CLUTE, J., in a written judgment, said that the plaintiff admitted that he sold at prices less than the association prices, and asserted a right to do so. He denied that there was any such limitation in the contract as was alleged by the defendant company.

In the view of the learned Judge, the whole correspondence between the parties was so connected as to be admissible to shew what the contract was; and from the correspondence it clearly appeared that the contract was subject to the provision alleged by the defendant company. Having regard to all the facts and the nature of the contract and what took place between the parties after the defendant company heard of the breach of contract by the plaintiff, the defendant company was justified in regarding the plaintiff's action as a repudiation of his part of the contract and a refusal in advance to be bound by it, and the defendant company was justified in treating it as cancelled and in refusing to fill the further specifications after the breach.

If sec. 498 of the Criminal Code was applicable, and the illegal part of the contract could not be separated, but formed part of the consideration, the whole contract was void; the plaintiff, being a party to it, could not sue upon it, and so the plaintiff's action would fail.

The learned Judge, after quoting sec. 498 of the Code, making it an indictable offence to conspire, combine, agree, or arrange with any other person (*b*) "to restrain or injure trade or commerce in relation to any . . . article or commodity . . . (*d*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, . . . or supply of any . . . article or commodity," referred to Hately v. Elliott (1905), 9 O.L.R. 185; Rex v. Elliott (1905), 9 O.L.R. 648; Wampole & Co. v. F. E. Karn Co. Limited (1906), 11 O.L.R. 619; Rex v. Beckett (1910), 20 O.L.R. 401, 427; Weidman v. Shragge (1912), 46 S.C.R. 1; Stearns v. Avery (1915), 33 O.L.R. 251; and to a number of English and American cases.

The result of a consideration of all the cases was to shew that sec. 498 was not to be construed as in accordance with the common law, but in the way indicated by the Canadian cases.

The contract between the parties included the agreement on the part of the plaintiff to maintain association prices. It was because the plaintiff refused to be bound by this clause of the contract that the defendant company refused to make further deliveries.

The agreement was made on the 14th May, 1914, between