Smith, 2 Bing. 156; *Leader* v. *Moxon*, 2 Wm. Black. 924; *Callender* v. *Marsh*, 1 Pick. 434; *British Castplate Co.* v. *Meredith*, 4 Term Rep. 794; Shearman & Redfield, sect. 371; *Newell* v. *Wright*, 3 Allen 166; *Sutton* v. *Clarke*, 6 Taunt. 29; *Jones* v. *Bird*, 5 B. & Ad. 837; *Sawyer* v. *Corse*, 17 Grattan 230.

And the reason why the principle of *respondeat superior* does not apply is, that such officers have no means except such as belong to themselves to satisfy the claim for damages, while on the other hand, in order to infer personal responsibility, direct personal culpability must be brought personally home to such officer: *Holliday* v. *Vestry of St. Leonard*, 4 L. T. N. S. 406.

In concluding this article, it is hardly necessary to remind the reader, that with respect to some of the propositions there exists great diversity of judicial opinion, resulting partly, from the fact, that some of the courts have proceeded entirely upon common-law principles, and the cases here cited are believed to be representative of this class; others have proceeded upon the principles of the civil law relating to servitudes and the analogies to be drawn from them, while courts distinguished for their learning have adopted a line of decision involving principles essentially variant from those, either of the common or the civil law, but believed by them to be more in harmony with the organic law of the state whence they emanate, and which may be regarded as *sui generis* and local in their application.

J. E. W.

Columbus, O.

RECENT ENGLISH DECISIONS.

High Court of Justice—Chancery Division.

ROUSSILLON *v.* ROUSSILLON.

The validity of a contract in restraint of trade depends upon the reasonableness of the contract, and there is no other rule limiting the area over which the contract extends.

If the extent of the restraint upon one party is not greater than protection to the other party requires, the contract is reasonable and valid.

Allsopp v. *Wheatcroft*, Law Rep., 15 Eq. 59, disapproved of.

A contract against public policy will not be supported by English courts, no matter where it may be made, and the policy of English law extends its favor to foreign traders.

Where a judgment was obtained in France against a domiciled Swiss, resident in

England, without notice being given to him, *held*, that the judgment was not binding.

Schibsby v. *Westenholz*, Law Rep., 6 Q. B. 155, approved.

The circumstances which impose a duty on a defendant to obey a judgment of a foreign court stated.

THIS was an action to restrain the defendant from carrying on business as a champagne merchant and for damages, under the following circumstances :—

The plaintiffs, Jean Roussillon and his son, were partners, carrying on the business of champagne merchants at Epernay, in France, and having also an office in London. The business was formerly wholesale and retail.

In 1866, the plaintiffs took the defendant (who was a Swiss subject and a nephew of Jean Roussillon), into their employment at Epernay, and he resided with them at Epernay for some time learning the business. In 1867 he was sent to England to acquire a knowledge of the English language, and he was in that year introduced to the plaintiffs' customers in England and Scotland as their traveller.

In 1869 (being then of the age of nineteen), the defendant returned to Geneva, and in September of that year he was emancipated according to the law of the canton of Geneva. The effect of such emancipation was to make him *sui juris*, and to enable him to contract as fully as though he were of full age.

In October 1869, the defendant visited Epernay, and whilst in his uncle's house wrote a letter in the French language, of which the following is a translation :—

"Monsieur J. ROUSSILLON,—

"As a return for the kindness and care of which I have been the object, and the trouble you have taken in my commercial education, I address this letter to you as a proof that I undertake not to represent any other champagne house for two years after having left you, if at any time I leave your house for any reason whatever, whether it be on your part or on my own. I also undertake not to establish myself nor to associate myself with other persons or houses in the champagne trade for ten years, in case I should leave you as already mentioned above. I enter into these engagements trusting to your assurance that I may rest in the idea that my position is assured in your house, except in the event or unforeseen events, or of negligence on my part in the affairs which

are, or shall be, intrusted to me, and I promise to do all in my power to maintain and increase the good reputation of your house in the countries I am connected with.

