

were authorized by said Act of the Legislature amending intervenant's charter, and which intervenants were not authorized to pay. That the principal sums mentioned in said two first items of part one of schedule cannot and could not in any sense be held to be current working expenses of said road, and even if so, were due at the time of said agreement, and plaintiff had and has not as between him and said intervenants, under the contract of date the 2nd April, 1887, a right to benefit by any reduction made in the capital sums therein mentioned by payments made thereon out of the earnings of the said road;

"And further considering that the amounts so paid out of the earnings of the road on said first two items of schedule, irrespective of interest, more than exceed the par value of the forty-six bonds claimed by plaintiff of defendant, and that plaintiff has not fulfilled the conditions of his contract and agreement of date the 2nd April, 1887, so as to entitle him to the possession of said forty-six bonds, and that it is established that a larger sum by \$2,588.14 was paid out of the earnings of the road on the amounts mentioned in part two of said schedule than appears in the statutory declaration delivered by plaintiff to defendant, which would prevent plaintiff from receiving bonds of the value thereof from defendant, and that plaintiff has not established his right to the forty-six bonds claimed by him in his action against defendant under the contract declared upon by him;

"And considering that intervenants have proved their right to intervene to protect their interests in connection with said bonds, and that it appears that plaintiff is not entitled to ask the delivery thereof from defendant in which they, intervenants, are interested, but that intervenants have not established the nullity of the contract of date 2nd April, 1887, and further that they are not entitled to that part of the conclusions of their intervention which asks for a judgment of the Court ordering the delivery of the bonds to them;

"Doth grant the prayer of the intervention in this cause in so far, and in so far only as they ask to have it declared, that plaintiff

has not carried out the stipulations of said agreement so as to entitle him to the delivery of said bonds from defendant, and in so far as they seek the dismissal of plaintiff's action, asking a judgment to that effect;

"And this Court doth therefore declare that plaintiff hath not carried out the obligations of his contract of date 2nd April, 1887, so as to entitle him to the possession of the forty-six bonds sought by his action against defendant, and doth dismiss plaintiff's action as against defendant, and doth maintain the intervention to this extent, with costs of intervention, distracts to intervenant's attorneys."

H. B. Brown, Q. C., for plaintiff.

Lawrence & Morris, for defendant.

Camirand, Hurd & Fraser, for intervenants.

C. Fitzpatrick and *A. H. Cook*, counsel for intervenants.

CHANCERY DIVISION.

LONDON, April 24, 1891.

Before KEKEWICH, J.

DAVIES et al. v. LOWEN. (28 L. J. N. C.)
*Restraint of Trade—Divisibility of Agreement—
Injunction.*

The plaintiffs in this case were a firm of foreign carriers and express agents, who carried on business in London, Liverpool, and New York. The defendant on entering their service agreed that he would not within twelve calendar months after leaving them carry on or be engaged or interested, either directly or indirectly, in the cities of London, Birmingham, Liverpool, and New York, or within fifty miles thereof, 'either as principal, agent, clerk, or otherwise in any business similar to the business now or hereafter to be carried on by' the plaintiffs. The defendant having left the plaintiffs' service, obtained a situation in the service of a firm of carriers in London.

The plaintiffs brought an action and moved for an interim injunction to restrain the defendant from breaking the above mentioned agreement.

KEKEWICH, J., said that the questions to be considered with regard to an agreement in restraint of trade were: first, whether the limitations in respect of space and time were reasonable; secondly, whether they were