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GOOD-WILL.

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1. *Good-will may be sold like other personal property: Churton* v. *Douglas*, Johns. Ch. R. 174; *Banks* v. *Gibson*, 11 Jur., Pt. 1, 680; *Hitchcock* v. *Coker*, 6 Ad. & El. 438; *Wedderburn* v. *Wedderburn*, 22 Beav. 84; *Johnson* v. *Helleley*, 34 Id. 63; *Bradbury* v. *Dickens*, 27 Id. 53; *Melleish* v. *Keen*, 28 Id. 453; *Turner* v. *Major*, 3 Gif. 442; *Cruttwell* v. *Lye*, 17 Ves. 335; *Shackle* v. *Baker*, 14 Id. 468; *Hall* v. *Barrows*, 33 L. J. Ch. 204; *McFarlan* v. *Stewart*, 2 Watts 111; *Holden's Admr's. v. McMakin*, 1 Pars. Eq. Ca. (Pa.) 270; *Musselman's Appeal*, 62 Penn. St. R. 81; *Williams* v. *Wilson*, 4 Sandf. Ch. 379: *Dougherty* v. *Van Nostrand*, 1 Hoff. 68; *Howe* v. *Learing*, 19 How. Pr. Rep. 14.[1]

2. (*a*) The vendor of a business and of the good-will thereof, may, in the absence of express stipulation to the contrary, set up a similar but not the identical business, either in the same neighborhood or elsewhere, and may publicly advertise the fact of his having done so; but he must not solicit the customers of the old business to cease dealing with the purchaser, or to give their custom to himself: *Cruttwell* v. *Lye*, 17. Ves. 335; *Cook* v. *Collingridge*, Jacob 607. In the decree in the latter case, which is fully reported in Collyer on Partnership 174, Lord ELDON said that, after a sale, the partners would be at full liberty to carry on the same trade and business; that those who buy the good-will, buy it with full knowledge that it is liable to the chance of the partners not retiring from trade and carrying off the customers of the old establishment.

In *Rupp* v. *Over*, 3 Brewst. (Pa.) 133, the court held that, where plaintiff had sold to defendant the types, &c., and good-will of *The Bedford Inquirer*, it was not error to reject evidence offered by the defendant to prove that plaintiff had afterwards carried on a rival newspaper called *The Bedford Patriot*, by which much of the custom of the *Inquirer* was taken away.

In *Churton* v. *Douglas*, Johns. 187, the principle is well stated by Vice-Chancellor Wood as follows: "The authorities, I think, are conclusive upon this point, that the sale of the good-will of a business, without more, does not imply a contract on the part of the vendor not to set up again a *similar* business himself. I cite the expression *similar* business purposely, in order to distinguish the case I am supposing from one where, as here, the vendor seeks to set up again the *identical* business which he has professed to sell. Upon the sale of the good-will of a business, the vendor is not precluded from carrying on a precisely similar business, with all the advantages he may be able to acquire from his own industry and labor, and from the regard people may have for him; and that, in a place next door, for example, to the very place "where the former business was carried on. And, upon the authorities, it is settled that, if the purchaser wishes to prevent that step from being taken, it is his fault if he does not take care to insert provisions to that effect in the deed." See also *Hall* v. *Barrows*, 33 L. J. Ch. 204; *Davies* v. *Hodgson*, 25 Beav. 177; *Howe* v. *Learing*, 19 How. 14. In *Johnson* v. *Helleley*, 34 Beav. 63, a decree had been made on the death of a partner for the sale of the business as a going concern, and included therein the right on the part of the purchaser to hold himself out as the successor of the firm of "*Samuel J. & Sons*." Upon objection made by the surviving partner, the court decided that the particulars of sale ought to state that the surviving partner, *William J.*, had still a right to carry on the same business in the same form in his own name.

(*b*) In *Labouchere* v. *Dawson*, Law Rep. 13 Eq. 322, the good-will of a brewery business, and the exclusive right to use the name of *Benjamin Dawson & Co.* in connection with the business of brewers, was sold by the defendant to the plaintiffs. The agreement contained no stipulation to prevent the defendant from himself setting up business as a brewer. The defendant began to carry on the business of a brewer, and by his travellers and agents solicited the customers of the firm of *Benjamin Dawson & Co.* for orders. An injunction was awarded by the M. R. (Lord ROMILLY) to restrain the defendant, his partners, servants or agents from applying to any person who was a customer of the firm of *Benjamin Dawson & Co.* prior to the date of the agreement to sell the good-will, privately, by letter, personally, or by a traveller, asking such customers to continue to deal with the defendant, or not to deal with the plaintiffs.

