P. Shulman, for the appellant.
J. Earl Lawson, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that it was contended for the appellant that his agreement was invalid—that it was too wide both as to time and space—and that so wide a restriction upon the appellant's right to carry on business was unnecessary for the protection of the respondent in the enjoyment of the right he was intended to enjoy as the purchaser of the business and its goodwill.

The parties were Ruthenians, and it was conceded by the appellant's counsel that people of that race prefer to deal with each other and usually do so. It was shewn that the local business done at the Richmond street store was comparatively small, and that it had customers at points out of the city of Toronto. In other respects the evidence was meagre. There was nothing to shew the number of Ruthenians dwelling in Toronto or whether scattered over the city or living in particular districts.

There is a marked distinction, as to the nature and extent of the restriction that may be imposed, between cases such as this, where the agreement is entered into by the vendor of a business and cases where the agreement is entered into by an employee or servant—the limit of the restriction that may be imposed in the latter class of case being much narrower than in the former: Herbert Morris Limited v. Saxelby, [1916] 1 A.C. 688. The law applicable in the latter class of case was considered in George Weston Limited v. Baird (1916), 37 O.L.R. 514.

Quotations from the report of the former case, pp. 700, 701.

The cases shew that a restraint unlimited as to time—as the restraint here was—is not necessarily invalid, and that the question in each case is, whether the restraint imposed was reasonably necessary for the protection of the person in whose favour it was imposed. In the circumstances of this case, the protection which the restraint was designed to afford was not greater than was reasonably necessary for the protection of the respondent in the enjoyment of the goodwill; and the contract of the appellant was, therefore, a valid and binding contract, unless it was shewn that, though reasonable as between the contracting parties, it was injurious to the public. The onus of shewing this was upon the appellant; and there was nothing in the evidence or in the circumstances which warranted a finding that it was injurious to the public.

The trial Judge assessed the damages at $300, which was the price paid for the goodwill. That would seem to be a large sum