sum of $4,059.10 were defendants asked to consent, nor did they consent in any such way as was intended to make them liable or as did make them liable under the agreement. . . .

The amount on which the 8 per cent. should be computed I find to be $25,761.75. . . .

Defendants' rent will, therefore, be 4 per cent. on land, $10,800, that is, $432.00; 8 per cent. on building, $25,761.75, that is, $2,060.94; in all, $2,492.94.

Judgment declaring that plaintiffs are not entitled to have specific performance of the agreement by defendants paying or agreeing to pay as rent $3,028.70 yearly, payable quarterly in advance; that defendants are entitled to possession and to a lease from plaintiffs with rent reserved at $2,492.94 a year, payable quarterly in advance; and directing payment by defendants to plaintiffs of rent from 1st April, 1905, at the rate of $2,492.54 a year, with interest at 5 per cent. from due dates. No costs.

BOYD, C. APRIL 9TH, 1906.

TRIAL.

SMITH v. SMITH.

Will—Interest in Partnership—Trustees under Will—Sale of Partnership Interest to Surviving Partners—Discretion of Trustee—Adequacy of Price—Goodwill—Beneficiaries under Will—Attack on Sale—Account—Costs.

Action by the widow of John B. Smith and her children (all but one) against Robert Jaffray and W. J. Smith, two of the executors of John B. Smith's will, and others.

The testator died on 7th March, 1894. His will was dated 25th August, 1893. Probate issued on 4th December, 1894, to Robert Jaffray, William Jaffray Smith, and Francis A. Smith, the executors.

The testator was married 3 times. The issue of the first marriage was an only son. The second wife had 3 sons and 3 daughters, who, with the eldest son and the executors and one of the children of the widow, were the individual defendants in the action. An incorporated company was organized to carry on the business conducted by the testator in his lifetime.