

to arbitrators and others who have to assess the value of goodwill on the dissolution of a partnership by death or otherwise.

Where the partnership is dissolved by the death of one partner, or by the expiration of the agreed time, or otherwise, the rule of law is that the partnership assets and effects, including the goodwill, must be sold and the proceeds divided according to the share of each partner therein. The general rule is, of course, often varied by special agreement in the partnership articles, which provide some special method of winding-up the partnership. In the absence of special stipulation, however, even if one partner buys the share of his deceased or former partner, the measure of the value which he ought to pay is what the deceased or former partner's share would fetch if the whole business were sold to a stranger. This will materially effect the value of goodwill, because on any sale to a stranger the goodwill would be depreciated in value owing to the fact that the former partners could (apart from special stipulation) set up immediately in competition with the purchasing stranger. Mr. Justice Romer said in *Re David and Mathews' Arbitration* (80 L.T. Rep. 75; (1899) 1 Ch., at p. 382): "I think that the goodwill ought to be valued on the footing of the consideration of what its value would have been to the partnership if there had been no contract between the partners that the surviving partner should purchase the share of the deceased partner in the partnership effects and securities, and, therefore, on the footing that, if it were sold, the surviving partner would be at liberty to carry on a rival business, but also, I think, on the footing that he could not use the firm name of the partnership firm, and would not have the right to solicit the old customers of the firm." The prohibition against soliciting old customers does not, of course, extend to the right to deal with them, nor does the prohibition against using the firm name extend to a former partner trading under his own name even if such name has formed part of the firm name. Hence it follows that where the goodwill is, as it were, personal, *i.e.*, has become attached to an active partner, although the goodwill may in itself be very valuable, it may be of little value to a "sleeping partner" or the executors of a deceased partner where the surviving partner has managed the business alone for some time.

—*The Law Times.*