

MIDDLETON, J.

APRIL 9TH, 1915.

RE WOOD VALLANCE & CO.

Partnership—Death of Partner — Determination of Questions Arising upon Partnership Articles—Implication of Terms—Right of Surviving Partner to Take over Interest of Deceased Partner upon Payment of Share of Capital with Interest and Profits—Right of Representatives of Deceased to Share in Profits—Termination of Period—Goodwill — Valuation of Share—Balance Sheets.

Motion by the executors of the late William Vallance, upon originating notice, for an order determining certain questions arising upon the articles of partnership, dated the 31st January, 1910, between W. A. Wood and William Vallance.

Vallance died on the 28th November, 1913. The last balance sheet made up under the articles was on the 31st January, 1913. The partnership provided for by the articles was for a period of five years commencing on the 31st January, 1910.

Clause 2 of the articles provided that the capital of the partnership should consist of the assets of the former firm of Wood Vallance & Co. as they stood at the date of the articles, and that the parties transferred to the new firm of Wood Vallance & Co. all their interests in the assets.

Clause 4 declared that the parties were interested in the capital assets to the amounts following: Vallance, \$479,243.32; Wood, \$577,524.21.

Clause 5 provided for the allowance of interest at 6 per cent. upon the capital to the credit of each partner.

Clause 6 provided for an equal division of the profits after payment of interest.

Clause 7 provided that each partner should devote his whole time to the business.

Clause 8 provided that at the expiration of each year of the partnership an account should be taken of the stock in trade, assets, and liabilities of the partnership, and that an annual balance sheet should then be made out to the 31st January in each year, and be attested by each of the parties.

Clauses 9 and 10 are summarised below.

The motion was heard in the Weekly Court at Toronto.
E. F. B. Johnston, K.C., for the applicants.
W. N. Tilley, for W. A. Wood, the surviving partner.