

After about a year and a half of service under the agreement, it was terminated by the plaintiff. The defendant took service with a trade rival of the plaintiff and set out to solicit trade and make sales of the same class of goods upon his old routes.

The action was tried without a jury at Toronto.

A. C. McMaster, for the plaintiff.

F. J. Hughes and F. Regan, for the defendant.

LATCHFORD, J., read a judgment in which he said that the agreement was similar to that in question in *Skeans v. Hampton* (1914), 31 O.L.R. 424. A contract which purports to restrain trade unduly is not illegal, it is merely not enforceable: *North-Western Salt Co. v. Electrolytic Alkali Co.* (1912), 107 L.T. 439; *Mogul S. S. Co. v. McGregor Gow & Co.*, [1892] A.C. 25; and, if the stipulations are severable, effect may be given to that which is valid: *Baines v. Geary* (1887), 35 Ch. D. 154; *Chesman v. Nainby* (1727), 1 Bro. P.C. 234; *Mallan v. May* (1843), 11 M. & W. 653. The plaintiff's counsel is content if the defendant is enjoined from using the knowledge and connection be acquired while in the plaintiff's service, to the plaintiff's prejudice; and to this he is entitled. The plaintiff should not have the wider relief claimed in respect of the whole territory.

It was a case of divided success, and the plaintiff was harsh in dismissing the defendant; so there should be no costs.

Judgment for the plaintiff, without costs, enjoining the defendant from canvassing for business and from selling teas and coffees along the trade routes upon which he worked for the plaintiff, for the remainder of the three-year period. The streets should be defined in the judgment.

There was no question of condonation of a previous offence, as in *McIntyre v. Hockin* (1889), 16 A.R. 498. The plaintiff was quite justified in insisting that his employee should live up to his agreement. *Wicher v. Darling* (1885), 9 O.R. 311, is relevant on the questions of consideration and public policy.

MIDDLETON, J.

MAY 5TH, 1916.

*RE KIRKLAND.

Trust—Royalties from Sale of Books of Deceased Author—Life-tenants and Remaindermen—Apportionment between Capital and Income—Unmarketed Company-shares—Apportionment of Proceeds when Sale Effected.

Motion upon originating notice for an order determining ques-