

Province of New Brunswick.

SUPREME COURT.

BARKER, J., }
In Equity. }

[August 17]

RYAN v. McNICHOLL.

Contract—Sale of practice by physician—Covenant not to practice—Covenant in restraint of trade—Legality.

The plaintiff was a medical practitioner of many years standing and in the enjoyment of a large practice at Sussex. On his removing to California he entered into negotiations with the defendant, a recently graduated physician, for the sale of his practice to him and to lease him his house and offices. An agreement was entered into between them dated May 3rd, 1894, which after providing for the lease of the premises for two years from July 1st, 1894, at an annual rental of \$200, contained the following covenant by the defendant: "That said lessee will at the end or other sooner determination of said lease either (a) purchase all said lot of land and said buildings thereon at \$3,000, or (b) will forthwith leave and depart from said parish of Sussex and will not for a period of at least three years next thereafter reside in said parish of Sussex or practice thereat either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practising in said parish of Sussex or elsewhere within ten miles thereof, and that said lessee will at least three months before the end of said term of two years give said lessor notice in writing whether said lessee will so purchase said house and lot or will depart from Sussex as aforesaid." The lessor for himself covenanted with the lessee that he would from and after July 1st, 1894, cease to practice as physician or surgeon in said parish of Sussex for and during said term of two years, or until breach by the lessee of some one or more of his covenants, and that if the lessee purchased the house and lot and kept his covenants that he (the lessor) would not practice as physician or surgeon in Sussex for three years from July 1st, 1894. The plaintiff discontinued his practice and remained absent from Sussex until July, 1896. At the expiration of the lease the defendant declined to purchase the property or to cease practising at Sussex. In a suit to restrain the defendant from practising,

Held, that the agreement was not unreasonable and was not void as being in restraint of trade and contrary to public policy, and that an injunction should be granted.

White, Sol.-Gen., and Allison, for the plaintiff.

L. A. Currey, Q.C., and J. M. McIntyre, for the defendant.

BARKER, J. }
Equity Chambers. }

TOWNSHEND v. MCINTYRE.

[Aug. 20.]

Practice—Security for costs—Residence of plaintiff abroad.

In a suit for dissolution of a partnership carried on in New Brunswick application was made for security for costs, on the ground that plaintiff re-