His lordship having stated that the case was a new one, continued: "The question is this: Was he entitled to solicit personally the customers of the old firm to come and deal with him? Now all the cases admit that he is entitled to carry on the same business wherever he pleases, and to solicit customers in any public manner that he pleases. Then it is argued that the power of soliciting the whole of the public to deal with him includes the power of soliciting any one particular person who is a member of the public. On the other hand, the plaintiffs say this: You cannot violate this principle, 'that if you sell a thing you are not entitled to take away its value.' It is true that you sold it without binding yourself not to carry on the same business; yet you did sell it, expressly including the good-will, that good-will being the probability of the old customers going to the new firm to which you have sold the business. The question is, may you go to those very persons and try to prevent their giving their custom to the new firm? It is very true you have not entered into an express covenant that you will not do that, but there is an implied covenant to that effect, for a person cannot sell a thing and destroy the value of it. * * * I am of opinion the defendant is not at liberty personally to solicit the customers of the old business to come to the new business. But this does not exclude what is a reasonable or fair solicitation of those customers; this, however, is a matter to be determined in each particular case. * * * The new firm, the defendant in this case, is entitled to publish any advertisement he pleases in the papers, stating that he is carrying on such business; but he is not entitled, either by private letter or by a visit, or by his traveller or agent, to go to any person who was a customer of the old firm and solicit him not to continue his business with the old firm, but to transfer it to him, the new firm." Lord ROMILLY went on to say, in answer to the question: Where are you to draw the line? that if a person were to publish circulars in the papers which could have no meaning except as a solicitation of the customers of the old firm, and which would be unmeaning if they related to the new firm, he should consider it merely a colorable departure from what was not allowable, and should grant an injunction.

A point somewhat similar had been decided in Pennsylvania in 1850, twenty-one years before. In *Palmer* v. *Graham*, 1 Pars. Eq. Ca. 476, the plaintiff had been in the habit of supplying certain persons regularly with camphine oil. He sold his horse, wagon, cans, &c., together with the good-will of his trade, to defendant, who agreed "to keep up said horse, wagon and route, the custom or good-will, &c., and make such additions to the custom as lay in his power, for the space of twelve months, and in case the money was not paid within that time, he agreed to return the horse, wagon, cans, &c., and a correct and full list of every customer on said route. Defendant did not pay the sum agreed on, and it was agreed that the proviso of the contract should be complied with. The horse, wagon, original list of customers, &c., were returned to the plaintiff, but the defendant continued to supply plaintiff's old customers. KING, P. J., said: "While he professed to return to the plaintiff his property *in statu quo*, he really abstracted from it, for his own benefit, that which constituted its permanent value. That the plaintiff could have maintained an action at law for this breach of good faith, cannot be doubted. But has he not also the more effective remedy in this court of compelling the specific execution of the contract by restraining the defendant by injunction from any further violation of it?" Injunction awarded to restrain defendant or his servants from furnishing camphine to such persons as were customers of the plaintiff at the time that the contract was entered into. It will be observed that in this case it was presumed against the defendant that all of the former customers of plaintiff obtained by him, had been gotten improperly. The injunction was far broader than that granted by Lord ROMILLY, as the mischief was done, and was the result of fraud.

In *Hall's Appeal*, 60 Penn. St. 458, the defendant sold the good-will of his business to the plaintiff for value. Defendant set up the same business within a short distance of his old place of business, the plaintiff's establishment, and advertised that he had removed from his old place and was *continuing his former business* in a different street in the city of Philadelphia. WILLIAMS, J., said: "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. It is clear that he had 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 had removed." Decree granted restraining defendant "from holding himself out to the public by advertisement or otherwise as continuing his former business, or as carrying it on at another place."

