

BOYD, C.

MARCH 9TH, 1915.

*STEARNS v. AVERY.

Contract—Illegality—Sale of Goods—Conditions Unreasonably Enhancing Prices Charged to Public—Element of Crime—Impairing Freedom of Contract—Refusal to Enforce Agreement.

Motion by the plaintiffs for an interim injunction restraining the defendant from selling the goods manufactured by the plaintiffs except at prices mentioned in an agreement between the plaintiffs and defendant.

The motion was heard by BOYD, C., in the Weekly Court at Toronto.

S. H. Bradford, K.C., for the plaintiffs.

A. C. McMaster, for the defendant.

BOYD, C.:—The 5th paragraph of the defendant's affidavit would shew that the profits exacted by the plaintiffs to be made by the defendant are greatly in excess of what would be fair and reasonable. The case was not argued on the facts, but rather put upon the law as to whether the English case of *Elliman Sons & Co. v. Carrington & Son Limited*, [1901] 2 Ch. 275, was to be regarded as applicable, or the Canadian case of *Wampole & Co. v. F. E. Karn Co. Limited* (1906), 11 O.L.R. 619. If the right view is, as I think it is, that the stipulations imposed by the vendor-plaintiffs were such as unreasonably to enhance the price to the purchasing public, then the element of crime comes in and affects the freedom of contract which might otherwise exist. That being so, I think it is my duty to follow the *Wampole* case. I would call attention to the fact that this case was followed by *Mathers, C.J.*, in a Manitoba case, *Shragge v. Weidman* (1910), 20 Man. R. 178. He was reversed on appeal in that Province; but his decision was restored by the Supreme Court of Canada: *Weidman v. Shragge* (1912), 46 S.C.R. 1.

The English decision was also not followed by the Supreme Court of the United States in *Miles Medical Co. v. Park & Sons Co.* (1911), 220 U.S. 373, 413, for reasons generally in accord with the lines adopted by my brother Clute in the *Wampole* case.

I refuse the motion for injunction with costs; and I suppose that means the dismissal of the action also.