[HIGH COURT OF AUSTRALIA.]

BRIGHTMAN . . . . . APPELLANT;
DEFENDANT,

AND

LAMSON PARAGON LIMITED . . . RESPONDENTS.
PLAINTIFFS,

*Restraint of Trade—Agreement between employer and employee—Reasonableness.*

The defendant upon being appointed general manager of the plaintiff Company, which carried on the business of manufacturing and selling certain goods in Australia and selling them in New Zealand also, agreed that he would not during the period of ten years after the termination of his employment be in any way concerned in any similar business in Australia or New Zealand.

*Held*, on the evidence, that the agreement was not unreasonable either as to area or duration.

Decision of *Rich* J. affirmed.

H. C. OF A. 1913.

SYDNEY, *July* 1.

Rich J.

1914.

SYDNEY, *Aug.* 10, 11.

Griffith C.J., Isaacs and Gavan Duffy JJ.

APPEAL from *Rich* J.

An action was brought in the High Court by Lamson Paragon Ltd., a company incorporated in Victoria, against John Brightman, a resident in New South Wales, in which the plaintiffs alleged that on 7th December 1909 the defendant, who had been their general manager from 1903 to 1909, agreed (*inter alia*) as follows:—"The said John Brightman shall not for the term of ten years after the termination of this agreement or any extension thereof if and so long as the Company or its assigns shall be carrying on business in Australia or New Zealand during such period either by himself or in partnership or in connection with or as the agent or employee of any other person or persons company corporation or other body carry on or be concerned either directly or indirectly within any of the States of Australia

H. C. OF A. 1914.

BRIGHTMAN v. LAMPSON PARAGON LTD.

or New Zealand in the carrying on of the business of manufacturers or vendors of cash or other check books used for any purpose whatsoever and for any breach of this clause will on demand pay to the Company the sum of £500 as and by way of liquidated damages without prejudice to the right of the Company to restrain the said John Brightman or cause him to be restrained from each and every such breach thereof." The plaintiffs also alleged that the defendant continued in their employment under such agreement until 22nd August 1911, when he resigned, and that he entered the employment of John Sands Ltd. in Sydney, New South Wales, who carried on, or were concerned directly or indirectly within the States of Australia and New Zealand in carrying on, the business of manufacturers or vendors of cash or other check books. The plaintiffs claimed an injunction to restrain the defendant from carrying on, or being concerned directly or indirectly within the States of Australia and New Zealand in carrying on, the business of manufacturers or vendors of cash or other sale books, and £500 damages in respect of breaches of the agreement.

A motion for an interlocutory injunction before *Rich* J. was by consent turned into a motion for a decree.

The facts are sufficiently stated in the judgment of *Rich* J. hereunder.

*Knox* K.C. and *Innes*, for the plaintiffs.

*Langer Owen* K.C. and *Maughan*, for the defendant.

RICH J. The plaintiff Company were registered in Victoria on 26th February 1897, and were formed for the purpose of acquiring the assets and taking over the contracts and liabilities of an English company then carrying on the business of manufacturing, printing and vending manifold sales books and cash sales and other check books in Australasia and New Zealand.

At the date of the incorporation of the plaintiff Company the defendant was in the employment of the English company as commercial traveller for New South Wales and Victoria. Upon the incorporation of the Australian company the defendant

entered into and remained in their employment until 1st November 1902, when another agreement was made between the plaintiff Company and the defendant. The defendant continued in the employment of the plaintiff Company under the last mentioned agreement until December 1903, when he was appointed general manager of the plaintiff Company by an agreement dated 8th December 1903. Negotiations with regard to this appointment and as to the provisions of this agreement were carried on between Mr. Moule, solicitor for the plaintiff Company, and the defendant. The defendant suggested a modification of the agreement to the effect that if the Company ceased to carry on business at any time during the ten years the restriction imposed on him should also cease.

The clause as finally agreed upon is as follows:—"7. The said John Brightman shall not for the term of ten years after the termination of this agreement or any extension thereof if and so long as the Company or its assigns shall be carrying on business in Australia or New Zealand during such period either by himself or in partnership or in connection with or as the agent or employee of any other person or persons company corporation or other body carry on or be concerned either directly or indirectly within any of the States of Australia or New Zealand in the carrying on of the business of manufacturers or vendors of cash or other check books used for any purpose whatsoever and for every breach of this clause will on demand pay to the Company the sum of £500 as and by way of liquidated damages without prejudice to the right of the Company to restrain the said John Brightman or cause him to be restrained from each and every such breach thereof."

