

*Held*, 1. An injunction may be granted against a publisher and a company controlled by him, jointly sued for infringing his contract which conferred exclusive rights of sale of a copyrighted book upon another company in consideration of the latter's purchase of a specified number of copies of the work, to restrain the future selling or offering for sale of such work by either of defendants in contravention of the contract, and damages may be awarded for the past infringement.

See *Pitt, Pitts v. George & Co.*, [1896] 2 Ch. 866; *Walsh v. Whitcomb*, 2 Esp. 565; *Bohn v. Bogue*, 10 Jur. 421; *Re Hirth*, [1899] 1 Q.B. 612, 625.

2. In an action for infringement of exclusive territorial rights of sale conferred by contract, the court may give weight to the circumstance that the defendant had, prior to the expiry date for which he himself contended, and which was in dispute, made extensive preparations to invade the business territory in question in competition with the party holding such contractual rights, and had not communicated the fact to the latter.

See *Bank of New Zealand v. Simpson*, [1900] A.C. 182; *Waterpark v. Fennell*, 7 H.L.C. 650, 678; *The "Curfew,"* [1891] P. 131.

3. Where an exclusive agency for a copyright publication has been granted within a defined territory in consideration of a guaranteed purchase by the agent of a large quantity for resale and where the parties for a long period thereafter have acted as though there were an enforceable contract and goods have been supplied and accepted in pursuance thereof, a plea of the Statute of Frauds (sec. 4) is not a bar in equity to the enforcement of the contract so acted upon, even if there were no sufficient memorandum to answer the statute.

*Prested v. Garner*, [1910] 2 K.B. 776, and in appeal, [1911] 1 K.B. 425, distinguished.

4. A letter setting forth in detail what the writer claimed had been agreed upon and purporting to confirm an unsigned cablegram sent by him a short time previously must be regarded in ascertaining the terms of a contract informally made and not theretofore completely shewn by a writing signed by the party to be charged; and where the party receiving the letter did not repudiate (although through inadvertence) and the contract in other respects was acted upon and partially performed, he must be taken to have accepted any variation of terms expressed in the letter.