

W. 40 of 1930
(5)

Lawton

r

Parker

Reasons for judgment

Rich }
Clark }
Dunlop }

Delivered 3.10.1930

LAWTON

V.

PARKER .

JUDGMENT

MR JUSTICE RICH
MR JUSTICE STARKE
MR JUSTICE DIXON

LAWTON V. PARKER.

JUDGMENT

RICH J.
STARKE J.
DIXON J.

This appeal relates primarily to the question whether goodwill should be taken into the capital account of the partnership and if so at what amount. Upon the construction of the partnership ^{articles} ~~accounts~~ we agree with the learned Judge in thinking that it does form part of the capital of the partnership. The case being a small one His Honour at the instance of parties in effect took the capital account himself. He fixed the value of the goodwill at £600 relying upon a valuation of the witness (Cochrane) called for the defence. In the first place the evidence of this witness as recorded does not justify a valuation of £600 for the whole business, but at most £500. In the next place

the value of the material assets must be deducted. We think His Honour's valuation therefore cannot be supported. As, however, the learned Judge accepted the evidence of the witness Cochrane, and as we were most anxious to avoid ~~prolonging~~ ^{prolonging} these proceedings we have hazarded a computation of the capital upon the witness's evidence and given the respondent an option of accepting that in lieu of going upon an inquiry. The learned Judge departed entirely from the ordinary order as to costs in partnership

Hammer v. Giles 11 C.D. 942.

cases. Not only did he not make them payable out of the assets but threw them wholly on the defendant appellant in spite of the fact that the plaintiff respondent had failed on important issues. We can find no ground justifying the learned Judge's order as to costs which therefore cannot stand.

ORDER:- Appeal allowed with costs , appeal against counter claim dismissed.

Order of Wasley J. set aside. No order as to costs of trial Appellant to pay to respondent the sum of £200 in respect of his interest in the capital of the partnership and the amount of £57.5.4 in respect of profits such amount having been ~~placed~~ paid into Court.

The appellant's costs of this appeal to be set off against the amounts payable by him to the respondent under this judgment.