"Your affectionate nephew,

"AUGTE. ROUSSILLON."

The defendant continued as traveller to the plaintiffs, until March 1877, when he voluntarily left them. It appeared by the evidence that he transacted business for them in England and Scotland, and on one occasion in Holland. He was paid by commissions. He also travelled for another wine merchant for wines other than champagne.

Early in 1877 the plaintiffs gave up the retail part of their business.

In February 1878, the defendant established himself in London as a champagne merchant, and by advertisement, and by his trade circulars and labels, described himself as of "Ay, Champagne," although he had no establishment there (Ay being in the neighborhood of Epernay).

In September 1878, the plaintiffs instituted an action against the defendant in the Tribunal of Commerce, sitting at Epernay, for damages by reason of the breach of the agreement contained in the above-stated letter, and to restrain him from further breach thereof; and on the 6th of November following obtained a judgment, of which the following is a translation:—

"Says that Auguste Roussillon should not represent any champagne house for two years from the commencement of the year 1878, and that during ten years from the same period he should not carry on business as a champagne merchant, either on his own account or in partnership.

"Orders that in a week following notice of the present judgment he shall completely cease to trade as a champagne merchant, and shall suppress the words 'Ay, Champagne,' and the mention of champagne wine from his labels, advertisements and circulars. This under the penalty of 100 francs damages per day for non-compliance for two months after which right shall be enforced.

"Empowers plaintiffs from this day to seize labels, advertisements, circulars, &c., of Auguste Roussillon having advertisements of champagne wines.

"Condemns Auguste Roussillon to pay 50 francs for damages for proved contravention; condemns him besides to pay 15,000

francs in compensation for the damage done to this day to plaintiff.

"Authorizes the plaintiff to insert the present judgment in six newspapers of the Marne Department, three Paris newspapers, five English newspapers, and to have fifty bills posted at Epernay, Reims, Ay, and in England, all at the expense of the said Auguste Roussillon.

"Condemns Auguste Roussillon to the prepaid costs, amounting to twenty-one francs eighty-five centimes, besides the law expenses of the present judgment."

As the defendant continued to carry on business after notice of the above judgment had been served on him, the plaintiffs commenced this action to restrain him from representing any champagne house for two years from the 1st day of March 1877, and from carrying on business as a champagne merchant for a period of ten years from the same date, and to obtain the sum of 891*l.* 9*s.* in respect of the above-stated judgment, and a sum of 500*l.* in respect of further breaches since the judgment.

It appeared by the evidence that the defendant never was a domiciled Frenchman, that his visits to France were of a limited duration, and that he had had no intention of remaining there. That the proceedings in France were taken entirely without his knowledge, and that the first notice he had of any such proceedings was in November 1878, when the judgment was handed to him.

A French advocate, who was called as a witness by the plaintiffs, gave evidence that by the law of France a judgment became void unless executed within six months, or unless everything that could be was done to obtain execution. He also proved that contracts in restraint of trade are not void by the law of France.

Cookson, Q. C., and *S. Dickinson*, for the plaintiffs.—The first point, assuming this to be an English contract, is as to the adequacy of the consideration. The judgment of Lord Chief Justice KENYON in *Davis* v. *Mason*, 5 Term Rep. 118, shows that it was unnecessary for the plaintiffs to employ the defendant for a definite time. And in the case of *Gravely* v. *Barnard*, Law Rep., 18 Eq. 518, the Master of the Rolls adopts the words of Lord Chief Justice TINDAL in *Hitchcock* v. *Coker*, 6 A. & E. 438, "It is enough if there is a legal consideration and of some value."