The defendant's engagement under this contract expired on 31st December 1909. Before this date the defendant informed the plaintiff Company that he desired certain alterations in regard to his remuneration and also as to the notice to be given to determine the engagement on either side. On neither occasion did the defendant object to the restrictive covenant, or suggest any modification of it except such as I have mentioned. Accordingly a new agreement was prepared embodying the proposed alterations, but otherwise in the same form as the last-named

H. C. OF A. 1914.

BRIGHTMAN v. LAMPSON PARAGON LTD.

Rich J.

contract. This new agreement was executed by the plaintiff Company and the defendant, and dated 7th December 1909. Clause 8 of this agreement corresponds with clause 7 of the previous agreement.

The defendant continued in the employment of the plaintiff Company until August 1911, when he resigned. In April 1913 he was appointed salesman and traveller by John Sands Ltd.

In order to obtain employment with the plaintiff Company the defendant freely entered into the contract in question. After leaving the service of the plaintiff Company the defendant deliberately broke this contract. The defendant now objects to the validity of the agreement as being unreasonable.

I will refer here to a passage from the judgment of *Lindley* M.R. in *E. Underwood & Son Ltd.* v. *Barker* (1):—"If there is one thing more than another which is essential to the trade and commerce of this country it is the inviolability of contracts deliberately entered into; and to allow a person of mature age, and not imposed upon, to enter into a contract, to obtain the benefit of it, and then to repudiate it and the obligations which he has undertaken is, *primâ facie* at all events, contrary to the interests of any and every country. Of course I am not speaking of contracts induced by fraud, duress, or undue influence, or impeachable on any other recognized ground of invalidity. Omitting all such cases, the public policy which allows a person who obtains employment, on certain terms understood and agreed to by him, to repudiate his contract conflicts with and must to avail the defendant prevail for some sufficient reason over the manifest public policy which, as a rule, holds him to his bargain."

Before I can uphold the restrictive covenant in this case I have to ask myself whether or not the restraint sought to be enforced is wider than is reasonably necessary for the protection of the plaintiffs' business. The restraint must be reasonable "in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public": *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (2); *Horner* v. *Graves* (3).

(1) (1899) 1 Ch., 300, at p. 305. (2) (1894) A.C., 535, at p. 565.
(3) 7 Bing., 735.

At the date when he entered into the contract he had been many years in the Company's employment and was in a good position to know what was reasonably required for the protection of the plaintiffs' business. He made no objection at the time.

It is material to consider the nature of the plaintiff Company's business and of the defendant's employment at the date of the agreement the subject of this action. The plaintiff Company were carrying on the business of manufacturing, printing and vending manifold sales books and cash sales and other check books in the States of New South Wales and Victoria and of vending such books in each of the States of Queensland, South Australia, Western Australia and Tasmania and in the Dominion of New Zealand. Their business was large, and judging by the affidavits filed on behalf of the defendant there were many competitors in the market. The most lucrative contracts made by the plaintiff Company are those extending over periods from five to ten years. The defendant was placed by the plaintiff Company in a position of great trust and confidence for the purpose of reorganizing the plaintiffs' business. As general manager he had full knowledge of every detail of the business and of the names of the customers.

The object of a covenant such as the present is to prevent rivals in trade from becoming acquainted with the secrets of the internal management of the business and with the names of the customers.

No case was cited to me in which length of time has invalidated the contract where the area was not unreasonable. No restraint is excessive unless the area exceeds that fairly covered by the business of the covenantee at the date of the agreement or which might at that date reasonably be expected to be covered by such business on the expiration of the agreement.

In this case the space is coextensive with the working area of the plaintiff Company's business as it existed at the date of the agreement or its contemplated future extension on the expiration of the agreement.

The time limit is not excessive, especially having regard to the fact that the more valuable contracts of the plaintiff Company are those which extend over five to ten years.

H. C. OF A. 1914.

BRIGHTMAN v. LAMPSON PARAGON LTD.

Rich J.

For these reasons I consider the totality of the restriction is not excessive. The restraint is reasonable, and the plaintiff Company are entitled to an injunction in terms of the covenant with costs.

