

*Horner v. Ashford* (1825, 3 Bing. 322, at p. 326), "by which a person binds himself not to employ his talent, his industry, or his capital in any useful undertaking in the kingdom would be void." The reader must guard himself against accepting dicta of this description. The subject is, indeed, greatly confused by the former rigid adherence to this distinction between general and partial restraints. In point of fact, a restraint, general in point of space, would readily be held bad at the present day; but this is not because it is general, but because, being general, it would probably be held to be unreasonable. We may anticipate matters this far by stating that the reasonability of the restriction in the circumstances of the particular case is the true legal test of the validity of the covenant or contract.

To turn now to what Lord Justice Bowen has called the common law narrative in the development of this doctrine—in Elizabethan times all engagements in restraint of trade were held to be void on the grounds of public policy. Thus in *Colgate v. Bachelor* (Cro. Eliz. 872) an obligation not to carry on the trade of a haberdasher was held bad, although the proscribed area was only the county of Kent. This rule was relaxed by the courts yielding to the requirements of trade. The doctrine itself was found to be more in restraint of trade than the covenants which it purported to vitiate. Masters had in every apprentice a potential rival in trade, and persons becoming aged and infirm lost their trade because they could not put in a vicarious successor. Qualified covenants in restraint of trade had, in practice, come into vogue, and were found to be exceedingly useful in London and other large towns, where traders were wont to let their shops and wares to their apprentices when out of their apprenticeships, on the apprentices binding themselves not to use the trade in the street: (see *Broad v. Jollyfe*, 1620, Cro. Jac. 596). These consequences led to gradual recognition of the possible validity of a covenant in restraint of trade if made for a reasonably sufficient consideration. But this relaxation only extended to so-called partial restraints.

Here we come to the differentiation between general and partial restraints. Lord Macclesfield in the case of *Mitchel v. Reynolds*