The consideration is therefore good. As to the reasonableness of the contract, *Allsopp* v. *Wheatcroft*, Law Rep., 15 Eq. 59, is not an authority on a question of partnership, nor is it a case that can be relied on. There is no hard and fast rule making a covenant in restraint of trade invalid, if unlimited in area. The true principle is shown by the case of the *Leather Cloth Co.* v. *Lorsont*, Law Rep., 9 Eq. 345. The cases on this point are collected in the notes to *Mitchel* v. *Reynolds*, 1 Smith's L. C., 8th ed., p. 417. [FRY, J.—I see Willes states that all restraints of trade are *primâ facie* bad, and then considers the exceptions, and, first, if the restraint be only particular in respect to the time or place. I suppose a general restraint of trade means a contract not to carry on any trade at any time at any place?] Yes, universal. [The case of *Tallis* v. *Tallis*, 1 E. & B. 391, was also referred to.] Even if the contract was bad by English law, yet if it was good according to French law, English courts would uphold it: *Quarrier* v. *Colston*, 1 Ph. 147; *Connor* v. *Earl of Bellamont*, 2 Atk. 382; Story's Conflict of Laws, 7th ed., sect. 242, *et seq.* English law on a question of policy does not apply to foreigners resident in England. As to the judgment obtained by French law, there can be no doubt that this action is not merged in the French action. The judgment in France merely forms evidence here of the contract between the parties: *Smith* v. *Nicolls*, 5 Bing. N. C. 208. As to whether the court will go into the question whether a foreign judgment was obtained by fraud, *Martin* v. *Nicolls*, 3 Sim. 458, shows that this court cannot examine the grounds of a foreign judgment. This is not a case where the judgment has been fraudulently obtained, and if that is so, the *Bank of Australasia* v. *Nias*, 16 Q. B. 717, further illustrates the doctrine that the court cannot examine the merits. *Schibsby* v. *Westenholz*, Law Rep., 6 Q. B. 155, was a similar action to this, and it shows that a judgment, until set aside, is held conclusive. [FRY, J.—In that case the contract was held to have been made in England. The present case is that of a person travelling in France when he entered into the contract.] The law of the place where the contract was entered into applies: *Copin* v. *Adamson*, Law Rep., 9 Ex. 345; *Becquet* v. *McCarthy*, 2 B. & Ad. 951; *Reimers* v. *Druce*, 23 Beav. 145; and Story's Conflict of Laws, 7th ed., sect. 603, *et seq.* They also referred to *Young* v. *Brassey*, 24 W. R. 110, and *Buchanan* v. *Rucker*, 9 East 192.

North, Q. C., and *Dundas Gardiner*, for the defendant.—The contract is unreasonable, because it would deprive the defendant from selling champagne anywhere. The two cases of *Hope* v. *Hope*, 8 De G., M. & G. 731, and *Grell* v. *Levy*, 16 C. B. N. S. 73, show that an agreement contrary to the policy of English law will be held void, although it is valid by the law of the country where it was made. The latest case on contracts in restraint of trade is *Collins* v. *Locke*, Law Rep., 4 App. Cas. 674, which shows that restraints of trade are against public policy, and void, unless the restraint they impose is partial only. [FRY, J., referred to the *Leather Cloth Co.* v. *Lorsont*, and Smith's L. C., vol. 1, p. 431.] *Collins* v. *Locke*, shows the bargain may be too large. Reasonableness is not the only circumstances to be considered. There must be a limit in space. In *Ward* v. *Byrne*, 5 M. & W. 548, the contract extended to the whole kingdom, and was held void. [FRY, J.—On the ground that the restraint of trade was unlimited in space. Would you contend that questions relating to telegraphs would be unreasonable, even though they encircled the world?] *Homer* v. *Ashford*, 3 Bing. 322, shows that any deed binding a person not to employ himself in any useful undertaking in the kingdom would be void. [FRY, J.—Does not this merely mean that the court starts with the proposition that the contract is bad, and then proceeds to consider how far the circumstances of the case justify the mitigation of this rule?] *Hinde* v. *Gray*, 1 Man. & G. 195, shows that a contract unlimited as to space is void. [FRY, J.—*Whittaker* v. *Howe*, 3 Beav. 383, shows that such contracts may extend over all Great Britain.] The Master of the Rolls expressed doubt as to contracts of that nature, and only decided as he did in respect of the particular profession then the subject-matter of dispute. The rule is that a person cannot, by contract, be excluded from trading in the whole of the country. In the *Leather Cloth Co.* v. *Lorsont*, the question was considered whether, being unlimited as to time and place, a stipulation not to communicate a secret was valid or not, and thus the case was decided on a different point from that of ordinary contracts in restraint of trade. The present case is not distinguishable from *Allsopp* v. *Wheatcroft*. *Wallis* v. *Day*, 2 M. & W. 273, is referred to in Pollock on Contracts, 2d ed., p. 314, as being an instance of a covenant unlimited as to space held good, but in that case the covenant was really limited, for it was dealing with a

