Div. 31, 199 N. Y. S. 66, it was held that where the plaintiff was employed as a general manager and director of a musical comedy and by conduct and derogatory statements abused his employer, that such were sufficient grounds to justify a dismissal.

The use by a salaried employee of a corporation of insulting, disrespectful or abusive language to any officer or superior employee thereof in connection with the duties of the former, or his refusal to obey, or his advice to other employees to disobey the orders of any superior, is a good ground for discharging him. *Darst v. Mathieson Alkali Works* (1896), 81 F. 284. A servant owes to a master respectful and decorous treatment. Unprovoked insolence and disrespect for him or his representatives will usually justify the servant's discharge. This is clearly illustrated in *Darden v. Nolan* (1849), 4 La. Ann. 374; and in *Board of Education of City of Lawton v. Gossett* (1916), 56 Ok. 95, 155 P. 856.

Therefore, in view of these numerous authorities, it would seem that there was no error committed in the principal case, and that the question of the right to discharge an employee who uses disrespectful language towards his employer was properly left to the jury for determination as to whether justifiable under the existing facts and circumstances. C. R. S., '30.

PARTNERSHIP-SERVICES AND COMPENSATION OF PARTNER.—Plaintiff and defendant were partners in a filling station run by hired hands with occasional supervision by themselves, each of them living in another town and working at his individual business. After three years, the business being in a bad condition, defendant suggested that plaintiff visit the oil station. Plaintiff gave his whole time and attention to the management of the business for four years. Until dissolution of the partnership plaintiff made no claim for salary for the management, while defendant was absent and devoting himself to his personal business. *Held,* that plaintiff is entitled to a salary on implied contract for services rendered, and that the co-partner failing in his duty of giving his services to advance the business should pay the plaintiff who gave his whole time. *Montgomery v. Burch* (Tex. 1928), 11 S. W. (2d) 545.

The rule at old common law is that one partner can make no claims for compensation for services from his partner, since each has the duty to devote his time and energy to the partnership. This applies today to the ordinary case of partnership where each partner works in and for the business, or where one advances capital and the other gives his time. Lindley, PARTNERSHIP, p. 454; *Frazier v. Frazier* (1883), 77 Va. 775; *Caldwell v. Lieber* (1839), 15 N. Y. Ch. 483; *Peck v. Alexander* (1907), 40 Colo. 392, 91 P. 38; *Talbert v. Hamlin* (1910), 86 S. C. 523, 68 S. E. 764, 17 L. R. A. (N. S.) 412.

By express contract one partner may charge the other partner for services rendered. There seems little reason to restrict the power of contract to exclude this definite, deliberate agreement. Mechem, LAW OF PARTNERSHIP,

2d ed., sec. 178-9; *Martin v. McBryle* (1921), 182 N. C. 175, 108 S. E. 739, 21 A. L. R. 12, 48.

However, many cases have allowed the partner to recover on an implied contract for services to the partnership. This is implied either from custom or from the course of dealing of the partnership, showing expectation and understanding without express agreement, that certain services of the partner be paid for. Each case rests on its own particular facts. The typical case is where an active and managing partner devotes his whole time and attention to a partnership business at the instance of other partners who are attending to their individual businesses and giving no time or attention to the business of the firm. A request of the partners for the plaintiff to give his services is the strongest evidence of their intention to compensate him. Other factors are the course of business or the nature of the services. The real basis of this situation lies in contract, so the elements of implied contract must be shown. *Rains v. Weiler* (1917), 101 Kan. 294, 166 P. 235, L. R. A. 1917F 571; *Emerson v. Durand* (1885), 64 Wis. 111, 24 N. W. 129, 54 Am. Rep. 593; *Lewis v. Moffet* (1849), 11 Ill. 392; *Morris v. Griffin* (1891), 83 Iowa 327, 49 N. W. 846; *Hoag v. Alderman* (1903), 184 *Mass.* 217, 68 N. E. 199; *Cramer v. Bachman* (1878), 68 Mo. 310; *Maynard v. Maynard* (1917), 147 Ga. 178, 93 S. E. 289, L. R. A. 1918A 81, *Sons v. Sons* (1922), 151 Minn. 336, 186 N. W. 809; Rowley, MODERN LAW OF PARTNERSHIP, secs. 404-7.

A request by the dormant partner is not a *sine qua non*, so in the present case the court need not have construed defendant's suggestion that plaintiff visit the station as a request to devote his whole time for several years. Circumstances may show intention without any request.

It is said that in order wholly to justify such a claim from the relations *inter sese* alone without other evidence of contract, the partnership situation, under which plaintiff claims, should be greatly different from what was expected at the time the express agreement of partnership was made; i. e., the defendant should be in default as to his duty. Gilmore, PARTNERSHIP, 383-4. For if a salary was expected to be paid, it should have been mentioned in the articles of partnership. But either default by one partner or reasonable intention from the circumstances will justify the claim. If the intention exists, default, by fiction as in the instant case or otherwise, is not necessary.

The rule set forth in the Uniform Partnership Act, Sec. 18, is that, ". . . . subject to any agreement between them, . . . (f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs." The last clause is a statutory exception, but the general rule is stated. However, it will be noted that the general introduction to the section states "subject to any agreement between them"; this will, it would seem, allow implied contracts to alter the general situation.

It is well to remember that the facts must be strongly in favor of the plaintiff to allow him to set up a contract implied in fact without statements or representations by the parties. R. J. H., '30.