MIDDLETON, J. (after setting out the facts):—It is obvious that the difficulty in determining the rights of the parties under these articles arises from the paucity of the provisions found therein. . . .

The principle guiding in all attempts to imply terms in a written agreement was investigated by me to the best of my ability in the case of Hopkins v. Jannison (1914), 30 O.L.R. 305, where, at pp. 319 et seq., I collected the cases which establish and illustrate the principle. The Court must at all times avoid making a contract for the parties which they have not themselves made, but on the other hand all terms must be applied which are necessary to give to the transaction that effect which the parties must have intended it to have had, gathering the intention from that which is found in the document itself.

The first and main question asked upon this motion is, whether the surviving partner is not entitled to take over the interest of the deceased partner in the partnership assets, by paying to his estate the amount of his capital, with interest and profits.

The articles make no such express stipulation, but from what they do contain I think that this right must be implied. By clause 9 it is first provided that upon the death of the partner the partnership shall not be dissolved, but shall be continued by the surviving partner either during the current financial year or, at his option, for a period not exceeding 12 months from the date of the death, the capital of the deceased partner in the meantime remaining in the business and bearing interest at the rate of 6 per cent. per annum to the date of payment; and, in addition, the estate of the deceased partner shall receive its appropriate share of profits up to the end of the current financial year. There is embedded in this clause the significant provision that the surviving partner shall not be required to pay to the representative of the deceased partner any portion of his capital until the expiration of 12 months from his death.

Clause 10 is, however, the one that appears to me conclusively to point to the taking over by the surviving partner of the entire business, for it provides that, if any dispute or difficulty arises between the surviving partner and the representatives of the deceased partner as to the valuation of the assets, the dispute is to be referred to arbitration. This would be absolutely meaningless if the valuation was not required to determine some real question—and the only question can be the price to be paid by the surviving partner to the representatives of the deceased partner.