

PARTNERSHIP — PARTNERS' COVENANT AGAINST TRADING — GOODWILL — FIRM NAME — VENDOR AND PURCHASER — SALE OF SHOP WITH NAME OF VENDOR OVER DOOR.

Townsend v. Jarman (1900) 2 Ch. 698, is a case involving two or three points of interest. The plaintiff and defendant entered into partnership; the plaintiff covenanted that on leaving the firm he would not for twenty-one years carry on the same business as that of the firm within forty miles of Chard, where the firm's business was carried on. The business was principally carried on in a shop in Chard, owned by the defendant, and of which the firm were tenants. In 1895 the business was converted into a joint stock company entitled "Jarman & Co., Limited," to which the plaintiff and defendant sold all their interest and goodwill in the business; and the defendant at the same time sold the shop in Chard to the company, his name, "E. J. Jarman," still remaining thereon, and there was no covenant or agreement that the name should be removed. The company was wound up, and the shop, with the name of Jarman on it, together with the business and goodwill, were sold by the company to the plaintiff, but there was no special assignment of the trade name. The plaintiff then carried on business in the shop under the firm name of "Jarman & Co." The defendant opened a similar business in Chard under the style of "Jarman & Co," and afterwards of "Jarman & Jarman." The plaintiff claimed that the defendant was holding himself out as carrying on the original Chard business, and he claimed an injunction to restrain him from so doing. The defendant counter-claimed for an injunction to restrain the plaintiff from carrying on his business in Chard in breach of the covenant in the partnership articles above referred to; and also an injunction to restrain him from keeping the name of "E. J. Jarman" over his shop. Farwell, J., who tried the action, held, on the evidence, that there had been a holding out by the defendant that he was carrying on the business in succession to the original business at Chard, which entitled the plaintiff to an injunction; but he considered the defendant's counter-claim could not be maintained, because the benefit of the plaintiff's covenant not to trade was a part of the goodwill of the original partnership which had been sold first to the company, and afterwards by the company to the plaintiff himself, and consequently he alone was now entitled to the benefit of it; and as regards the name over the shop, he also held that the defendant