writing, which was signed by Mr. Whipple and witnessed by Mr. Lombard and myself, and he read the same. I then handed him the duplicate copy, which was to be signed by himself. He made no objection to the contract, put the duplicate in his pocket, said he would take it with him to Washington, would there execute it and hand it to Mr. Whipple, and that I might deliver the original to him after he delivered the copy. I still hold the original of said contract for Mr. Ambler; will deliver it to him as soon as the

duplicate is signed and delivered *to myself* or *Mr. Whipple.* I would not give Mr. Ambler the original because signed by Mr. Whipple; and I was instructed not to give it to him until the other was signed. I tendered it to him on Sunday, October 24th, at his rooms at his hotel."

The testimony of Martin showed that he had undertaken, in his conversations with Ambler and while negotiations were going on about the arrangement set out in the paper dated 24th of September, 1869, and signed by Whipple but not by Ambler, to engage that Whipple should release the $1000 recited in the paper as having been due by Ambler to Whipple, and that Whipple did afterwards release the said $1000.

The witness gave a very disparaging account of Ambler's early and long-continued habits of intemperance, and of the great efforts which he had made to reform him. He testified also to his conviction for crime, though it appeared that after his discharge from prison the witness took an interest with him in a patent, offered by Ambler to him by way of gratitude.

The following, with similar testimony, much too long to be set out in a case involving chiefly questions of fact, was relied on to show that Martin was really the agent of Whipple:

"QUESTION. What time did you first make Mr. Whipple's acquaintance?

"ANSWER. In the spring of 1864.

"QUESTION. Had you a great deal to do with Whipple?

"ANSWER. Yes, sir.

"QUESTION. As much mixed with him as with Ambler?

"ANSWER. No, sir; not quite. It was a different kind of mixing.

"QUESTION. You said that in the course of conversation with Ambler, you agreed that Whipple should discharge him?

"ANSWER. Yes, sir."

Ambler was indebted, it seemed, to the witness.

Ambler's own account of the matter was:

"On the 24th of October, 1869, I met Mr. Martin, and he told

me that he had prepared an assignment of my interest to Mr. Whipple for, he said, a part consideration of $1000. I took the assignment and looked at it. Said I, 'Shall I take this with me?' He replied, 'Yes, if you choose.' 'I do not wish,' said he, 'to press this case upon you at all; exercise your own judgment.' Said I, 'Mr. Martin, I will take it to Washington and show it to my wife.' I did not say, nor intimate, that I would sign it."

The court below dismissed the bill and the complainant took this appeal.

Messrs. G. W. Paschall and R. Mason, for the appellant; Mr. J. A. Ballestier, contra.

Mr. Justice MILLER delivered the opinion of the court.

It is to be observed that neither party prays for a dissolution of the partnership. Indeed, the bill and cross-bill, and the answers to both, proceed upon principles which do not recognize the partnership as existing. The complainant seems to imply that by reason of Whipple's course of conduct he is remitted to all his rights as the inventor, and claims that being the sole inventor of the successful machine he is entitled to all the benefit of it. Whipple assumes that by his purchase from Ambler, and Ambler's misconduct, that the partnership has been dissolved, and he has succeeded to all its rights, if they are of any value.

The testimony is voluminous and contradictory. In the view we shall take of the case, while the decision will mainly turn on these questions of fact, we shall only state the effect which the testimony has had upon our minds without referring to it in detail.

1. If the complainant really released or sold his interest in the partnership business, or in the patent of Whipple and Ambler, his case is at an end, and we will, therefore, consider that question first.

The instrument of writing dated September 24th, 1869, is supposed to have that effect. There is no doubt that the language of the instrument* is sufficient for the purpose

* Quoted, *supra*, p. 553.—REP.

for which it was intended, but it wants the signature of Ambler. Nor is it pretended that he ever signed it or any copy of it. It is clearly on its face a paper which requires the signature of both parties to make it binding on either. The releases and assignments are mutual, and each is the consideration of the other, and it requires no great penetration to see that it was drawn in the interest of Whipple, who signed it, and not in the interest of Ambler, who did not sign it.

But it is argued that the paper was procured from Whipple by Martin, the agent of Ambler, at Ambler's request, and was signed by Whipple and delivered to Martin; that Martin delivered it to Ambler, who received a copy of it without objection, and promised to sign it. Admitting all this to be true, it is very clear that both parties intended to have a written instrument signed by each as the evidence of any contract they might make on that subject, and neither considered any contract concluded until it was fully executed. Under these circumstances Ambler had a right to decline to sign the paper, and until he signed he was not bound by it. It was not drawn by him, nor at his dictation. It was first signed by Whipple, and drawn up by him or in his presence, and made to suit his purposes. It is idle to say that because Ambler took a copy of it from Martin to examine he became a party to it, though he never signed it.

Further, we are of opinion, notwithstanding Martin's declaration that he acted on Ambler's suggestion, that he was throughout the whole affair acting for Whipple, and governed solely by his interest. This transaction does not, in our opinion, establish any release or transfer of Ambler's interest in the partnership concern.

