ject, he was entitled upon his acceptance of the office to hold it for life, excepting he were guilty of immorality or heterodoxy, neither of which, however, had been imputed to him It was also contended that he was *cestui que trust* under the settlement, and had a life interest in the endowment They cited Lewin on Trusts, 402, s. 17; *Doe d. Jones* v. *Jones*, 10 B & C 718; *Doe d Nicholl and Others* v. *McKaeg*, 10 B. & C 721; *Attorney General* v. *Pearson*, 3 Mer 354, 357, 402; *Foley* v *Wontner*, 2 J. & W 246; *Daugars* v. *Rivaz*, 8 W. R 225; 28 Beav. 233; *Attorney General* v. *Drummond*, 1 Dr & War. 353

Whitbread appeared for the defendant Christie, and submitting that he ought not to have been made a defendant, asked for his costs

Greene, Q C, for the defendant Pike, urged that he ought not be made a party to the suit; that he was only agent of the defendant Gordon, and that he was entitled to his costs. He cited *Pope* v *Everard*, 1 Russ. & M. 231; Calvert's Parties to Suits, 301.

Hardy, Q C, in reply, urged that at law the defendant Gordon was a mere tenant-at-will to the trustees, and was removable by a majority either of such trustees or of the congregation. He cited *Perry* v. *Shipway*, 1 Gif. 1; *Attorney-General* v. *Aked*, 7 Sim 321; *Doe d. Earl Thanet* v. *Gartham* 1 Bing. 357; *Rex* v *Giskin*, 8 T. R. 209; *Porter* v. *Clarke*, 2 Sim. 520; *Davis* v. *Jenkins*, 3 Ves & B. 151.

At the conclusion of the arguments his HONOUR said that he would not deliver judgment until next term He strongly exhorted the parties to come to some arrangement in the interval.

(*To be continued.*)

UNITED STATES REPORTS.

SUPREME COURT OF PHILADELPHIA.

HALL v RULON.

(*From the Legal Gazette.*)

1. A contract not to carry on a particular business in a particular place is in restraint of trade, and although valid if made, its existence must be proven by clear and satisfactory evidence, and will not be inferred from the fact of the sale of the *good will* of a business.
2. After making such a sale, however, good faith requires that the vendor shall not hold himself out as *continuing* his former business, and he will be restrained from so doing.

Appeal from the decree of the Court of Common Pleas of Philadelphia County

Opinion by WILLIAMS, J., July 6th, 1869.

We have no doubt of the validity of such a contract as is alleged in the bill, if founded on a sufficient consideration; or of the power of the court to restrain its breach by injunction Our doubt in this case arises from the insufficiency of the proof to establish the existence of the alleged agreement. It cannot be inferred from the sale of the good will of the business, and it is expressly denied in the answer. The sealed agreement between the parties, given in evidence by the plaintiff, contains no stipulation or covenant on the part of the defendant, either to retire from the business, or not to resume it again in the city of Philadelphia; and in this respect it fully corroborates and sustains the answer. Nor is there any sufficient evidence that such a stipulation was omitted through the fraud of the defendant, or the mistake of the parties. The only evidence from which such an inference could possibly arise is the testimony of Joseph R. and Alexander Black, but neither of these witnesses proves that it was one of the express terms and conditions of the sale that the defendant was to retire from the business, and not to resume it again in the city of Philadelphia. On the contrary, their testimony amounts to no more than a declaration of the defendant's intention not to go into the business again in Philadelphia, on account of the state of his health, which had compelled him to give it up The fair inference from their testimony, in connection with the blank left in the agreement, is that while the defendant declared it to be his intention and purpose not to resume the business, he was unwilling and refused to bind himself by a positive stipulation not to resume it at any time thereafter This inference is greatly strengthened by the plaintiff's admissions to Balderston and Fogg after the defendant had resumed the business, and by the fact that he furnished him, without remonstrance or objection, goods to carry on the business for two or three months after he had resumed it. As the alleged agreement is in restraint of trade, its existence should be established by clear and satisfactory evidence, in order to justify the court in restraining its breach by injunction. There should be no doubt or uncertainty in regard to its terms, or the consideration upon which it was founded Here the parties have put their contract in writing, and it must be allowed to speak for itself unless it is clearly shown that the stipulation in question was omitted through fraud or mistake. Under the proofs in this case a court of equity would not reform the agreement as written and sealed by the parties; and if they had not reduced their contract to writing, the evidence would be wholly insufficient to establish it as alleged by the plaintiff.

But there is more of substance in the complaint as to the manner in which the defendant is carrying on the business of an undertaker. He sold the good-will of his business to the plaintiff for a valuable consideration, and good faith requires that he should do nothing which directly tends to deprive him of its benefits and advantages The bill charges and the evidence shows that he is holding himself out to the public by advertisements as having removed from his former place of business—No 1313 Vine Street to his present place of business No 1539 Vine Street—where he will continue his former business It is clear that he has no right to hold himself out as *continuing* the business which he sold to the plaintiff, or as carrying on his former business at another place to which he has removed. *Hogg* v *Kirby*, 8 Ves Ch Rep. 214; *Churton* v. *Douglas*, 1 Johns. Eng Ch. Rep. 174. While, therefore, the appellant is entitled to have the decree of the court below, restraining him from conducting or carrying on his business of undertaking, &c., within the limits of the city of Philadelphia, reversed, it must be so modified as to restrain him from holding himself out to the public by advertisements or otherwise, as continuing his former business, or as carrying it on at another place.

Let the decree be drawn up under the rule.