

PATENT—*Continued.*

article sold by him in competition with the patent is not an infringement of it.
BARCLAY v. McAVITY1

2. — *Sale of Interest in Invention and Improvements—Improvements Not Amounting to a New Invention—Construction of Agreement.*] Defendant was the inventor and owner of a patented snow plough, and by an agreement with K. sold to him a one-half interest in the invention and all improvements that subsequently might be made. The invention proving unsatisfactory, defendant constructed a new plough, which was an improvement in many important respects upon the original invention, and sufficiently dissimilar to it as not to be an infringement, and had it patented as a new invention. In a suit by K.'s administrators to secure to them a one-half interest in the new patent, the defendant contended that the plough was a new invention and not an improvement of the old invention. *Held*, that it did not amount to more than an improvement within the meaning of the agreement.
ALBERT JONES AND JOHN MCGINTY, ADMINISTRATORS OF JAMES T. KENNEDY, DECEASED, v. RUSSELL232

PHYSICIAN—*Sale of Practice—Agreement—Covenant to Discontinue Practice—Legality—Restraint of Trade—Condition Precedent—Waiver—New Brunswick Medical Act, 33 Viet. c. 19—Vendor not Registered—Terms of Injunction.*] The plaintiff was a physician practising at Sussex, and in receipt of a large income. Having occasion to remove from the Province, he entered into an agreement with the defendant, a physician, to lease to him a part of his (the plaintiff's) house, including offices, for two years from July 1, 1894. An annual rental was reserved. The defendant covenanted that at the end of the lease he would either purchase the house at a named sum, or would forthwith leave and depart from the parish of Sussex, and would not for a period of at least three years next thereafter reside in said parish, or practise thereat, either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practising in said parish, or elsewhere within ten miles thereof, and that he would, at least three months before the

PHYSICIAN—*Continued.*

end of the said term, give the plaintiff notice in writing whether he would so purchase or would depart from Sussex. It was provided that if at the end of the term the plaintiff did not wish to sell he could return to Sussex and resume practising, in which case the defendant might remain and practise in Sussex. The plaintiff covenanted that he would on or before July 1, 1894, repair the roof of the house, and that from that date he would cease to practise in the parish of Sussex for two years, and that if the defendant purchased the house and lot as aforesaid he would not practice in Sussex for three years from said date. Repairs to the roof were not made until January, 1895, and were found to be insufficient, and it was not until the fall of 1895 that the matter was attended to, when a new roof was put on. At the time the defendant went into possession, July 1, 1894, he was aware that the repairs had not been made, and he raised no objection to the plaintiff's default. At the time of the agreement the plaintiff was not a registered physician, though he had been registered the year before, and was entitled to be registered on payment of the annual fee. At the end of the lease the defendant declined to purchase the property, or discontinue to practise at Sussex. In a suit for an injunction to restrain the defendant from practising and residing at Sussex, in the terms of his covenant: *Held*, (1) that the agreement was not invalid as being in restraint of trade, and contrary to public policy, (2) that there had been a waiver by the defendant with respect to the time of performance of plaintiff's covenant to make repairs; and that its performance was not a condition precedent to the performance by the defendant of his covenant, (3) that it was immaterial that the plaintiff was not a registered physician at the time of the agreement; (4) that defendant's covenant was supported by consideration, (5) that the defendant should be enjoined from residing at Sussex as well as from practising there. **RYAN v. McNICHOL**487

PLEADING—*Allegations of Fact—Conclusions of Law.*] A bill must allege facts and not conclusions of law.
SMITH v. THE HALIFAX BANKING COMPANY17