

club on paying an annual subscription. Stirling, J., therefore held that notwithstanding he found that the proceedings complained of were irregular, yet there being no rights of property involved, the Court could not interfere by way of injunction, and that the plaintiff's remedy was by action for damages.

INJUNCTION AGAINST USING NAME CALCULATED TO MISLEAD.

The decision of Stirling, J., in *Tussaud v. Tussaud*, 44 Chy.D., 678, is an important limitation of the general principle laid down in *Turton v. Turton*, 42 Chy.D., 144, that a man cannot be restrained from using his own name for the purpose of carrying on business—namely, that though he may carry on his own business under his own name, and may also sell to others such business and the right to use his name, and that though the business so carried on might be converted into a joint stock company, with the right to use the same name; yet that a man cannot, for valuable consideration or otherwise, confer on any other person the right to use his name in connection with a business which he has never carried on, and in which he has no interest whatever, or in which he is engaged only as a servant or manager, where such use would be calculated to mislead the public into confounding such business with any other prior existing business.

MINERALS WRONGFULLY TAKEN—ACCOUNT—INTEREST.

*Phillips v. Hornfray*, 44 Chy.D., 694, can hardly be considered as having any very direct bearing in this Province, owing to the difference which exists between our practice in the Master's Office and that which prevails in England. Indirectly, however, it is instructive as showing that where an account is directed against defendants for minerals, wrongfully taken by them, the action is not in the nature of an action of trover, but rather one for money had and received, and, therefore, not one to which the maxim *actio personalis moritur cum persona* applies; it was also held that where no adjudication has been asked at the hearing of the cause, on the question of interest, and the account had been taken without interest, interest could not be allowed on the hearing on further directions. Under our practice, however, the Master may take the account with interest, without any special direction, and where interest has not been allowed by the Master, this case would go to show that it could not be granted on further directions, but the question would have to be raised by way of appeal from his report.

COMPANY—RESERVE CAPITAL—WORKING CAPITAL EXHAUSTED—WINDING UP—R.S.O., C. 183, S. 5.

In *re Bristol Joint Stock Bank*, 44 Chy.D., 703, was an application by a shareholder to wind up a bank under the following circumstances: By the articles of association it was provided that a certain portion of its uncalled capital should not be called except for the purpose of winding up; with the exception of this part of the capital, all the rest except £337 had been exhausted. The company had been in existence for six years, but had never made any profit; it had originally commenced business on a large scale with a considerable staff, but its business was now carried on in small premises, by a single clerk. The petition was