

(c) *Managers of a Business.*—The provisions of an agreement with reference to which the defendant employer was held not to be guilty of trespass for entering without giving the plaintiff employé a month's notice were as follows: The plaintiff was to carry on the business of selling beer for the defendant, and the place and stead, in the same manner, and with and upon the privileges and terms as one U. had theretofore done, until the agreement should be terminated by the notice provided for, that all the beer to be sold and consumed on the premises should be had and taken by the plaintiff from the defendant, and that the plaintiff should not part with the trade or the occupation of the premises without the license of the defendant; that, whenever either party should be desirous of determining the agreement, the plaintiff should, on receiving a month's notice in writing, without being paid any sum of money or consideration quit and deliver up the trade and possession of the premises; and that the plaintiff should be at liberty to leave the trade and quit the occupation of the premises on giving one month's notice in writing. It was held that agreement did not create any tenancy between the plaintiff and defendant, and that the occupation of the plaintiff was as servant to the defendant. *Mayhew v. Suttle* (Exch. Ch. 1854) 4 El. & Bl. 347, 1 Jur. N.S. 303, 24 L.J.Q.B. 54. There Cockburn, C.J., said: "It was properly urged in answer to this view of the case [i.e. that no tenancy was created], that the stipulations that the plaintiff should take beer from no one else, and that he should not part with the trade or business or occupation of the premises without license in writing, are more consistent with an independent occupation by the plaintiff and with his carrying on the business on his own account; but they are not inconsistent with the business being that of the defendant, as expressly stated again and again in the agreement. And the defendant may well have chosen to make it a part of the agreement, that the plaintiff should not sell other parties' beer there, and should not give up the actual occupation, which no doubt he had, although that occupation was a servant, and in law the possession was the master's. So also the fact of the plaintiff having to pay the defendant for the beer as stated in the replication, is not inconsistent with the fact that the possession was really that of the defendant as master. The beer is stated to be the defendant's; and it is quite consistent with the defendant's case that the plaintiff may have had to pay higher prices than what beer is sold for to be sold again at retail. No doubt the prices were to be paid over to the defendant; and the stipulation that he should receive more for the sale on his premises than the wholesale price seems as if he was to receive something as being himself the retailer on the premises, allowing the plaintiff for his services the rest of the excess of the retail over the wholesale price. At all events we must take the sale as stated in the agreement to be for and on account of the defendant." With reference to the effect of the provision with reference to the abandonment of the contract by mutual consent, the learned judge said: "This provision seems well applicable to, and at all events not inconsistent with, the relation of these parties being that of employer and employed. The giving up the occupation is treated as ancillary to and connected with the putting an end to the plaintiff's carrying on and conducting the trade. The notice may be given at any time and not at the end of each month from the commencement; and it was only proper where the relation was not that of menial servant, and where therefore there might be some doubt whether the employment might not be a yearly one, to engage that the relation of the parties may be put an end to by a month's notice. It is well remarked that, supposing there was misconduct on the part of the plaintiff, the defendant might have terminated the contract at once, and on such determination the plaintiff's occupation could not have been intended to be allowed to subsist. It should be observed that either party will have a remedy on the contract, if it be broken by the other determining the engagement without a notice and without reasonable cause."

Where a fishmonger engaged a man to superintend his business in consideration of a salary, a percentage of the profits and lodging on the pre-