

**PARTNERSHIP—Agreement—Construction—Whether Persons Partners Inter se.]**

M. carried on business, and had in his employ his sons, J., R. and A. An agreement was entered into between them, by which the sons were to be associated with the father for a term of five years as co-partners in carrying on the business which was to be under the name and style of W. M. & Sons. The father was to furnish the capital and stock in trade, and the sons were to work in their several departments in carrying on the business. J. was to have charge of the books of the business, and power in the absence of the father to sign the firm's name, and also in the absence of the father was to have general charge of the business. R. and A. were to be under the direction of the father. The agreement witnessed that each of the sons should accept from the father "out of the proceeds of the business, as their and each of their several interests in the business, on account of the services to be performed by each of them," a specified sum of money each year, and which the father covenanted to pay them "on account of their several interests in the business." Provision was made for the withdrawal of the sons or either of them "from the said firm," on giving notice to the father, upon which the account with the firm of the party giving such notice should be made up, and the balance due him paid when all his interest in the business should cease. It was further agreed that at the end of the term of five years the several accounts of the sons should be balanced, and the money found to be due to each paid, whereupon the agreement should terminate. The sons were prohibited from entering into any contract on behalf of the firm involving more than \$10, or engaging in any transaction out of the usual course of the retail business, and the wish of the father in all matters respecting the general management of the business was to be binding upon the sons. In the books of the business kept by J., and accessible to the sons, an account was opened against each of the sons, in which they were charged the cash paid to them, and were credited as salaries the amounts which by the agreement they were to be paid each year. Stock was never taken, and no steps were taken to ascertain the profits or losses

**PARTNERSHIP—Continued.**

of the business. *Held*, that the father and sons were not partners *inter se*.  
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2. — *Realty Forming Part of Partnership Assets—Conversion—Dower.* Realty purchased by partners with partnership funds for partnership purposes must be regarded as personal estate in the absence of an agreement between them to the contrary, and consequently is not subject to dower. *In re CUSHING'S ESTATE; Ex parte BETHIA J. CUSHING.* .....102

**PATENT—Combination of Old and New Inventions—Infringement—Agreement by Licensee to Sell—Sale of Competing Article—Measure of Damages.]** A patent for an apparatus which combines a particular invention by the patentee with other things which are not his invention is not infringed by an apparatus which does not include the patentee's particular invention. Plaintiff was the patentee of a lubricator, and by an agreement with the defendants gave them the exclusive right to manufacture and sell the article within a specified area, in consideration of a royalty payable upon each lubricator when sold. The defendants agreed to manufacture the lubricator in sufficient numbers to supply the trade, and to use every reasonable means to secure its sale. The defendants duly manufactured the lubricator, kept it in stock for sale, and supplied all orders for it. They also manufactured and sold another lubricator not under patent and not an infringement of the plaintiff's invention. This and other lubricators in the market were sold so much cheaper than the plaintiff's could be manufactured and sold at that the latter had a very limited sale. The plaintiff contended that the manufacture and sale by the defendants of another lubricator was a breach of covenant by them to use every reasonable means to secure the sale of his invention. *Held*, that there had been no breach of the agreement. *Scemle*, that if the article sold by defendants had been an infringement of plaintiff's patent his damages would be the royalty payable under the agreement. If it were not an infringement, but its sale a breach of the agreement, the damages would be as on an ordinary breach of covenant. A licensee under a patent cannot question its validity. But he may shew that an