

HON. MR. JUSTICE MIDDLETON.

APRIL 29TH, 1914.

COX v. RENNIE.

6 O. W. N. 293.

Trade Name—Right to Use Partnership Name—After Dissolution—Similarity to Firm Name of Plaintiffs—Evidence—Action for Injunction.

Where partners engaged in business under a firm name composed of their individual names and one partner sold out his interest to the other,

MIDDLETON, J., held, that the purchasing partner had the right to continue business under the firm name, without the consent of the other.

Burchall v. Wilde, [1900] 1 Ch. 551 and

Smith v. Greer, 7 O. L. R. 332, followed.

That the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on is a right in the nature of a trade-mark, i.e., he must not use a name fictitious or real, or a description, whether true or false which is intended to represent to the public that it is the business of another and thus deprive him of the profits of the business which would otherwise come to him.

That the Court will not interfere to prevent the world outside from being misled into anything. If there is any misleading, it is a matter for the Criminal Courts or the Attorney-General to take notice of, but an individual plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain any one else from injuring his business by using that name.

Levy v. Walker, 10 Ch. D. 436 at 447, approved.

Action tried at Toronto, 24th April, 1914.

W. R. Smith, for plaintiff.

W. H. Ford, for defendant.

HON. MR. JUSTICE MIDDLETON:—The plaintiffs had carried on business under the firm name of Cox & Andrew, as sign painters and decorators, for about ten years. They seek an injunction restraining William J. Rennie and Edward Charles Hartnell from carrying on a similar business under the firm name of Cox & Rennie.

Rennie had been employed by the plaintiffs in their business. In April, 1913, he entered into a partnership with one Herbert H. Cox, in the sign painting business, under the name of Cox & Rennie. This partnership continued until early in September of the same year, when it was dissolved; Cox selling out his interest to Rennie for a small sum. Cox and Rennie both went to a solicitor's office, and the dissolution was evidenced by a memorandum drawn up by the