2. Nor is there any such evidence of abandonment of the enterprise on the part of Ambler as to justify the court in holding that he had lost or forfeited his rights in the venture. It is true that about the middle of August he left Washington City for a week or two, but when he returned he found himself excluded from the workshops and from all participation in Whipple's plans, and it seems probable he was by

Whipple's authority forbidden to go there before he left the city. It is unreasonable to call this a voluntary abandonment of the enterprise.

3. What weight would be given to the charges of bad character, drunkenness, and dishonesty in a suit by Whipple to dissolve the partnership we need not here state. If all that is charged were proved in such a suit it would make a strong case for relief, on such terms as equity might impose for the protection of both parties. But they did not authorize Whipple, of his own motion, to treat the partnership as ended and take to himself all the benefits of their joint labors and joint property. It seems also to be a fair inference from the pleadings and other circumstances that Whipple must have known of Ambler's conviction for felony *before* he entered into the agreement with him.

We are, therefore, of opinion that the case shows nothing which deprives Ambler of his rights under the original contract with Whipple.

4. We are also of opinion that Whipple is chargeable as trustee for Ambler with one-half of all that has been realized or may be realized from the use of the patent to Whipple and Ambler and the patent to Whipple and Dickerson.

This conclusion we rest upon the sixth article of the agreement between Whipple and Ambler.* This article provides that any improvement or modification of the invention which may be made by either party, in this country or any other, for which a patent may be obtained, shall enure to the joint benefit of both. In the peculiarly close and confidential relation which the parties assumed toward each other in regard to an invention which both understood to be imperfect, undeveloped, and the subject of future trial and experiment, this provision was eminently wise and necessary. And since Whipple was, by the assignment of Ambler, invested with the legal title of the patent and chief conduct of the affairs of the partnership, he was under a peculiar obligation of good faith as both partner and trustee of Ambler.

* Quoted, *supra*, p. 547.—REP.

Notwithstanding the bills, cross-bills, and supplemental bills set up both by the patent to Whipple and Ambler and the patent to Whipple and Dickerson, No. 95,665, and another issued to them pending the suit, No. 102,662, which are charged by Ambler to be all covered by his invention, and by the others to be totally distinct, none of these patents are found in the record. It is impossible, therefore, for this court to give any *conclusive* opinion or judgment as to how far they are identical, or how far there may be distinctive features, under which the whole or some part of the two latter patents might be sustained. We base our decree on other principles.

We are satisfied, from the testimony in the case, that the results of the experiments conducted by Ambler and Whipple in their joint enterprise developed the practicability of success in obtaining the object of their pursuit; that these experiments disclosed the fact that while they had mainly relied on the effect of heat by steam, applied to petroleum indirectly by encompassing the vessel in which the petroleum was, by the steam let into an outer chamber, it was found that it was necessary to introduce the steam into the vessel, thus bringing it into direct contact with the petroleum.

Whether Ambler had seen this as clearly as Whipple is not very well or satisfactorily shown. But it is proved to our entire satisfaction that when Whipple saw this point, and that through it success was within his reach, he immediately recognized its great value. This experiment was made at the same shops, with the same machines, and in the same pursuit, which for three months had engaged the active energies of both Ambler and Whipple. The weight of evidence is that Ambler was present and assisting, but this is denied by other witnesses.

What is clear to us is that as soon as Whipple recognized the value of this discovery he made up his mind to be rid of Ambler.

The undisputed facts of the case,* taken in connection

* See them set out, *supra*, pp. 551, 552.—REP.

with much other testimony of a direct character, convince us that Whipple, in violation of his trust to Ambler, and in fraud of his rights, deliberately entered upon a scheme by which Ambler was to be deprived of the benefits resulting from success in their joint experiments. That in pursuit of this scheme he called in Dickerson, who, without having invented anything, and in a remarkably short space of time, procured letters-patent to issue to himself and Whipple which embraced the results of Ambler's discoveries and experiments, whether they embraced anything else or not.

For all that has come to Whipple's hands, for all that is included in the patents to him and Dickerson, he is, under the terms of the sixth article of the agreement, a trustee for Ambler to the extent of one-half, and must be so charged and held to account in this proceeding.

As to Dickerson, while he is not a trustee under that article, we are of opinion that he has so far knowingly connected himself with and aided in the fraud on Ambler that he cannot resist Ambler's right to an undivided half of both the patents to Dickerson and Whipple, and of the profits made or to be made out of them. What rights or remedies he may have against Whipple we do not decide.

The result of these views is that the decree of the Supreme Court of the District must be reversed; that a decree must be entered in that court declaring Whipple and Dickerson to hold in trust for the benefit of Ambler to the extent of one-half the two patents issued to them, mentioned in the pleadings as 95,665 and 102,662; that an accounting be had as to the profits realized by them, or either of them, from the use or sale, or otherwise, arising from said patents, and for such other and further proceedings as may be

IN CONFORMITY TO THIS OPINION.