ment. Vice-Chancellor Leach did not think that the testimony of the officers of the Mint was so pointed upon this subject as it might have been, but he was of opinion that it was sufficiently plain that the defendant did not apprise them that he was treating for himself in exclusion of the plaintiffs, and that upon the settled principles of equity he could not exclude them from the same proportion of profits as they were entitled to under the first agreement. A declaration was accordingly made that the second agreement was to be considered as made on account of the several parties interested in the first agreement in the proportions in which they were entitled under the first agreement, and accounts were taken accordingly.

Gardner v. McCutcheon (4 Beav. 534), was a motion to restrain the defendant from receiving certain wools. The defendant was part owner and master of a ship, which he sold at Sidney. Soon after the sale he made large purchases of wool, which were consigned to England. The plaintiffs were also co-owners of the ship, and were all interested in the common adventure. They insisted that the wools in question were purchased with partnership property and on the partnership account. They, therefore, claimed the wool as partnership property. For the defendant it was contended that, besides acting as master of the ship, and trading on the joint account, he had a right to trade and did trade on his separate and private account, and that he purchased the wool with his own effects. As a general rule there is no doubt that the master of a ship is bound to employ his whole time and attention in the service of his employers, and that a partner in trade has no right to employ the partnership property in a private speculation for his own benefit. The defendant, however, alleged a custom as making it lawful for him to carry on private trade, and set up acquiescence on the part of the plaintiffs. "As to the alleged custom of trade," said Lord Langdale, "I could not, even if it were uncontradicted, which it is not, pay much attention to it on the present occasion. The master of a ship is an agent bound to give all his time and attention to his principal. In this case the duty of the defendant as master was, when the ship was employed on a trading adventure, to act for the common benefit of the owners, and when the ship was freighted or chartered, to obtain freight on the best terms he could for the owners, free from all bias of separate interest on himself, or of leave given to himself by the charterers to trade for himself; and I think it will be very difficult to support a custom, which, if illegal, as alleged, would entitle him to trade for himself separately, when it was his duty to trade to the best of his ability for the joint interest of himself and the other owners, and would give him a discretionary power to place his own interest in competition with the joint interest, an option to give the advantage to himself whenever he pleased, without the knowledge of his co-owners, and without giving them notice of his proceedings in this respect; a custom also which would make it valid for a person in the relation of co-owner or partner, having complete control over the ship which was partnership property, to employ it at the joint risk for his own private benefit.

The Master of the Rolls had said, in *Dean* v. *M'Dowell:* "The mischiefs of his and the defendant engaging in business are two-fold. It may be that it diverts his mind from the partnership business, and takes away his time and attention, which did not happen in this case; or it may be that it makes him liable for the losses of the other business, and may involve him and damage the partnership in which he is engaged; and therefore, the other parties have an option of intervening by injunction, and that has been the remedy usually adopted. Those are the two remedies. But ever since the Court of Chancery existed, till it was abolished, no one ever heard of such a bill as this. That is pretty good proof that there is no such equity." His Lordship also went upon the words of the clause, considering the covenant as a negative and not an affirmative one. In the Court of Appeal great reliance was placed on the case of *Somerville v. Mackay,* 16 Ves. 382; but as Lord Justice Cotton pointed out, the plaintiff and defendant in that case had agreed to enter into a joint adventure or partnership, for the purpose of exporting goods to Russia, and there was a special provision that the partners should not, on their separate account, export goods to the country or to the particular person named. The defendant, nevertheless, had exported goods to Russia and to the person named. "In that case, there-