

a motion to strike out the same paragraphs as embarrassing and prejudicial to the fair trial of the action on the same grounds should not be entertained while such demurrer is pending.

Hagel, K.C., for plaintiff. *Cohen*, for defendants.

Mathers, C.J.] SCHRAGGE v. WEIDMAN. [June 22.
Conspiracy in restraint of trade—Criminal combination—Illegal contract—Crim. Code, s. 498 (b), (d).

Two junk dealers, who controlled practically the whole trade in junk in Western Canada, entered into an agreement to fix prices for buying and selling for one year, the effect of which was to do away with all competition between themselves. The evidence shewed that their intention was to destroy all other competition, and control the market for themselves.

Held, 1. Following *Mogul Steamship Co. v. McGregor* (1892), A.C. 25, and *Collins v. Lock*, 4 A.C. 674, that such agreement was not void at common law as being in restraint of trade. *Urmston v. Whitelegg*, 63 L.T.N.S. 455, distinguished.

2. Following *Rex v. Gage*, 18 Man. 175, that the agreement was not a contravention of sub-s. (b) of s. 498 of the Criminal Code against undue restraints of trade.

3. But, following *Rex v. Clarke*, 14 C.C.C. 46; *Wampole v. Karn*, 11 O.L.R. 619, and *Rex v. Elliott*, 9 O.L.R. 648, the agreement was in direct violation of sub-s. (d) of s. 498, as unduly preventing competition, and therefore one which could not be enforced by action between the parties.

MacNeil and *Deacon*, for plaintiff. *F. M. Burbidge*, for defendants.

Province of Quebec.

POLICE COURT—MONTREAL.

Judge Bazin, Pol. Mag.] [May 2.

THE KING v. LYONS.

Attempt to obtain money by false pretences—Advertisement of trade mark preparation—Passing off a substitute article with similar name—Cut-rate druggist—Sale of Pepto-mangan solution—Knowledge by vendee of attempted deception—Transaction completed—No conviction for obtaining money by false pretences—Conviction for attempt although vendee not deceived—Cr. Code secs. 72, 404, 405, 949, 951.