

confectionery, pastry, or other bakery products, within the city of Toronto, for himself or for any other person, firm, or company than the" plaintiffs, etc. The judgment awarded the plaintiffs an injunction and \$5 damages.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. Bicknell, for the appellant.

E. B. Ryckman, K.C., for the plaintiffs, respondents.

LENNOX, J., read a judgment setting forth the facts. He was of opinion that there was nothing in the fact that the defendant was in the service of the plaintiffs before he signed the agreement. He was making trial trips only; his engagement was conditional upon his proving to be efficient and satisfactory; and the authorities are clearly and uniformly against the defendant in such circumstances—generally even where there has been previous service of a permanent character.

The restraint provided for, having regard to the extent and character of the plaintiffs' business, was reasonable as to time, and the area was not too wide to be embraced in an effective agreement, if properly confined to the actual connection of the defendant with the plaintiffs' business and customers, and limited to what was reasonably necessary to prevent prejudice to the plaintiffs' proprietary rights arising out of the employment. There was legitimate scope for an effective restrictive agreement of a limited character; it could have been framed, entered into, and enforced; but the agreement actually made was not of this character—it attempted too much, was unfair to the defendant, prejudicial to the public interest, and not enforceable in whole or in part. It was an attempt to prevent competition of a character not arising out of, and throughout an area wider than the proposed or actual scope of, the defendant's employment.

The learned Judge considered and quoted from a number of authorities—among others: Halsbury's Laws of England, vol. 27, para. 1097; *Skeans v. Hampton* (1914), 31 O.L.R. 424; *Herbert Morris Limited v. Saxelby*, [1916] A.C. 688; *Mason v. Provident Clothing and Supply Co.*, [1913] A.C. 724.

The paramount consideration is always the public interest. Subject to this consideration, the recognised aim is freedom of trade and freedom of contract.

The provisions of the contract were not distinctly severable; and it was not a case in which some of the restrictions should be enforced and others disregarded.