

finding of my brother Teetzel, and only refer to the further case of *Hibben v. Collister*, 30 S. C. R. 459.

The question of interest upon the sum of \$3,500 was disposed of upon the argument.

The result is, with reference to the plaintiff's appeal, that the same should be dismissed, except as to the declaration of the assets of the former firm having passed to the new firm. With reference to this, there should be a declaration that there was no sale of the assets, but only a right of user for which interest was to be paid during the continuance of the partnership. In others respects the plaintiff's appeal is dismissed.

With reference to the cross-appeal. Upon the first ground I agree that the plaintiff is entitled to an account of the partnership dealings from the inception of the partnership on the 1st of August, 1899, to the 5th January, 1909, and not merely from the 1st of August, 1905. This ground of appeal is dismissed.

I also am of opinion that the second ground of appeal fails as to the sum of \$2,141.96. This amount the learned Referee has deducted from the total of accounts passed over by the old firm to the new. They have been charged originally by the defendant, but he himself made the deduction and in explanation stated that having regard to their character, he thought it only fair that he should do so. Many of them were obviously bad at the time the partnership was entered into and no one knew better their character than the defendant himself and he having made this deduction as fair, ought not now to be permitted to withdraw from a position which upon a full knowledge of the facts he then took. This ground of cross-appeal should be dismissed.

The next ground is a question of interest. It was to charge what in effect was compound interest. This was disallowed, and, I think, properly so, in the absence of any agreement of the parties to pay compound interest.

The only remaining ground of the cross-appeal is that in relation to the depreciation on buildings, plant and machinery. The Referee found that the profit and loss account of the firm should not be charged with such depreciation. Taking the view that there was no sale of the assets of the old firm and that the intention of the parties was at the conclusion of the partnership, the defendant should receive