

The second agreement is on a form used by plaintiffs in connection with the retail trade, and provides, amongst other things, that defendants, in consideration of plaintiffs' covenant to supply them with the above mentioned preparations at a schedule of prices therein set out, agree not to sell such preparations to any retailer except at the schedule of prices mentioned in the said agreement, and then only when such retailer had signed an agreement with plaintiffs to the same effect as the said agreement with defendants.

Plaintiffs allege that they have supplied defendants with their preparations, in accordance with the agreement, and in every way have carried out their part of the contracts.

Plaintiffs charge that defendants have not complied with their covenants contained in the said agreements, and have sold the preparations of plaintiffs at lower prices than those agreed to be observed, as set out in the schedule to said agreements, and defendants refuse to observe and be bound by their covenants in the said agreements. . . .

Defendants plead that the contracts are null and void by reason of being in restraint of trade. Defendants further say that if any such agreements existed, as referred to in plaintiffs' statement of claim, they were procured by an unlawful conspiracy between plaintiffs and other manufacturing chemists and the Association of Wholesale and Retail Druggists, and that the said conspiracy was entered into for the purpose of unduly enhancing the prices of certain medicines, and are contrary to the provisions of the Criminal Code relating thereto, and are null and void.

Plaintiffs' manager was examined for discovery, and it was agreed between the parties that his examination should be put in as evidence.

It appeared from the evidence that the goods covered by the contracts had been supplied to defendants; that defendants had been advised that the contract was illegal and void, and had refused to be bound by it, and had, in fact, sold goods purchased at prices less than the prices fixed by the schedules in the said agreements, in breach of their contracts with plaintiffs. Plaintiffs were in fact paid their prices for the goods. The breach charged was that defendants were selling at less than the schedule prices. Plaintiffs' manager explained how this injuriously affected their business . . . indirectly. . . .