

As subsidiary to this the question is asked as to when the right of the representatives of the deceased partner to share in the profits ends. I think the articles expressly provide that the right to share in the profits ends on the 31st January following the date of death, and that this is so whether the option given to the surviving partner to continue the business as a partnership for 12 months from the death is exercised or not. After the 31st January, the representatives of the deceased partner receive interest upon the capital, and that only.

The next question is, whether the goodwill of the business is to be taken into account in ascertaining the amount to be paid. I think that it is not. The capital of the firm consists of the assets set out in clause 2, and does not include anything allowed for goodwill. The balance sheets, I think, follow the intention of the partnership agreement, and no mention is made in them of goodwill. What is to be repaid is, I think, capital in the sense in which that word is used in the articles and the balance sheets. It represents the share of the partner in the value of the assets, as ascertained by the balance sheets, over the liabilities there shewn.

It is quite true that, if the articles of partnership make no provision, goodwill is an asset of the firm, and the goodwill must be realised for the benefit of all; but it is quite clear that, where the articles provide that the surviving partner is to pay the representatives of the deceased partner upon the footing of the balance sheets, goodwill is not included. *Wedderburn v. Wedderburn* (1855), 22 Beav. 84, is authority for the general proposition. *Steuart v. Gladstone* (1879), 10 Ch.D. 627, is an authority for the exclusion of the value of the goodwill in a case such as this. *Scott v. Scott* (1903), 89 L.T.R. 582, is to the same effect.

*Hibben v. Collister* (1900), 30 S.C.R. 459, is not in conflict with this principle, for there the articles did not provide for an adjustment of the rights of the parties according to former annual accounts, but directed a valuation of all the assets of the partnership after the death.

The next question is, whether, on the valuation for the purpose of ascertaining the share of the deceased partner, the balance sheet of the 31st January, 1913, is binding, or whether the actual value of the assets is now to be ascertained.

The 8th clause, providing for the preparation of the annual balance sheet, requires attestation so as to shew the assent of both parties thereto; but the 10th clause indicates that the bal-