

cessary for the protection of the covenantee. "When once it is admitted," said Lord Herschell (*Nordenfelt v. Maxim-Nordenfelt Guns and Ammunition Company*, 71 L. T. Rep. 489; (1894) A. C. 535, at p. 548), "that whether the covenant be general or particular the question of its validity is alike determined by the consideration whether it exceeds what is necessary for the protection of the covenantee, the distinction between general restraints ceases to be a distinction in point of law." "The tendency in later cases," added his Lordship, "has certainly been to allow a restriction in point of space which formerly would have been thought unreasonable, manifestly because of the improved means of communication. A radius of one hundred and fifty or even two hundred miles has not been held too much in some cases. For the same reason I think a restriction applying to the entire kingdom may in other cases be requisite and justifiable."

Every case must, of course, be decided upon its own particular circumstances, and because a covenant not to carry on a trade within a radius of twenty miles of a certain spot may have been held good in one case, it does not follow that a covenant to carry on the same trade within a similar area would be held good in another case. Yet the following instances of covenants, which the Court has upheld as valid and unoffending against the doctrine, will serve as a general guide on the subject.

We shall take the medical profession first. In *Atkins v. Kinneir* (1850, 4 Ex. 776) a surgeon, entering into a three years' partnership with another surgeon, covenanted not at any time to practise as a surgeon within a distance of two and a half miles of a particular house in London, the distance to be measured by the usual streets or ways of approach to the house. In *Davis v. Mason* (1793, 5 T. R. 118) the covenant debarred practice for a period of seven years within a distance of ten miles of a particular country town in Norfolk. In *Saunders v. Ferguson* (1849, 7 C.B. 716) the restraint was unlimited in point of time, but the proscribed area was seven miles from Macclesfield. In *Gravelly v. Barnard* (1874, 18 Eq. 518) the proscribed area was a particular parish in Sussex, and a distance of ten miles from that parish with the exception of the town of Lewes. This restraint was to last