

and all such as shall hereafter come into the hands of Fenn, on account or in respect of the said underwriting business." The deed also contained a power of attorney, authorizing the defendant and his co-trustee to receive *the whole proceeds of the business*; and the first trust was, to pay the defendant £500 a-year, with an additional sum when the profits of the business should have realized a given sum, and a covenant, that, when the accumulated profits should have reached £8500, and continued at that amount without reduction for two years, the trustees should re-assign to S. "the said moneys and *profits* arising from the aforesaid underwriting business."

In an action upon a policy signed by Fenn in the name of S., a special case was stated, in which were set out the above-mentioned memorandum and marriage settlement, and by which it was agreed that the Court should draw any reasonable inferences of fact:—*Held*, by the majority of the Exchequer Chamber,—reversing the judgment of the Court below,—that the marriage settlement did not, either alone or in conjunction with the memorandum, render the defendant liable as a partner with S. in his underwriting business. *Held*, by *Pigott, B., and Shee, J.*, that the effect of the settlement was, to give the defendant such a substantial interest in the business as to render him liable as an insurer on the policy. *Bullen v. Sharp*, C. P. 86. [In the opinions of the judges who sat in this case will be found a very full and interesting discussion of the question—what will make a person liable as a partner? The dissenting judges stated their views with great energy and distinctness, and Mr. Justice Blackburn and Barons Channell and Bramwell with equal force and emphasis on behalf of the majority of the Court. Baron Channell observed: "I think that henceforth we may take it that the true test, where a person is sought to be made liable on the ground of his being a partner, is to see whether he has constituted the other alleged partner *his agent in respect of the partnership business*; and that, taking a part of the profits, though cogent evidence of this, is not conclusive. Mere participation in the profits is not sufficient to make a man

bound by alleged partnership contracts, if the facts show that he had not constituted the other his agent." Baron Bramwell was still more emphatic. In the course of his remarks he observed: "They say that the defendant is a partner with his son; and that, if not partners *inter se*, they are so as regards third parties. A most remarkable expression! Partnership means a certain relation between two parties. How, then, can it be correct to say that A. and B. are not in partnership as between themselves, they have not held themselves out as being so, and yet a third person has a right to say they are so as relates to him? But that must mean *inter se*; for, partnership is a relation *inter se*; and the word cannot be used except to signify that relation. * * * How many men in a thousand, not lawyers, could be got to understand, that, of the two servants of a firm, the one who received a tenth of the profits was liable for its debts, and the other who received a sum equal to a tenth was not? This Mr. Justice Story calls 'satisfactory.' (*Story on Partnership*, § 32.) Satisfactory in what sense? In a practical business sense? No; but in the sense of an acute and subtle lawyer, who is pleased with refined distinctions, interesting as intellectual exercises, though unintelligible to ordinary men, and mischievous when applied to the ordinary affairs of life. Lord Eldon did not think it satisfactory. Such a law is a law of surprise and injustice, and against good policy. It fixes a liability on a man contrary to his intent and expectation, and without reason, and gives a benefit to another which he did not bargain for and ought not to have, and prevents that free use of capital and enterprise which is so important."]

PROBATE AND DIVORCE.

Judicial Separation—Adultery.—A charge of adultery, in a suit by a wife for judicial separation, rested upon the evidence of one witness, who was a woman of loose character. The Court, without deciding affirmatively whether or not the adultery charged had been committed, declined to pronounce a decree upon her uncorroborated testimony, and dismissed the petition. *Ginger v. Ginger*, P. & D. 37.