trade in a particular space. In *Jones* v. *Lees*, 1 H. & N. 189, restraint was co-extensive with the privilege. In *May* v. *O'Neill*, 44 L. J. Ch. 660, cited in Pollock on Contracts, 2d ed., p. 315, the limit was to particular persons. Where a person covenants that he will not trade with those persons whose dealings constitute the good will of a business, that is not a restraint of trade. [*The Printing and Numerical Registering Co.* v. *Sampson*, Law Rep., 19 Eq. 462, was referred to.] As to the judgment abroad, the evidence of the French *avocat* was that the judgment was bad, unless executed within six months. A foreign judgment might give a right of action here, but if it goes off by want of execution the action will fail. The law was settled by *Copin* v. *Adamson*. We submit that signing a document in France relating to a business in England constitutes England the *locus in quo*. *Douglas* v. *Forrest*, 4 Bing. 686, and other similar cases relate to where the party was subject to the jurisdiction of the court. It is therefore useless to discuss them. In this case the plaintiffs knew where the defendant was, and yet they preferred to get a judgment behind his back. *Goddard* v. *Gray*, Law Rep., 6 Q. B. 139, was also referred to.

FRY, J., said that in this action the plaintiffs sought for an injunction on two grounds—one on the contract contained in the letter of the 9th of October 1869, and the other by reason of a judgment dated the 6th of November 1878, of the Tribunal of Commerce in France. The two subjects required entirely separate consideration. There were few facts in controversy, and it was unnecessary to state the facts of the case in detail, but he would refer from time to time to such facts as appeared necessary.

He decided that the words "champagne trade" meant the exporting wine from Champagne or importing into the country the wines of Champagne, and that there was a breach of the contract contained in the terms of the letter of the 9th of October, and said that in the next place it was argued that the contract was not reasonable.

It was, unquestionably, a rule of law that a contract in restraint of trade must be reasonable. What was the criterion by which the reasonableness was to be judged? H took the law on that point from the judgment of Lord Chief Justice TINDAL, in *Hitchcock* v. *Coker*, in delivering the judgment of the Court of Ex-

chequer Chamber on appeal from the Court of Queen's Bench:— "We agree in the general principle adopted by the court, that where the restraint of a party from carrying on a trade is larger and wider than the protection of the party with whom the contract is made can possibly require, such restraint must be considered as unreasonable in law, and the contract which would enforce it must therefore be void." This passage was adopted by Mr. Baron PARKE in the case of *Ward* v. *Byrne*, and therefore the rule so expressed had the authority of the three common-law courts, the Queen's Bench, the Common Pleas, and the Exchequer. If, therefore, the extent of the restraint was not greater than could possibly be required for the protection of the plaintiff, it was not unreasonable.

