

*Held*, that the repeal was not within the power of the council ; that the original by-law could be set aside or altered, or its effect prevented or changed, only by means of an appeal to the county council under s. 39, that the township council's power, once regularly exercised, was exhausted, to revive again only at the expiration of five years.

*Aylesworth, Q.C., and A. B. Carscallen, for applicant. J. S. Fraser, for township.*

Falconbridge, J., Street, J.] ROPER v. HOPKINS. [Sept. 6.

*Covenant—Restraint of trade—Breach—Assignment of interest pendente lite.*

Upon the plaintiffs becoming the holders of certain shares in an incorporated company carrying on a dairy business, they made an agreement with the defendant, who had formerly been the owner of these shares, by which he was employed as manager of the business, and given a right to re-purchase the shares, and by which he covenanted, among other things, that, if the agreement should be terminated, he would not "become connected in any way in any similar business carried on by any person or persons, corporation or corporations," in the same place. The agreement was terminated about six months later, and about a year after its termination the defendant's son began to carry on a similar business in the same place. The defendant without having any pecuniary interest in this business, and not being employed or paid by his son, but apparently moved solely by a desire to help his son's business, introduced his son to customers of the above mentioned company, and solicited orders for his son from them.

*Held* that, in order to establish a breach of the covenant above quoted, a legal contract of some sort between the defendant and his son must be shown, and, failing such a contract, it could not be said that the defendant was "connected in any way," with his son's business within the meaning of the contract.

Pending this action, which was brought to restrain the defendant from committing breaches of his agreement, the plaintiffs sold their shares in the company and ceased to have any interest in its affairs, but verbally agreed with the vendees to continue the action, and accordingly brought it to trial.

*Held*, that from the time the plaintiffs sold their shares they ceased to have any right to relief under the covenant.

*Semle*, that the benefit of the covenant would be assignable along with the shares.

Judgment of the County Court of York reversed.

*Lobb, for plaintiffs. J. M. Clark, for defendant.*

Meredith, C. J., Rose J., MacMahon, J.] [Sept. 7.

REAL ESTATE LOAN CO. v. GUARDHOUSE.

*Division Courts—Jurisdiction—Cause of action—Principal and interest due on mortgage—Splitting of—Assignee of covenant.*

In an action brought in a Division Court by the assignee of a covenant of a mesne owner of property subject to a mortgage for one of several gales of overdue interest ; the principal also being overdue. On a motion for prohibition,