

Upon the argument objection was taken to the jurisdiction of the Court upon the ground that there was no Report from which an appeal lay to a single Judge. This objection was overruled at bar.

Before dealing with the different matters in appeal, it will be proper to state the nature of the partnership and the position of the parties; The defendant Mitchell had established a very considerable business at Guelph for the manufacture and sale of carriage goods and supplies. A partnership was entered into between the plaintiff and defendant, and Cutten and Engeland in May, 1899, to commence on the first day of August, 1899. The defendant Mitchell was to prepare the partnership agreement, but this was never done. A question arises as to whether or not there was an actual sale of the former assets of the Guelph Carriage Top Company, under which Mitchell had carried on the business to the new company, or whether the partnership related simply to the right to use all the assets of the former business at a certain valuation and to share in the profits.

The order in the appeal before Teetzel, J., declares that "Upon the formation of the said partnership everything that was put into the partnership became the property thereof, subject to the account, in which the defendant was credited, with the values of the various assets which the defendant was putting into the said partnership, which assets must, in taking the accounts and making the enquiries herein directed, be treated as partnership and not as separate property." Against this finding both parties appeal.

The plaintiff in his notice of motion by way of appeal alleges that the defendant never sold or intended to sell the assets or the good-will of his business to the partnership. The defendant in his cross-appeal says that the learned Judge erred in the declaration that upon the formation of the partnership everything that was put into the partnership became the property of the partnership, and that, in taking the accounts, must be treated as partnership assets.

On the argument the counsel for the defendant expressed his willingness, as I understand him, to accept the view that all the assets of the old firm passed to the new firm. Mr. Hodgins on the contrary contested this view. The truth is that the evidence upon this point is very obscure. The parties seem rather to have taken it for granted that there was