

and to refuse to sell except to persons who will undertake to observe such terms. If they do not like the terms, they need not buy, and there is no law which will compel a manufacturer to sell his wares if he does not wish to do so.

The validity of an agreement to maintain retail prices was considered in the case of *Elliman, Sons and Co. Limited v. Carrington and Son Limited* (84 L.T. Rep. 858; (1901), 2 Ch. 275). The manufacturers of an embrocation sold it wholesale to druggists and other dealers, and, in order that the retail price should not fall below a certain fixed level, they required their trade purchasers to enter into written agreements undertaking not to sell below the named prices. They also required their purchasers, in the event of their supplying any of the embrocation to the trade, to obtain from any retailer they supplied a similar written undertaking. The defendants, who had purchased a large quantity of bottles of the embrocation from the plaintiffs and signed the agreement sold a portion of them to certain retail dealers without obtaining from them any undertaking. Messrs. Elliman having learned that the retail dealers had sold some of these bottles at less than the stipulated prices commenced proceedings against the defendants for damages.

Objections were raised to the claim that the agreement sued upon was in restraint of trade. This view the court declined to adopt, and it refused to put restrictions upon the right of manufacturers when selling their goods to make a bargain as to the use to be made of them by the purchasers. Just as the manufacturers could not be interfered with in fixing the price to the wholesale dealer, so they were at liberty to fix a price below which the goods should not be sold retail. They had their remedy in that they could refuse to supply the goods, and they could maintain an action for breach of agreement against dealers who had contracted with them.

Difficulties have, however, arisen where manufacturers have sought to impose conditions upon persons with whom they were under no definite contractual relationship. For while it is clear