

MARCH 20TH, 1905.

DIVISIONAL COURT.

SHEPPARD PUBLISHING CO. v. HARKINS.

Master and Servant—Contract—Servant to Devote Entire Time to Master's Business and to Engage in no other—Breach—Account of Profits Made in other Businesses—Damages—Costs—Reference—Statute of Limitations—Competitive Business.

Appeal by plaintiffs and cross-appeal by defendant from judgment of IDINGTON, J., 4 O. W. R. 477.

Action for an account of profits alleged to have been made by defendant while employed by plaintiffs as their advertising manager, by devoting to other enterprises time and labour which he had agreed to give to them, and by engaging as principal in competitive business. In the alternative plaintiffs claimed damages for breach by defendant of his contract for exclusive service.

IDINGTON, J., held plaintiffs not entitled to an account of profits, but only to damages, which he assessed at \$5, with costs upon the County Court scale, subject to set-off of the difference between High Court and County Court costs of defence.

The appeal was in regard to the dismissal of the claim for an account, and the cross-appeal against the finding of liability for damages for breach of contract.

A. B. Aylesworth, K.C., and W. J. Elliott, for plaintiffs.
W. R. Riddell, K.C., and W. T. J. Lee, for defendant.

The judgment of the Court (MEREDITH, C.J., TEETZEL, J., ANGLIN, J.), was delivered by

ANGLIN, J.:— . . . The trial Judge found as facts that defendant in 1889 engaged to devote his entire time and attention to the advertising interests of plaintiffs, and to engage in no other business during the period covered by the agreement then made; that this provision of the original agreement was extended to the continued services of defendant with plaintiffs; and that the businesses undertaken by defendant, of which plaintiffs complain, were carried on by him while he was in their employment upon these terms.

There is ample evidence to support these findings, and I am unable to say that there was any error either in making them, or in holding that defendant was guilty of a breach of his engagement with plaintiffs. It follows that the cross-appeal of defendant fails and must be dismissed with costs.