Another case that threw great light upon the mode of treating the question was *Tallis* v. *Tallis;* there the plaintiff and defendant had been partners as publishers of books, and part of their trade, called the canvassing trade, consisted in publishing books in numbers and employing travellers to sell such books by canvassing purchasers. On dissolution of the partnership the defendant agreed, amongst other things, not to carry on the canvassing trade in London, or within one hundred and fifty miles of the General Post Office, nor in Dublin or Edinburgh, or within fifty miles of either, nor in any town in Great Britain or Ireland in which the plaintiff or his successors might at the time have an establishment or might have had one within the six months preceding. The action was for a breach of the covenant. The defendant pleaded, amongst other things, that there were numerous works which the plaintiff did not publish and did not intend to publish, and which might be published with advantage to the public by the defendant, and without injury to the plaintiff; that the canvassing trade applied to all such books, and that the restraint as applicable to such books was therefore unreasonable. The court, however, on such pleading and also on demurrer, gave judgment for the plaintiff, citing a passage from *Mitchell* v. *Reynolds*, where it was said: "Wherever such contract *stat indifferenter*, and for aught appears, may be either good or bad, the law presumes it *primâ facie* to be bad.' But instead of adopting that view, the court called attention to what was said in the case of *Mallan* v. *May*, 11 M. & W. 653: "It would be better to lay down such a limit as under any circumstances would be sufficient protection to the interest of the con-

tracting party, and if the limit stipulated for does not exceed that to pronounce the contract to be valid." And further on in the judgment it was stated, "And even if the facts therein stated to be admitted by the demurrer, and that the reasonableness of the restriction in question is to be considered with reference to those facts, together with the facts alleged in the declaration, still we think the pleas bad. For, although the books capable of republication may be almost infinite, still the number of subscribers to such republications coming out in numbers is limited; and although, if the defendant's books are excluded, it does not follow that the plaintiff's books would be purchased; still, we cannot ascertain that the number of subscribers to the plaintiff's books would not be diminished if the defendant competed with him by offering other books, especially if they were of a similar character. And, unless the defendant made it plainly and obviously clear that the plaintiff's interest did not require the defendant's exclusion, or that the public interest would be sacrificed if the defendant's intended publications are excluded, according to the general rule before referred to, we ought not to hold the contract void." In other words, the Court of Queen's Bench threw on the defendant, who alleged the invalidity of the contract on that ground, the burden of showing that the restraint was obviously more than the plaintiff's interest required.

In his opinion, such should be the rule of law, because it was to be borne in mind that the defendant was seeking to put a restraint upon the freedom of contract, and he who did that should show that it was plainly necessary for the purposes of freedom of trade.

As to how far the view of the courts invaded the freedom of contracts, he adopted the decision of the Master of the Rolls in the case of the *Printing and Numerical Registering Co.* v. *Sampson*. The question then arose, Had the defendant discharged the burden so cast upon him? It was necessary to look at the facts. It appeared that the defendant had for some two years been acting as the representative of the plaintiffs in England, having instructions to travel over all parts of England and Scotland, and at some time visited Holland for the purposes of their trade. Further, the defendant had lived for some four months at Epernay at the plaintiffs' house, and was thus acquainted with the trade at both ends; he was, too, a relative of the plaintiffs', and bore their name. Looking at the extent of the plaintiffs' trade and its diffu-

sion over England, looking at the facilities for communication which now existed, he could not say that it was made plain to him that this contract exceeded in extent that which the plaintiffs were entitled to for the protection of their trade.

He could conceive cases where such a contract would not be supported—where there was no injury done to the plaintiff. That observation applied to *Tallis* v. *Tallis*, but in this case, having regard to the extent of the trade and the difficulty of providing for every possible case in which injury might arise without including certain possible cases in which injury might not arise, he had come to the conclusion that the contract was not larger than was necessary for the reasonable protection of the plaintiffs. He held that that objection failed.

It was said that over and above this rule there existed the rule that contracts in restraint of trade should be limited in space, and that because this contract was in terms unlimited, and therefore extending to the whole of England, meaning England and Wales, it must be void. How far could such a rule be reconcilable with the different systems of trading? Many trades extended over the whole kingdom which by their very nature were extensively and widely diffused; others were localized. If this rule obtained there would be complete protection for the latter class of trade, whilst it would prohibit complete protection to the former. The rule, if it existed, would apply to two classes of cases: (1) where want of limitation of space was unreasonable; and (2) where the universality of the contract was reasonable. In the former case, where the universality was unreasonable, the rule would operate nothing, because that was already covered by the rule that the contract must be reasonable. It would only operate in cases in which the universality of prohibition was reasonable—that was, this rule would operate just where it ought not.