In *Angier* v. *Webber*, 14 Allen 211, Angier, Webber and Wakefield were partners, as wagoners between Boston and Somerville. The five wagons owned by them had stands in Boston. Similar wagons had stands in the same and adjoining streets. Webber and Wakefield executed bills of sale to Angier for their share of the business, including tools, &c.; "also all the interest and good-will in and to the teaming business now prosecuted by them in Boston and between Somerville and Boston. And I do covenant and agree * * that I will not in any way do anything which shall in anywise impair or injure the said interest and good-will in the teaming business hereby conveyed." Wakefield and Webber afterwards associated themselves as partners in the business of wagoners in Boston, and purchased the right to two stands already used and enjoyed by other persons, in close neighborhood to some of Angier's stands, and carried merchandise for many of the former customers of the old firm. They did not, however, solicit the business otherwise than by procuring the stands and wagons above mentioned. GRAY, J., on the foregoing facts, refused an injunction restraining the defendants, &c., "from soliciting for, doing or obtaining any work, trade, custom or teaming business for or from any of the customers or persons who, before the date of the bill of sale, were customers of Angier & Co." The plaintiff appealed to the full court, who granted the injunction prayed for.

This case goes far beyond any of those cited, and cannot be sustained on principle. The defendants had sold the good-will of their business to the plaintiff. This, as we have seen, did not preclude them from setting up a *similar* business in the same place. They covenanted, in addition, not to do anything which should in anywise impair or injure the said interest or good-will in the business conveyed. This covenant was superfluous, for the defendants were bound, in the absence of covenants, as the decisions already cited prove, not to do anything which would injure the good-will of the business sold by them. It is difficult to see why a covenant not to do an act forbidden at law should be held to have a wider scope than its language warrants, because, unless the unauthorized meaning were given to it, it would be superfluous. The later cases on the subject do not appear to have been cited.

In the recent unreported case of *Burkhardt* v. *Burkhardt*, in the Superior Court of Cincinnati, the decision in *Labouchere* v. *Dawson*, *supra* 330, was followed. It was said that, though a former partner, who had sold his share of the good-will of the firm, might engage in a similar business and lawfully advertise that fact to the world, he will be enjoined from applying to any customer of the old firm, privately, by letter, personally, or by a runner or traveller, and asking him to deal with him, or to give up dealing with the old firm.

3. (*a*) *When a partnership is dissolved by death, bankruptcy or otherwise, the good-will is an asset of the firm, and should be sold and the proceeds distributed among the partners.*

(*b*) *On the death of a partner, the good-will does not (in equity) go to the survivor.*

(*a*) In the leading case of *Crawshay* v. *Collins*, 15 Ves. 218, a partnership had been dissolved by the bankruptcy of one partner: *Held*, that the assignees were entitled, beyond an account and distribution of the stock, &c., to a participation in subsequent profits, made by the other partners carrying on the trade with the capital, good-will, &c., as it existed at the time of the bankruptcy. Lord ELDON said: "Another mode of determination is * * by the death of one partner; in which case the law says that the property survives to the others. It survives as to the legal title in many cases, but not as to the beneficial interest. * * If the surviving partners think proper to make that which is, in equity, the joint property of the deceased and them, the foundation and plant of increased profit, if they do not think proper to settle with the executor and put an end to the concern, they must be understood to proceed upon the principle which regulated the property before the death of their partner." In *Willett* v. *Blanford*, 1 Hare 253, Sir J. WIGRAM, V. C., says: "Again the whole or substantial part of the trade may consist of good-will, leaving the renewal of contracts with the old connection of the firm unaffected; in such a case the good-will is the identical source of profit, which operates both before and after dissolution. * * If * * the skill of the individual had been exercised as a partner in the concern until it had created a connection and good-will—and if, on his death, the surviving partner, instead of giving to his estate the benefit of that good-will by a sale of the concern, should think proper to carry on the concern for his own benefit until the connection and good-will were lost, it would not be difficult to justify a decree, which, in such a case, should declare the estate of the deceased partner entitled to a share of the profits accrued after his death."

Mellersh v. *Keen*, 27 Beav. 236, and 28 Id. 453. In the latter report the court says: [It] "may be perfectly true that nothing could have been more easy than to have sold it [the good-will] in such a way that nobody would have given a penny for it. But the court is bound to look at it in this point of view: What it would have produced if it had been sold in the most advantageous manner and under such circumstances that it would have produced the largest sum for all the parties interested." So in *Bradbury* v. *Dickens*, 27 Beav. 53, the court, on the dissolution of a literary partnership, ordered the right to use the name of the periodical, "*Household Words*," to be put up for sale and the proceeds to be distributed together with the other firm assets. See also *Turner* v. *Major*, 3 Gif. 442. In *Williams* v. *Wilson*, 4 Sand. Ch. 379, difficulties arose between the partners in a private insane asylum, and one claimed the right, on a dissolution of the partnership, to retain sole possession of the establishment. The Vice-Chancellor decided that the principal value of the establishment arose from the good-will, and that this belongs equally to all the partners. He ordered the sale of the lease of the premises together with the good-will to be made, and proceeds distributed, &c. So in *Holden's Adm's* v. *McMakin*, 1 Pars. Eq. Ca. 270, it is well said that, "it is undoubtedly his [the surviving partner's] duty at once to make sale of all the partnership property of every kind as it was held by the partners at the time of the death of the deceased partner, or of a dissolution caused by bankruptcy, insolvency or otherwise, * * * and divide the balance with, &c. * * * In all cases of a partnership at will, whether the contract was originally of that nature, or has become so by effluxion of time or other circumstances, a court of equity will, upon dissolution, decree a sale of the entirety of the partnership effects, at the desire of any of the parties."

