

An appeal from a judgment of HON. MR. JUSTICE TEETZEL, 20 O. W. R. 754, 3 O. W. N. 425.

The appeal to Divisional Court was heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LENNOX.

F. E. Hodgins, K.C., for plaintiff, appellant.

I. F. Hellmuth, K.C., and C. L. Dunbar, for defendant, respondent.

HON. MR. JUSTICE CLUTE:—At the trial the case was referred under sec. 29 of the Arbitration Act to his Honour Judge Chadwick. He made his report from which the defendant appealed upon the following grounds:—

“1. That the learned Referee should not have found that the plaintiff is entitled to an account of the partnership dealings from the inception of the partnership on the 1st August, 1899, to the 5th January, 1909, and that he should have found that the plaintiff is not entitled to an account of the partnership dealings prior to the 1st day of August, 1905.

“2. That the learned Referee should not have deducted the sum of \$2,141.96 from the accounts receivable of the defendant at the inception of the partnership.

“3. That the learned Referee should not have reduced the capital of the defendant at the inception of the partnership by the sum of \$5,000 constituting the item of “good-will.”

“4. That the learned Referee should have found that the defendant is entitled to interest on his capital in the partnership ascertained from year to year.

“5. That the defendant should not be charged with the so-called ‘cash shortage’ items or any part thereof.

“6. That the learned Referee erred in finding that the profit and loss account of the firm should not have been charged with depreciation on buildings, plant and machinery.

“7. That the defendant should not be charged with any sum whatever in connection with the mortgage referred to in clause 9 of the Report.”

Teetzel, J., dismissed the appeal upon the first, second, fourth and sixth grounds, and allowed the same upon the third and seventh grounds. From this order both parties have now appealed.