For the existence of such a rule he should require the clearest authority. This rule was pressed on him as an artificial rule—an absolute rule—called by the late Vice-Chancellor WICKENS "a hard and fast rule," but such a rule might always be evaded by a single exception. No exception could be said to be colorable to a rule of this description, because whether the exception was colorable or not could only be judged by the principle of the rule. How was the question whether or not the evasion was colorable to be decided by the principle of the rule if the rule was an artificial

one; without principle there was no criterion. He therefore ought not to hold that there was any such rule unless it was well established.

There were cases such as *Ward* v. *Byrne* and *Hinde* v. *Gray*, but these related only to contracts in which the universality was unreasonable, and more than once in *Ward* v. *Byrne* the rule was so explained, although he candidly admitted that there were other passages in the judgment in which the court seemed to say that the universality was always part of the contract. But, undoubtedly, Vice-Chancellor WICKENS (of whose judgments he could never speak without the highest respect) came to the conclusion that such an artificial rule existed, and so he expressed himself in the case of *Allsop* v. *Wheatcroft*. Vice-Chancellor WICKENS said: "There has been a natural inclination of the courts to bring within reasonable limits the doctrine as to these covenants laid down in earlier cases, but it has generally been considered in the later as well as in the earlier cases that a covenant not to carry on a lawful trade unlimited as to space is on the face of it void. This seems to have been treated as clear law in *Ward* v. *Byrne* and in *Hinde* v. *Gray* and in other cases, and the rule if not obviously just, is, at any rate, simple and very convenient. No doubt, in the case of the *Leather Cloth Company* v. *Lorsont*, Lord Justice (then Vice-Chancellor) JAMES threw some doubt on the existence of a hard and fast rule, which makes a covenant in restraint of trade invalid if unlimited in area." There were earlier cases which seemed inconsistent with the existence of the supposed hard and fast rule. In *Whittaker* v. *Howe*, the case relating to attorneys, it was stipulated that the business should not be carried on in any part of Great Britain for twenty years; and again in *Jones* v. *Lees* the covenant was against selling a particular article anywhere in England without the invention of the plaintiff applied to it, and the objection that the covenant was unlimited as to space was taken. "It is objected," said Mr. Baron BRAMWELL, "that the restraint extends to all England, but so does the privilege. The cases with respect to the sale of a goodwill do not apply, because the trade which is the subject-matter of the sale is local, and therefore a prohibition against carrying it on beyond that locality would be useless." In other words, the learned judge explained the inclination against the universality of a prohibition applying to cases where the subject-

matter of the sale was itself local. That was just the view he (FRY, J.) took of the earlier cases.

Still more important was the judgment of Lord Justice JAMES in the *Leather Cloth Company* v. *Lorsont.* He came to the conclusion that no such rule existed. He said, "I do not read the cases as having laid down that unrebuttable presumption. * * * All the cases when they come to be examined seem to establish this principle, that all restraints upon trade are bad, as being in violation of public policy unless they are natural and not unreasonable for the protection of the parties in dealing legally with some subject-matter of contract."

He had, therefore, to choose between two sets of cases. He adhered to those which refused to recognise this rule. He considered that the cases in which an unlimited prohibition had been spoken of as void, related only to cases where such a prohibition had been unreasonable. It followed, therefore, that in his judgment the plaintiffs had established their right upon the contract to have an injunction. It appeared to him that no sufficient evidence had been given to induce him to award substantial damages to the plaintiffs, and he therefore awarded them the sum of one shilling and no more.

Before he left this part of the case, he must refer to two points argued by Mr. *Cookson.* He had insisted that even if the contract was void by the law of England, as against public policy, yet being made in France it must be good here; accordingly he proved that the law of France knew no such principle as that by which unreasonable contracts in restraint of trade are held to be void in this country. It appeared to his lordship to be plain that the court would not enforce a contract against public policy wherever it might be made.

