

MARCH 14TH, 1911.

## ALLEN MANUFACTURING CO. v. MURPHY.

*Covenant—Restraint of Trade—Agreement by Servant not to Engage in Business of a Similar Kind to that of Master—Engaging in one of two Departments of Business—Breach of Covenant—Restriction Extending to the Whole of Canada—Unreasonable Restriction—Invalidity—Interests and Requirements of Covenantees' Business—Public Policy—Freedom of Contract.*

Appeal by the defendant from the judgment of a Divisional Court, ante 442, 22 O.L.R. 539, reversing the judgment of MULLOCK, C.J.Ex.D., at the trial, and directing judgment to be entered for the plaintiffs in an action based upon an alleged breach of a covenant in restraint of trade.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., and H. H. Shaver, for the defendant.  
H. M. Mowat, K.C., for the plaintiffs.

MOSS, C.J.O. (after setting out the facts):—By the formal judgment the defendant is restrained until the 2nd June, 1913, from being either directly or indirectly employed or interested in any way, by himself or with or through any other person or persons or corporation whatever, in the city of Toronto, in any laundry business of a similar kind to that carried on by the plaintiffs in the city of Toronto, or from setting up or conducting the same. He is also condemned to pay damages, if the plaintiffs have sustained any by reason of the breaches set forth, to be ascertained by the Master, together with the costs.

Upon this appeal the only substantial question argued was whether the covenant or agreement in question offends the rules respecting agreements in restraint of trade. It is limited as to time, but as regards space it extends to the whole and every part of the Dominion of Canada. In this sense, it falls within the category of a general as distinguished from a particular or partial restraint. The prohibition extends to every kind of business carried on by the plaintiffs under their corporate powers and to the limits of the Dominion of Canada. It contains no words which would render the covenant divisible or capable of being construed so as to refer to one branch of the