

enquête be re-opened. There was also a petition to me in Chambers to discharge the *délibéré*. This petition must be dismissed, and so the motion to reopen the enquête. On the merits, judgment for plaintiff for debt, interest and costs.

*Ouimet, Ouimet & Nantel*, for plaintiff.

*F. O. Wood*, for defendant.

### THE SALE OF THE GOOD WILL OF A BUSINESS.

The decisions of the Master of the Rolls in the recent cases of *Ginesi v. Cooper*, 42 L. T. Rep. N. S. 751; L. Rep. 14 Ch. Div. 596, and *Leggott v. Barrett*, certainly carried the law as to the duty of the vendor of a business who afterwards commences another business similar to the one sold, considerably beyond what it previously had been, and the judgments of the Lords Justices in *Leggott v. Barrett*, 43 L. T. Rep. N. S. 641, dissolving that part of the injunction granted by the Master of the Rolls which restrained the defendant from "dealing with any customer or customers of the firm," in addition to the ordinary words restraining solicitation merely, usefully indicate the proper limits within which, in their opinion, a vendor is, under such circumstances, free to carry on business again, and how far the fact of the prior sale curtails his right of free trading.

In this case the defendant, who had for some years carried on, with the plaintiff, the business of furnishing ironmongers in Bradford, dissolved partnership in July, 1879, and by a deed dated in November of the same year, for the consideration therein mentioned, assigned to the plaintiff all his share in the stock in trade, fixtures and partnership assets generally of the firm. He further covenanted that he would not, "within the space of ten years from the date of the said dissolution of partnership, commence business, either on his own account or in copartnership with any other firm or firms, or take any situation in the trade or business of an ironmonger in Bradford, or within ten miles thereof, except in Leeds, and soon afterwards the plaintiff, alleging that the defendant had sent circulars to and was doing business with some of the old customers of the firm, applied to the court for an injunction restraining the defendant not

only from soliciting but also from dealing with such customers. This order the Master of the Rolls, in accordance with his previous decision in *Ginesi v. Cooper*, made, but the Court of Appeal have held that, while it would be obviously unfair for the defendant to attempt to decoy the old customers from the partner to whom the business had been sold, yet that no rule of justice requires, in the event of those customers, without solicitation, choosing to call at the defendant's shop, that he ought to be restrained from dealing with them.

Although no mention of the word "good-will" may be made in the assignment of a business, it has long been held that the sale of a business carries with it both the good-will and the trade-marks that have been used in connection with it, and in all cases arising out of the resumption of business by a person who has previously sold a similar one, the only important question to be decided is whether or not there has been fraud upon a contract, express or implied, entered into by the vendor at the time of the sale—in the words of Lord Justice Brett—"that he will not immediately afterwards do away with that for which he has been paid, by soliciting the customers, and so practically destroy the good-will which he has agreed to transfer to or leave with another."

Notwithstanding that the nature of the good-will must of necessity vary very much according to the character of the business to which it belongs—as, for example, the good-will of a public house, which is almost entirely local, in contrast with that of a newspaper or patent medicine, which mainly depends upon the name—there are yet in all cases certain common and easily recognizable attributes which it has been found convenient to classify under this name. No better definition has ever been given than the broadly comprehensive and masterly one furnished by Vice Chancellor Wood in *Churton v. Douglas*, Johns. 174, when he says: "'Good-will,' I apprehend, must mean every advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the