

C. & J. Hayward the sum of ten shillings per week, providing the said C. & J. Hayward do not sell bread less in price than the said Thomas Burnell and the trade generally in this particular district of Princes Road, Notting Hill, and St. Anne's Road, of the same Notting Hill, the first payment being due at the end of the first week the said C. & J. Hayward sell bread at the trade prices as above mentioned, which by agreement they do agree to commence doing November 23, 1885; further, if the said Thomas Burnell fail to keep this agreement, the said C. & J. Hayward will be at liberty to take their own course. (Signed) THOMAS BURNELL [stamp 6d.], 10th day of November, 1885.'

From the date of this agreement the plaintiffs sold bread at the trade price, and the payment of 10s. a week was regularly made to them by the defendant up to July, 1886, about which time the plaintiffs dissolved partnership, and subsequently the plaintiff John Hayward continued to carry on the same business alone and to sell bread only at the trade price, and the defendant continued to pay him the 10s. a week up to January 24 last, when the defendant, without notice, discontinued such payment. The plaintiffs now bring their joint action for the arrears of that payment up to April 25 last, amounting to 7l.

The first thing to be considered is the legal construction of this extraordinary agreement, and which must be made with strictness, as it is in restraint of trade. Now, it appears to me clear that this document contains only on the part of the plaintiffs a joint covenant or agreement for their joint acts as partners, and not separate covenants for their separate acts, and indeed, if there were any ambiguity in the words employed, such would be the implication or construction of law, as the words implied would, according to the rule laid down in 'Shepherd's Touchstone,' p. 166, 'have an import corresponding to the interest of the covenantors, so as to be joint where their interest is joint, and several where their interests are several,' and this construction stands to common sense. Suppose a covenant by or with a numerous partnership or company composed (say) of twenty or two hundred persons, it

would be absurd to contend that after the dissolution of the partnership every member of the partnership or company would be bound by or entitled to the benefit of such covenant in his individual capacity, and I can see no difference in this respect between two, twenty, or two hundred partners. This agreement, therefore, amounts only to a contract that the plaintiffs will not jointly as partners sell bread at a lower price than the trade price of the district in question; and consequently, on the dissolution of their partnership, it ceased altogether, and each of the plaintiffs was at liberty to sell bread at such lower price, and after that date the covenant of payment of 10s. by the defendant in my opinion also ceased under the express terms of the agreement, and I think also independently of such terms, inasmuch as the absence of mutuality in the agreement would then render it unreasonable and void, at all events in equity.

Another and a wider question arises in this case—viz., whether the present agreement was not, in its inception, invalid and void, as being in restraint of trade. The rule is, that every agreement in restraint of trade is void, except where it fulfils the following conditions; First, it must be partial in respect of space; second, it must be supported by an adequate consideration; and third, it must be reasonable (see 'Smith's Leading Cases,' *Mitchell v. Reynolds*, and the cases there cited). Now, there is no doubt that the present agreement fulfils the first two conditions; but, in my opinion, it does not fulfil the third, on account of its direct tendency to enhance the price of bread and create a monopoly, and the nature of the consideration. I am, of course, aware that the statutes against the offences of regrating and enhancing the price of provisions at markets have been repealed, and those offences abolished at common law, and that many cases have been decided in favour of mutual agreements between railway companies and between individuals which tend to keep up the charges of conveying passengers and carrying goods, and the prices of certain commodities; but I am not aware of any case in which such an agreement as the present to keep up the price of the necessaries