

It was a common practice for the boys to ride to their work in this way, and it was expressly forbidden, and the prohibition was in force as far as possible. It was held that the death was caused by an added peril to which the deceased by his own conduct exposed himself, and not by any peril involved by his contract of service.

I think the appeal should be dismissed with costs, if demanded.

HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LENNOX, agreed.

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DIVISIONAL COURT.

JUNE 20TH, 1912.

FOSTER v. MITCHELL.

3 O. W. N. 1509.

*Partnership Dissolution—Taking Partnership Accounts—Goodwill—Compound Interest—Profit and Loss Account—Depreciation of Plant and Machinery.*

TEETZEL, J., *held*, 20 O. W. R. 754; 3 O. W. N. 425; that where one partner of four makes up a partnership account for the purpose of settling the claim of two of the other partners in the business, which was accepted, at that time, by the fourth partner, as satisfactory to him, the fourth partner is not thereby estopped from going behind that account, upon dissolution of the partnership, other than the valuation placed upon the items, except book accounts which make up the capital.

That where one partner contributed book account (\$4,527) to the capital of the partnership, but subsequently charged back or wrote off \$2,149.96 as bad, he was bound by his own just interpretation of the rights of the parties.

That, where a business had been carried on fairly successfully for several years and the articles manufactured had acquired a good reputation and an extensive and valuable trade connection established, upon it being converted into a partnership, the person who had so carried on that business is entitled to an allowance for "goodwill," as it is an asset capable of valuation.

*Inland Revenue Comrs. v. Muller*, [1901] A. C. 217; *Trego v. Hunt*, [1896] A. C. 7, and *Hill v. Fearis*, [1905] 1 Ch. 466, followed.

That, compound interest should not be allowed, where not provided for in the partnership agreement.

That, the profit and loss account should be properly charged with depreciation on buildings, plant and machinery, but a partner is entitled to have the actual value of all assets ascertained quite apart from any values thereof that appear in the partnership books.

That, where one partner borrowed \$3,500, which he placed in the business, as part of the capital, but concurrently withdrew \$1,000 from the business, he was entitled to interest on the whole \$3,500, but his capital account should be charged with the \$1,000.

DIVISIONAL COURT varied above judgment on a minor finding of fact, but affirmed findings above set out.

Subject to above variation, appeal and cross-appeal dismissed. No costs of appeal.