

never carried on such a business on his own account. 'It could not be doubted,' said Mr. Justice Stirling, 'that the name of Tussaud was well known and of high reputation in connection with waxworks, and that if another exhibition of a similar nature to that of the plaintiff company were to be established in London in the defendant's name the one would "in the ordinary course of human affairs be likely to be confounded with the other," quoting the words of Lord Justice James in *Hendriks v. Montagu (supra)*. It followed in Mr. Justice Stirling's opinion, from the decisions in the two cases of *Burgess v. Burgess (ubi sup.)* and *Turton v. Turton (ubi sup.)*, that the defendant Louis Tussaud was at perfect liberty to open on his own account and to carry on in his own name an exhibition of waxworks. Further, he might take partners into his business, and carry it on under the name of Louis Tussaud & Co. The learned judge, without actually deciding the point, also gave it as his opinion that the defendant, having commenced business on his own account, might sell it with the benefit of the goodwill to third parties, who might continue to carry it on under the same name, and transfer the business and goodwill to a joint-stock company registered under the same name as had previously been used in connection with the business. But His Lordship conceived it to be clear that the defendant could not confer on another person the right to use the name of 'Tussaud' in connection with a business which the defendant had never carried on, and in which the defendant had no interest whatever; and the learned judge came to the conclusion that the defendant could not confer that right on a company in relation to which he would stand simply in the position of a paid servant.

The above expression of opinion by His Lordship bore fruit in a further attempt by the defendant to make use of his name in connection with a waxworks exhibition, he having entered into a partnership to carry on such an undertaking under the name of 'Louis Tussaud's Exhibition.' The plaintiff company again attempted to restrain him from so doing, but on this occasion without success, Mr. Justice Stirling holding that what they sought was practically a monopoly

of the name of Tussaud in connection with waxworks, to which they were not by law entitled.

The subsequent decision of Mr. Justice Kay in *Rendle v. J. Edgcumbe, Rendle & Co. (Lim.)*, 63 L. T. Rep. (N.S.) 94, fortifies the view taken by Mr. Justice Stirling in *Tussaud v. Tussaud*; for Mr. Justice Kay held that the defendant, who was not at the time carrying on a certain business, he having assigned all his interest therein to his creditors, had no right to lend his name to a company promoted by him, and of which he was manager, which name, from its being so like one already attached to an established business, would be calculated to deceive.

Sometimes the question raised is whether on the sale of a business carried on under a particular name the purchaser has a right to use that name. Thus, in *Thynne v. Shove*, 59 Law J. Rep. Chanc. 509, the plaintiff had sold to the defendant his business premises and the goodwill of the business carried on by him there. The deed by which the sale was effected contained no express assignment of the right to use the plaintiff's name. Mr. Justice Stirling held (distinguishing *Levy v. Walker*, 48 Law J. Rep. Chanc. 273; L. R. 10 Chanc. Div. 436) that the defendant had by virtue of the assignment of the goodwill, the right to use the plaintiff's name in the business, so as to show that the business was the one formerly carried on by him, and not so as to expose him to any liability by holding him out as the owner of the business, or as one of the persons with whom contracts were to be made.

The last case to which we shall refer is that of *Lewis's v. Lewis*, 25 L. J. N. C. 111. The plaintiff, who carried on a large retail business in various provincial towns, widely advertised and known as 'Lewis's,' claimed an injunction to prevent the defendant, whose name was J. M. Lewis, from carrying on a similar business in Preston under the name of 'Lewis's.' Mr. Justice Kekewich did not consider that the defendant was using his own name of J. M. Lewis in a fair and honest way when he added to it 's,' preceded by an apostrophe. The learned judge was of opinion that the object of the defendant was to represent that his business was