

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

G. T. Walsh, for the appellants.

C. H. Porter, for the plaintiff, respondent.

RIDDELL, J., in a written opinion, after stating the facts, said that the Clerk of the Division Court had no right to place the case on the list for trial on the 20th May, 1915; the statute is specific that he "shall place the action on the list for trial at the next sittings of his Court which commences six clear days or more after he receives the papers:" R.S.O. 1914 ch. 63, sec. 79 (2). The case was, against the express direction of the statute, put on the list for trial; and it must be treated as though it were not there at all. The Judge had no power to try the case at that time—the statute is imperative. There had been no "trial" in law, and sec. 123 did not apply. It was unnecessary to express any opinion as to whether *Re Nilick v. Marks* (1900), 31 O.R. 677, was rightly decided, as it was inapplicable.

The appeal should be dismissed with costs.

MEREDITH, C.J.C.P., agreed in the result, for reasons stated in writing.

LENNOX and MASTEN, JJ., also concurred.

*Appeal dismissed with costs.*

SECOND DIVISIONAL COURT.

JUNE 28TH, 1916.

\*GEORGE WESTON LIMITED v. BAIRD.

*Covenant—Restraint of Trade—Unreasonable Restrictions—Public Interest—Inseparable Provisions—Refusal to Enforce Agreement.*

Appeal by the defendant from the judgment of one of the Judges of the County Court of the County of York, in favour of the plaintiffs, in an action for an injunction and damages in respect of the defendant's alleged breach of an agreement or covenant "that he will not during his employment" (as cake-salesman and driver for the plaintiffs), "or within twelve months after its termination, whether by mutual consent or otherwise, drive a cake-waggon or sell or deliver or serve or solicit orders for any cakes,