The action was tried without a jury at a Toronto sittings.

W. J. McLarty, for the plaintiffs.

R. G. Agnew and W. H. Kirkpatrick, for the defendants.

MASTEN, J., in a written judgment, after setting out the facts, dealt first with the claim against Collins. If the covenant was valid, Collins had committed a breach of it. The covenant, however, was unlimited in space or area. That did not make it bad; but, having regard to the nature of the plaintiffs' business, as disclosed by the evidence, the prohibition was too wide as to territory, was not reasonably necessary for the plaintiffs' protection in their business, and should not be enforced: Allen Manufacturing Co. v. Murphy (1911), 23 O.L.R. 467; Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co., [1894] A.C. 535, at p. 565.

In reference to the patent, the learned Judge referred to Frost on Patents, 4th ed., p. 73, and Walker on Patents, 5th ed., sec. 32, for the principles to be applied in determining whether or not a combination is patentable, and said that those principles had been fully adopted in our own jurisprudence: Smith v. Goldie (1883), 9 Can. S.C.R. 46; Toronto Telephone Manufacturing Co. v. Bell Telephone Co. of Canada (1885), 2 Can. Ex. C.R. 495; Mitchell v. Hancock Inspirator Co. (1886), 2 Can. Ex. C.R. 539; Dansereau v. Bellemare (1889), 16 Can. S.C.R. 180.

In the present case there was a collocation of inter-communicating parts, which, in virtue of such inter-communication, produced a definite and specific result not hitherto attained, that object being to shake and jolt the ashes and clinkers from the middle part of the top of the grate-bar. The simultaneous action of the three movements, namely, the revolving movement of the grate, its lateral or horizontal movement, and its vertical movement, coupled with the jarring or jolting of the bar against the shoulder of the bearing slot in which it sits, produces the definite and specific result of shaking the ashes and clinkers from the top of the bar when otherwise they would not be removed. This is a valid combination and patentable, and adequately covered by the 5th claim of the patent.

The case was presented and argued at large without special reference to the different claims set forth in the patent, and the learned Judge expressed no opinion whatever as to the validity of claims 6, 8, and 9, mentioned in the expert evidence of the plaintiffs.

In the result there should be judgment, in the usual form, for an injunction, but without any award of damages, and without a reference as to profits, no case having been made on that score. The other claims of the plaintiffs were dismissed.

Having regard to the divided success in the action, in the exercise of the Judge's discretion, no costs should be awarded.