(*b*). In *Hammond* v. *Douglas*, 5 Ves. 539, "the Lord Chancellor [LOUGHBOROUGH] was clearly of opinion that, upon a partnership without articles, the good-will survives, and a sale of it cannot be compelled by the representatives of the deceased partner, being the right of the survivor which the law gives him to carry on the trade. It is not partnership stock of which the executor may compel division." This was in 1800. In 1808, Lord ELDON, in *Crawshay* v. *Collins*, 15 Ves. 218, says he agrees with the doubt expressed by Sir S. ROMILLY, whether this point of the judgment, ascribed by his lordship to Lord LOUGHBOROUGH were good law. In *Lewis* v. *Langdon*, 7 Sim. 421, the view of Lord ELDON was discarded, and the Vice-Chancellor, Sir L. SHADWELL, returned to the earlier decision, noticing Lord ELDON'S doubt, but not satisfactorily answering it. This was in 1835. In 1855 the law was again declared to be in accordance with Lord ELDON'S doubt by Sir JOHN ROMILLY, M. R., who said, in *Wedderburn* v. *Wedderburn*, 22 Beav. 84: "The good-will of a trade, although inseparable from the business, is an appreciable part of the assets of a concern, both in fact and in the estimation of a court of equity. Accordingly, in reported cases, Lord ELDON held, that a share of it properly and of right belonged to the estate of the deceased partner. It does not survive to the remaining partners unless by express agreement. * * * *Good-will* manifestly forms a portion of 'the subject-matter which produces profits, which constitutes partnership property, and which is to be divided among the surviving partners and the estate of the deceased partner, according to the terms of the contract, and when that is silent according to their shares in the concern.' Assume this state of things to exist, that on the death of some partner in a firm possessing extensive connection and high reputation, it was found that they had no capital of any description except the counting-house, and that they had liabilities to a considerable amount, and assume that the surviving partners were, notwithstanding this, able to continue business, to retrieve their affairs and realize large profits for many years, is it not obvious that their profits would be wholly attributable to good-will—that is to the connection and reputation enjoyed by the firm? In the case supposed, the estate of the deceased partner, in the absence of any stipulation to the contrary, would be entitled to a share of the profits because he was entitled to a share of the good-will, which does not survive to the continuing partners." See also *Smith* v. *Everett*, 27 Beav. 446; *Holden's*

Adm's. v. *McMakin*, 1 Pars. Eq. Cas. 274, and *Howe* v. *Learing*, 19 How. Pr. R. 14.

In *Webster* v. *Webster*, 3 Swanston 490, note, motion on part of John Webster, one of the executors of James Webster, deceased, was made for an injunction to restrain defendants, David Webster and James Wedderburn, the two other executors of James Webster, from using the name of the testator in the trade carried on by them in partnership.

The ground upon which this motion was made was, that the defendants used the name of the testator in the trade for the purpose of subjecting his estate to the consequence of the trade, under a pretended agreement made by the testator in his lifetime,

Lord-Chancellor (ELDON). "It is impossible that using the testator's name in the trade, can subject his name to the trade debts."

Mitford. "If it has not that effect, it must be a fraud upon the public."

Lord-Chancellor. "The fraud upon the public is no ground for the plaintiff's coming into court." Motion refused.