The injunction granted was in the following terms:—"This Court doth order that the defendant be and he is hereby restrained for the term of ten years from 22nd August 1911 (if and so long as the plaintiffs or their assigns shall be carrying on business in Australia or New Zealand during such period) either by himself or in partnership or in connection with or as the agent or employee of any other person or persons company corporation or other body from carrying on or being concerned either directly or indirectly within any of the States of the Commonwealth of Australia or the Dominion of New Zealand in the carrying on of the business of manufacturers or vendors of cash or other check books used for any purpose whatsoever."

From that decision the defendant now appealed to the High Court.

The appellant in person.

*Knox* K.C. (with him *Innes* and *C. A. Weigall*), for the respondents.

During argument reference was made to *Mason* v. *Provident Clothing and Supply Co. Ltd.* (1); *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (2); *Henry Leetham & Sons Ltd.* v. *Johnstone-White* (3); *Sir W. C. Leng & Co. Ltd.* v. *Andrews* (4); *E. Underwood & Son Ltd.* v. *Barker* (5); *Haynes* v. *Doman* (6); *Toby and Offer* v. *Major* (7); *Halsbury's Laws of England*, vol. XXVII., pp. 554, 557.

GRIFFITH C.J. Having regard to the special character of the respondents' business, to the time the appellant had been in their employment as general manager and otherwise, and to the terms of his several previous contracts of engagement, I think that the

(1) (1913) A.C., 724.
(2) (1894) A.C., 535.
(3) (1907) 1 Ch., 322.
(4) (1909) 1 Ch., 763, at p. 771.
(5) (1899) 1 Ch., 300.
(6) (1899) 2 Ch., 13.
(7) 107 L.T. Jo., 489.

restrictions imposed upon him by the covenant in question were reasonable both as to area and to duration. Therefore the appeal fails; and, with certain verbal alterations suggested during argument, the order appealed from will be affirmed.

ISAACS J. I entirely agree. The judgment of *Rich* J. is perfectly right, and I only wish to add a very few words in reference to one argument put by the appellant. He urged very strongly that the restriction upon his power of earning his livelihood was, under the later decisions, improperly infringed, and he referred to a phrase used by Lord *Macnaghten* in *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (1), and quoted by Viscount *Haldane* L.C. in *Mason* v. *Provident Clothing and Supply Co. Ltd.* (2). That phrase occurs in this sentence:—"It is a sufficient justification, and indeed it is the only justification, if the restriction is reasonable—reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public." The words upon which the appellant laid stress were "the interests of the parties concerned," and he said that they meant the interests of the covenantor as well as and as distinct from those of the covenantee. The answer to his argument, in my opinion, is this: It is quite true that by the law the interests of both parties are conserved, but in this way, that the covenantee is entitled by law, if he can get such an agreement from the covenantor, to have all reasonably necessary provision for his adequate protection. That is so whether the agreement is one relating to the sale of a business or the engagement of an employee. On the other hand, the covenantor is entitled, whatever he has actually agreed to do or to abstain from doing, to have the fullest liberty of action consistent with all reasonably necessary precautions consented to for the adequate protection of the covenantee. That is the frontier line, so to speak, dividing the interests which the law preserves for both parties. If that line is not passed, then the covenantor's interests are not infringed

Isaacs J.

(1) (1894) A.C., 535, at p. 565.

(2) (1913) A.C., 724, at p. 733.

H. C. OF A. 1914.

BRIGHTMAN v. LAMPSON PARAGON LTD.

and up to that point the law permits the covenantee to adequately protect his own interests. That is what I understand the passage I have read to mean. Looking at the case in that light, I have come to the conclusion which has been stated by the learned Chief Justice.

GAVAN DUFFY J. I think the order made by *Rich* J. is quite correct. As Mr. *Knox* has no objection to the proposed alteration in the terms of the injunction I, of course, can have no objection to it.

*Order varied by substituting for the words "carrying on business in Australia or New Zealand" the words "carrying on in Australia or New Zealand the business of manufacturers or vendors of cash-sales or other check books," and by substituting for the words "within any of the States . . . for any purpose whatsoever" the words "in the carrying on or being concerned either directly or indirectly in the carrying on of the business of manufacturers or vendors of cash-sales or other check books used for any of the purposes for which such books were manufactured and sold by the plaintiffs before* 22*nd August* 1911 *or any like purposes within any of the States of the Commonwealth or New Zealand in which the plaintiffs shall be carrying on such business." With that variation order affirmed. Appeal dismissed with costs.*

Solicitors, for the respondents, *Moule, Hamilton & Kiddle*, Melbourne, by *Minter, Simpson & Co.*

B. L.