

as far as the Year-books. The judgments were, however, orally delivered, and would bear some condensation.

It is unnecessary to recall the facts to the reader's memory, further than to say that the defendant and the plaintiff were half-brothers, with whom their father had been in partnership as iron-workers; that on the surrender by the defendant of his interest in the partnership, he had covenanted to retire wholly and absolutely, not only from the partnership, but, 'so far as the law allows,' from the trade or business thereof in all its branches, and not to trade, act or deal in any way so as to either directly or indirectly affect the remaining partners. The partnership had done business in London and Wolverhampton, and the defendant proposed to start a business of the same kind in London at a certain place, and the injunction restrained him from so doing at that place. Lord Justice Cotton, in dealing with the injunction, points out, as had been pointed out in these columns, that the agreement enforced was in the nature of an executory agreement; but he guards himself against declining to entertain an application to perform the original agreement by directing a proper deed to be executed. He puts his decision, however, on the ground that the covenant in question is contrary to public policy. In this respect the judgment of Lord Justice Cotton differs somewhat from that of his colleagues, who prefer to leave the matter open, suggesting that if there is to be an alteration in public policy it should be made by the House of Lords. The course taken by Lord Justice Cotton on this point will be most approved, and the view of the learned Lords Justices seems to have a somewhat dangerous tendency. The House of Lords has no greater power over the law than the humblest judge in the country, except in the sense that it may overrule the decisions of inferior tribunals, not because it makes new law, but because they are not law. Lord Justice Bowen says: 'It appears unnecessary to consider or decide whether the old doctrine of the common law that covenants absolutely unlimited both in space and time are void ought to be modified, having regard to the altered character of the commercial

intercourse of the world;' and he puts his decision on the ground that, even assuming the possibility of such a contract being legal, there was nothing to show that such a contract was necessary or reasonable in this case. Lord Justice Fry, while agreeing with Lord Justice Bowen in reserving the question of the applicability of the rule of the common law to modern life, holds that the words 'as the law allows' make this particular agreement too vague to be enforced, thus deciding what Lord Justice Cotton does not decide, and leaving undecided what Lord Justice Cotton decides. Lord Justice Cotton, in the course of considering the question he proposed to himself, entered upon a very interesting investigation of the history of the decisions on the subject. It undoubtedly shows that there has been a gradual relaxation of the strictness of the common law. The rule was at first absolute, then was modified in favour of agreements for a sufficient consideration and with reasonable restrictions, and lastly, the element of the sufficiency of the consideration was eliminated. Mr. Justice Kekewich had gone many steps further, and decided not only that an absolute restraint of trade may be good, but that it will be good without showing any necessity under the circumstances for it, if it is accompanied by the saving clause "so far as the law allows." Lords Justices Bowen and Fry show some sympathy with the first of these steps, but decline to follow Mr. Justice Kekewich's second step, while Lord Justice Cotton declines to take any step at all.

The suggestion appears to be that the altered character of the commercial intercourse of the world has made the rule an anachronism. If that could be shown there would be no reason why any judge should shrink from modifying the application of the rule. The rule in its sternest form is illustrated by the case in the Year-books of 2 Hen. V., to which Lord Justice Bowen refers. This was a case of a bond conditioned on a man not exercising his craft for six months in a certain town—what would in modern days be looked upon as a mild and reasonable condition. On hearing the bond read, Mr. Justice Hull was guilty of this