In *Scott* v. *Rowland*, 26 L. T. N. S. 391, plaintiff and defendant had been partners under the name of *John Scott & Co.* till 1870, when the partnership was dissolved by the retirement of plaintiff. No deed of assignment was executed, but the whole stock in trade was sold to defendant at a valuation. Nothing was paid for or said about the good-will. An injunction was granted by V. C. WICKENS against the use by the defendant of the firm name, who said that the case was different from that of a deceased or bankrupt partner where no liability could attach, and that, even assuming that the good-will was intended to be included in the sale of the business, it would be a question whether plaintiff could continue to use defendant's name. An injunction was granted, restraining from using plaintiff's name in connection with his business, so as to represent that the plaintiff is a partner in the business.

4. *Good-will may be bequeathed by will.*

In *Hitchcock* v. *Coker*, 6 Ad. & E. 438, Ex. Ch., per TINDAL, C. J. "The good-will of a trade is a subject of value and price, and may be sold, *bequeathed*, or become assets in the funds of the personal representatives." This doctrine was, however, denied in *Robertson* v. *Quiddington*, 28 Beav. 529. A. and B. carried on business as partners on premises belonging to the firm. A. died, having bequeathed his share of the good-will as follows: "In case I should have power * * * to dispose of any part of the good-will of the business of a tailor, now carried on by me in partnership with B. * * * I bequeath such my interest in the same good-will which I may have power to dispose of (but not including my interest in the book debts owing to the firm of [A. & B.] at my decease, nor any interest in the stock in trade then belonging thereto or in the moneys to arise therefrom) as follows:—namely, two-third parts of such my interest in the said good-will, I give to [C.], and the remaining third part I give to [D]." C., the plaintiff, gave notice to the executors in writing, requiring them to take such steps as might be necessary to protect his interest in the good-will of the firm of A. & B., and calling upon them to proceed to a sale of the entire good-will of the concern in order to ascertain his share therein. C., who was one of A.'s executors, but had not joined in proving the will, received from the two other executors a formal written assent to his legacy. The executors assigned A.'s share in the premises to defendant, B. C. filed a bill, praying that the good-will of the business of the firm of A. & B. might be sold and four-ninth parts of the proceeds of the sale paid to him. (A. during his lifetime received two-thirds of the profits of the business.) He also prayed for an account. The bill was demurred to on the ground, (1) that if the good-will had any existence apart from the stock in trade and premises, it was part of the partnership assets, and could only be dealt with in a suit to wind up the partnership transactions; for that a bill for the partial administration of the partnership assets could not be sustained. (2) Because the executors were necessary parties; and as there had been no allegation that the debts had been paid, it would be a breach of trust for executors to assent to a legacy prior to payment of debts. The demurrer was allowed. The Master of the Rolls, Sir J. ROMILLY, said: "I fully concur in the observations on both sides, not only that the good-will is a valuable and tangible thing in many cases, but it is never a tangible thing unless it is connected with the business itself, from which it cannot be separated, and I never knew a case in which it has been so treated. I am of opinion that, even if the executors have assented to this bequest, * * * it is not competent for a legatee of two-thirds of a good-will of a deceased partner to file a bill against the legatee of the remaining one-third and the surviving partner, who is entitled to all the rest of the good-will to have that bequest specifically made good.

"I do not express any opinion as to what may occur in a suit for the general administration of assets, if it should appear that the executors have, by realizing the business, made a profit by the sale of this good-will, or whether thereupon the plaintiff may not have a right to be paid in respect of his interest in it. I should follow no doubt my decision in *Smith* v. *Everett*, 27 Beav. 446, in which the business had been actually sold, and where part of the purchase-money was attributable to the good-will. That, however, can only be ascertained, if, in the course of administration by the executors, they have been able so to deal with the business as to make something from the good-will. Here the bill expressly states that they have so dealt with the business premises as to make that impossible, because they have assigned the testator's interest [in the business premises] to [B]. In this state of things, I am of opinion it is impossible that the plaintiff can be entitled on that mere statement to realize the testator's share of the good-will, as against the person entitled to the other third."

"The case of *Lewis* v. *Langdon*, 7 Sim. 421, also appears to me to establish very clearly that the firm's name (whatever its value may be) survives to the surviving partner, and that, consequently, it could not be sold, and it is obvious that without this it would produce no value at all. If the plaintiff thinks fit to sell his interest, such as it is, nobody can prevent it; but certainly no one would get anything by it."

This case *decides* that the bill of a legatee of two-thirds of the good-will of a deceased partner against the legatee of the remaining third and the surviving partner is demurrable. But the expressions of the Master of the Rolls cover a wider field, and it may be doubted whether they state the law accurately.

