

Plaintiff by letter of 24th March written to defendant replied: "The terms mentioned in your letter concerning the money are quite satisfactory, and I will forward it on next week." And he did forward the \$2,000, which defendant received, and started a grocery business.

It was not in the contemplation of the parties that plaintiff should have by name, or in management or in work, anything to do with the business to be established. Defendant had the sole control of it. Plaintiff never in any way interfered. Defendant now says the business did not succeed. It has been wound up, and, as there were no profits, plaintiff is not entitled to recover.

I am of opinion that plaintiff is not entitled, upon the evidence before me, to recover the \$2,000 as a debt. It is quite true that defendant always speaks of the business as "my business," and there was the stipulation that plaintiff should at any time, upon giving 2 years' notice, get his "invested money;" but that was upon the clearly implied understanding that the business continued as "a going concern," and that the money remained invested in the business. Now there is no business, and, as defendant contends, no money remaining invested in it.

I am of opinion that as between these parties the matter must be treated as one of partnership, and that plaintiff is entitled, if he desires it, to have an account taken, and to have it taken upon the basis and with the direction that defendant is not entitled to the salary claimed by him as against plaintiff.

Defendant says he was, by agreement with plaintiff, entitled to wages at the rate of \$55 a month, the same amount as was paid to one Darrock. This plaintiff disputes. He says there was no such agreement. It would seem quite reasonable, in ordinary circumstances, that the active partner, as against the dormant one, should receive a salary, but this is not an ordinary agreement of partnership. . . . Defendant put into this business only \$963 as against plaintiff's \$2,000. From all that appears, a business of this kind could have been managed by Mr. Darrock and Mr. White without defendant, or by defendant and one of the others. Defendant, with a view to building up a business and without consulting with plaintiff, incurred large expenses. I