

Bain, J.]

BENTLEY v. BENTLEY.

[Dec. 30, 1898.]

*Contract—Injunction—Restraint of trade—Specific delivery of chattels—
Specific performance of covenant.*

The plaintiff had been carrying on, under the name of the "Berlin Portrait Co.," the business of making enlarged portraits in crayon from photographs, and on the first of July, 1897, the defendant entered into a written agreement with him to become his agent for the term therein specified to take orders for portrait work and frames, and he agreed to keep three agents, of whom he himself might be one, engaged in canvassing for orders for an average of six months at least, between the First of April and the Thirty-first of December in each year, while the agreement remained in force. The defendant and his agents canvassed for orders, obtaining a photograph in each case from which the portrait would be made, and directions for the portrait, which were generally noted on the back of the photograph. In June, 1898, differences arose between plaintiff and defendant, but the defendant and his men, using the sample portraits of the plaintiff, continued to canvass and take orders for the Berlin Portrait Co. until the 20th June. These orders, taken under the terms of the contract, and amounting to about \$3,000, the defendant, in his statement of defence, expressed his willingness to hand over to the plaintiff; but he had not done so, and at the trial his counsel argued that the plaintiff was not entitled to have them delivered over. On the 20th June the defendant notified the plaintiff's solicitor that he had decided to rescind the agreement between them. In it the defendant had covenanted that he would act "as such agent of the plaintiff as aforesaid, and in accordance with the terms of this agreement." Also, "that he will sell no goods other than portraits and frames between the 1st day of April and the 31st day of December in each year without first obtaining the consent thereto" of the plaintiff, and that neither he nor his agents would handle anything in the picture or frame line other than those stated in the agreement during the currency thereof without first obtaining the permission of the plaintiff.

The plaintiff asked for an order for the delivery over to him of the orders for portraits taken by the defendant under the agreement between them, also for an injunction to prevent the defendant from carrying on, on his own account, the business of making portraits from photographs in competition with the plaintiff.

Held 1. The Court would not undertake to enforce specifically the defendant's covenant, that he would act as the agent of the plaintiff.

2. As to the covenant in the agreement not to "handle," etc., the language was too vague and uncertain to enable the Court to order an injunction against the defendant in terms of the covenant, also that the covenant itself was void, as being in undue restraint of trade, as there was no limitation of space.