Good-will unquestionably is intangible, nor can it be separated from the business; but this does not lessen the duty of the executors to realize this incorporeal asset; and if they deal with it in such a way as to destroy its value, are they not accountable to the full extent thereof? The same judge, in *Mellersh* v. *Keen*, 28 Beav. 453, said: [It] "may be perfectly true in one sense that nothing could have been more easy than to have sold it in such a way that nobody would have given a penny for it. But the court is bound to look at it in this point of view: What it [the good-will] would have produced if it had been sold in the most advantageous manner and under such circumstances that it would have produced the largest sum for all the parties interested." Lord ROMILLY seems to admit that, in a suit for the general administration of assets, the executors might be charged by what they had actually realized from the good-will, or according to the expressions just quoted, by what they might have realized with due diligence. "But," continued the Master of the Rolls, "the bill expressly states that they have so dealt with the business premises as to make that impossible, because they have assigned testator's interest to" [B., the defendant]. The report of the case states that the executors had assigned testator's share *in the business premises* to B. But it is difficult to see why this should by itself render the good-will of no value. Suppose the case of a newspaper— Would a sale of the premises in which, or of the materials by which the manual labor was performed, destroy what might exceed the joint value of the stock a hundredfold, the value of the good-will—the name and subscription list? A newspaper yields, we will say, $50,000 net profits; the interest on the value of the establishment in which it is printed, machinery, &c., may not exceed that sum in value; is there any logical reason why a testator may not order the paper and stock to be sold separately, and may not bequeath the proceeds in different channels; and if he can bequeath the good-will separately, why may he not subdivide it and give a fraction to one and the remainder to another?

And because he has bequeathed the good-will specifically instead of ordering it to be sold, would a court of equity refuse to interfere and permit an asset of immense value to be wilfully destroyed or wrongfully appropriated to the use of one who has no just title to its enjoyment? A surviving partner carrying on the trade and using the good-will of the old firm, is, as we have seen, chargeable with a proportionate share of the profits. But what philosophy or justice is there in a decision which decrees an account of profits and refuses to recognise that which has produced them? Nor can a logical distinction be taken between a legatee and personal representative. If the next of kin is entitled to the value of all of the decedent's property, including the good-will, where he has died without a will, it surely cannot be urged that, where he has designated the objects of his bounty, they are therefore to be deprived of it. But Sir JOHN ROMILLY goes on to say that the case of

Lewis v. *Langdon*, 7 Sim. 421, appears to him pertinent, and to establish clearly that the firm's name (whatever its value may be) survives to the surviving partner, and that consequently it could not be sold; and it is obvious that without this it would produce no value at all. *Lewis* v. *Langdon* was decided on the express ground that the firm- name was part of the good-will, and that good-will went to the surviving partner. This doctrine, as we have seen, was doubted by Lord ELDON, and repudiated by Sir JOHN ROMILLY, in *Wedderburn* v. *Wedderburn*, 22 Beav. 84, in the following words: "The good-will of a trade * * * is an appreciable part of the assets of a concern * * * in the estimation of a court of equity. * * * Lord ELDON held that a share of it properly and of right belongs to the estate of the deceased partner. It does not survive to the remaining partner unless by express agreement. Good-will manifestly forms a portion of the subject-matter which produces profits, which constitutes partnership property, and which is to be divided among the surviving partners and the estate of the deceased partner."

And in *Smith* v. *Everett*, 27 Beav. 446, the same judge says: "I entertain no doubt that, if persons carry on business, and one of them dies, a share in the good-will (where it is of any value at all) forms part of the estate of the deceased partner, and his share of it would be in proportion to his interest in the concern."

And in *Mellersh* v. *Keen*, 27 Beav. 236, and 28 Id. 453, the same judge decided that, in regard to the good-will on a dissolution of partnership, the proper view to be taken is to ascertain "what it would have produced if it had been sold in the most advantageous manner and under such circumstances that it would have produced the largest sum for all the parties interested." It is somewhat difficult to reconcile the language of these three decisions made in 1855, 1859 and 1860 respectively, with that of *Robertson* v. *Quiddington*, made in the latter year, although to what lengths the latter case does exactly go, is, in view of the numerous qualifications introduced, extremely difficult to say.

In *McFarland* v. *Stewart*, 2 Watts 111, it was said that the subscription list of a newspaper was not the subject of a separate property, but an accident of the establishment, which passes with a sale of the materials.

A. S. BIDDLE.

(To be continued.)