

insurance therein, which in case of loss or damage to the goods, the company were to have the benefit of, the company are precluded from setting up the breach of such a condition as a ground for relief from liability, when the damage to the goods has been occasioned through negligence.

Idington, K.C., and *Harstone*, for plaintiffs. *Walter Cassels*, K.C., and *Forster*, for defendants.

Falconbridge, C.J.K.B., Street, J., Britton, J.]

[April 18.

BERRY v. DAYS.

Covenant—Double—Severable—Waiver of part—Assignable—Injunction.

Defendant covenanted with the plaintiff that he would not "directly or indirectly engage in the drug business in said Village of L. or within a radius of ten miles therefrom during a term of five years from this date . . . and that he will not open or have part in a third or further drug store in . . . during a term of five years from this date." The plaintiff sold his share in the drug business to the defendant and actively promoted a partnership between him and his (plaintiffs) son, which was continued for some months when the defendant sold out to the son. The plaintiff afterwards acquired the business and sold it to his co-plaintiff by bill of sale, reciting the covenant and extended its benefit to the purchaser and covenanted with him to save him harmless from a breach of the covenant by the defendant. In an action to restrain the defendant from carrying on a third drug store which he had opened.

Held, 1. For the first five years there were two concurrent severable covenants and that while the plaintiff might, by his conduct, have waived a breach of the first not to enter into business during the five years, he had not waived any breach of the second not to open or have part in a third store.

2. The covenant was assignable and the right to enforce it did not terminate by reason of the plaintiff having gone out of business, and an injunction was granted restraining the defendant from opening, carrying on or having part in a third store for the ten years.

Judgment of MacMahon, J., affirmed.

Paterson, K.C., for the appeal. *Proudfoot*, K.C., contra.

Britton, J.]

KINGSTON v. SALVATION ARMY.

[May 4.

Parties—Unincorporated Association.

The Salvation Army, the duly appointed officers of which are entitled under R.S.O. 1897, c. 162, to solemnize marriages, and which, under R.S.O. 1897, c. 307, may hold property in Ontario, may be sued in the courts of Ontario.

A. E. Hoskin, for defendants. *D'Arcy Tate*, for plaintiff.