THOMAS LIGGETT (DEFENDANT) .....APPELLANT; 1895

AND *May 9.
*June 26.

HENRY HAMILTON (PLAINTIFF) .....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Partnership—Dissolution—Winding-up—Extra services of one partner—Contract to pay for.

If the business of winding up a partnership concern is apportioned between the partners and each undertakes to perform the share allotted to him, one of them cannot afterwards claim to be paid salary or other remuneration merely for the reason that his share of the work has been more laborious or difficult than that performed by his co-partner, in the absence of any express agreement to that effect or one to be implied from the conduct of the parties.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment of the Superior Court in favour of the plaintiff.

The material facts of the case are sufficiently set out in the above head-note.

Davidson Q.C. for the appellant.

Geoffrion Q.C. for the respondent.

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—I am of opinion that this appeal must be dismissed. The parties were formerly in partnership in a business which was carried on in two departments, the carpet branch and the fancy goods branch. This partnership was dissolved and the appellant, who was to continue the carpet branch of the

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

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The Chief Justice.

business, undertook the winding up of that portion of the partnership affairs, and the respondent the winding up of the fancy goods part, which business he was to continue.

The agreement for winding up was verbal. Nothing was said expressly about remuneration for extra services. Now the appellant seeks to make the respondent liable for salary and commission, alleging that his services in the winding up were much more laborious and onerous than those of the respondent.

It is a rule of the law of partnership, that a partner cannot charge for extra services rendered during the continuance of the partnership, but this rule does not apply to extra services performed after a dissolution, in closing up the affairs of the firm (1). By extra services, however, I understand to be meant work more than the partner claiming the allowance undertook to perform. If the business of the winding up is apportioned between the partners and each undertakes to perform the share allotted to him, I take it to be clear that one of them cannot afterwards claim to be paid salary or other remuneration merely for the reason that his share of the work has been more laborious or difficult than that performed by his co-partner. The question here is therefore purely one of fact: Was there an agreement or understanding that the appellant should give his time and attention to the matters which he actually did attend to and for which he now claims to be paid? No such agreement in express terms is proved, but it is not necessary that there should have been an express agreement; if one can be implied from the conduct of the parties that is enough. In the present case I think it is undoubtedly to be inferred that the appellant did take upon himself the exclusive management of all that portion of the business relating

(1) Lindley, 5 ed. p. 381.

to the carpet branch, and, that being so, he must be understood as having so undertaken it on the implied understanding that he was to do this gratuitously. It was no doubt an advantage to the appellant, who was to continue the carpet business, that he should have the sole control of all the relations with the customers who had dealt with the old firm in that department. Then the financial management for which the appellant claims extra remuneration was to a great extent connected with the carpet branch, and at all events, I think the appellant must be taken to have agreed to attend to all the financial business connected with the winding up. If this was not his intention he should have expressly stipulated for remuneration. I cannot see any error in the judgment appealed against. The Court of Queen's Bench, acting on the rule *de minimis non curat lex*, refused to allow the appeal for the $25, part of the arbitration fees, and *a fortiori* we ought to do the same.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellants: *Davidson & Ritchie.*

Solicitors for respondents: *Geoffrion, Dorion & Allan.*