

only a partnership with reference to the profits and that the assets of the old firm were put in to be used by the new partnership at a valuation in order that interest might be charged against the new firm for their use. This, I think, was the fact and all parties have acted upon this view from the beginning of the partnership, and in this respect I think the finding of my brother Teetzel should be reversed.

Dealing with the partnership then as having been entered into with a view of running the business and not of its purchase, I proceed to deal with the matters in appeal upon this basis.

The principal point argued on behalf of the plaintiff was with reference to the item of interest upon \$5,000 charged as a valuation of the good-will of the business. It is conceded by both parties that the question of good-will was not mentioned at the time the partnership was entered into. There is no doubt it formed a material part of the defendant's business, which had been carried on for some years prior to the partnership and valuable connections formed. During the period of partnership the plaintiff got the benefit of this. The learned Referee disallowed the item, but it was restored by my brother Teetzel. The good-will formed a part of the assets or property of the defendant, which, during the continuance of the partnership, formed the capital from which the profits would arise. The valuation of the assets to be turned in for the use of the partnership was to be made by the defendant. This valuation he did make and it included the good-will which he placed at \$5,000, and entered the same in his private ledger with other items representing the values of the assets contributed. This ledger the plaintiff claims not to have seen until this action was brought, but it is clearly established by his own evidence that when the defendant made up the account in the action of *Cutten v. Mitchell*, when the other two partners went out, this item of \$5,000 for good-will was included, and to his knowledge the share of profits allowed to Cutten and Engeland were reduced by this charge, and to the extent that the plaintiff shared in the profits, subsequently he was benefited thereby. In valuing the assets, which were handed over to the partnership, the good-will was included, and I think, properly included inasmuch as it formed a part of the property from which the profits were to arise. Upon this question I agree with the