

But the discretionary powers of a chancellor will be freely used in shaping the relief granted, wherever the special circumstances render the ordinary remedies an inadequate protection to the interests of any of the parties concerned (*b*).

It will not be inferred that the partner desirous of selling may choose to which of his partners he will offer his share, and exclude some from the offer, unless, on the proper construction of the clause such a choice is clearly given. Hence if the pre-emption clause provides that the offer of the share of the outgoing partner shall be made first to all the other partners collectively, and, if that offer be declined, to the other partners desirous of collectively purchasing, an offer to all the continuing partners collectively, one of whom has determined, to the knowledge of the partner making the offer, not to purchase, enures to the benefit of the remaining partners, and they are entitled to specific performance (*c*).

In some cases special provisions are inserted in the articles with a view to ensuring that the retiring partner's offer of his share shall be duly brought to the knowledge of the other partners. Under such circumstances, it is sufficient if there is a substantial compliance with those provisions, particularly if the procedure followed is one which has been customarily followed in the same concern on previous occasions when a partner has retired (*d*).

Where notice has been given by one partner to another to exercise the option of the pre-emption reserved to each member of the firm under the articles, and the partner receiving the notice becomes a lunatic before he actually exercised the option, the notice is binding on the lunatic's committee, and the right of pre-emption is gone after the share is sold to a stranger (*e*).

(*b*) In a case before Lord Romilly, the articles provided that the partners who were to carry on business as surgeons for such a term as they should mutually agree, provided that in the event of the death or incapacity of either partner, the surviving or continuing partner might purchase his share in the business, and that, if he should decline, it might be sold to any other person who might be willing to purchase it. Upon the death of the partner who last entered the firm, the surviving member declined either to purchase or admit a stranger into the business. The course taken, as being most consistent with the true spirit of the articles, was to ascertain the value of the deceased partner in the concern at the time of his decease, and to charge the surviving partner with that amount. *Featherstonhaugh v. Turner* (1838) 23 Beav. 382.

(*c*) *Homfray v. Fothergill* (1866) L. R. 1 Eq. 567.

(*d*) *Glassington v. Thwaites* (1883) Coop. temp. Brough, 115 [provision as to notice to be given in writing, held to be satisfied by entry of offer in a book open to all the other persons concerned].

(*e*) *Rowland v. Evans* (1862) 8 Jur. N.S. 88, 30 Beav. 302.