In the next place it was urged that, although the policy of this country promoted trade amongst its native subjects, there was no such policy in favor of the trade by foreign merchants, and the defendant being a foreign merchant it was said he was exempt from the leaning of English law in favor of trade. It appeared to him that that view could not be substantiated. The point might be met by a citation from an elementary book; he therefore referred to a passage in Blackstone's Commentary, where he dealt with the mode in which the English law had regarded trade by foreign merchants. "The law of England, as a commercial coun-

try, pays very particular regard to foreign merchants in innumerable instances," and then Mr. Justice BLACKSTONE went on to refer to the provisions of Magna Charta in favor of foreign merchants. He (Mr. Justice FRY), therefore, held those arguments failed.

He next approached the question raised on the judgment obtained by the plaintiff in the Tribunal of Commerce at Epernay. That judgment, according to the evidence before him, was obtained without any notice being given to the defendant until the proceedings had matured into a judgment. It was not shown, according to the law of France, the defendant had had any opportunity or had then power to set aside that judgment if wrong. The French advocate who was examined on the point seemed to know of no such provision in the law as seemed to have been proved in some other cases. Further than that, it had been shown that the judgment was void by French law if not executed within six months, or if the utmost efforts to execute it were not taken, and it had not been shown that any such efforts had been taken to execute it, or that execution had been made upon the judgment.

That being the state of the facts, the law upon this point, he thought, he might conveniently take from the judgment of the court in the case of *Schibsby* v. *Westenholz*. In that case the court said: "We think that for the reasons therein given the true principle on which the judgments of foreign tribunals are enforced in England is that stated by Mr. Baron PARKE in *Russell* v. *Smyth*, 9 M. & W. 819, and again repeated by him in *Williams* v. *Jones*, 13 M. & W. 33, that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce, and consequently that anything which negatives that duty, or forms a legal excuse for not performing it, is a defence to the action."

What circumstances were there which had been held to impose on a defendant a duty to obey the decision of a foreign court having regard to that case and the subsequent case of *Copin* v. *Adamson?* They might, he thought, be stated as follows: Where the defendant was a subject of the country in which the foreign judgment was obtained; where the defendant was resident in the country when the action began; where the defendant in his character of plaintiff had himself selected the *forum* in which he was afterwards sued by the other plaintiff; where the defendant had voluntarily appeared;

and where he had contracted to submit himself to the *forum;* and possibly, if the case of *Becquet* v. *MacCarthy* was right, another condition might be added, viz., where the defendant had real estate within the jurisdiction of the foreign court, and in respect of which the cause of action arose within the jurisdiction.

None of those circumstances were present in this case. In the present case the contract was made between the plaintiffs, or one of them, a French subject, and the defendant, a Swiss subject, domiciled in Switzerland but resident in England, he having been two years established as the English representative of the plaintiffs' firm. He happened to be at Epernay on his return home from Switzerland. When he made the contract there was no intention on his part, or on the part of the plaintiffs, that the defendant should take up his residence in France. It did not appear that either party contemplated the performance of the contract in France, although the terms being universal, it might be observed or broken anywhere. He was at a loss to find any circumstances to impose a duty upon the defendant to obey the French court, and the defendant was, therefore, at liberty to say he was in no way bound by the judgment. The result was, he held this judgment was not capable of being enforced in this country, and the whole of the relief sought in respect to that judgment failed.

Having regard to the large extent to which the plaintiffs had failed, he thought that the reasonable mode of dealing with the costs would be to give neither party costs; therefore there would be an injunction restraining the defendant from carrying on business as importer of champagne for the period of ten years from the date of contract, and from in any other manner acting in contravention of that contract, with one shilling damages and no costs, and he would dismiss the action so far as it sought to enforce the judgment.

In this case, more than in any other, ancient or modern, is distinctly brought out the true ground upon which contracts in restraint of trade are declared void, viz., that under the particular circumstances of each case, and the nature of the particular contract involved in that case, the contract must be *unreasonable*. In determining that question of reasonableness or unreasonableness, the extent of territory covered by the prohibition is one element and only one element in arriving at the conclusion. Some cases seem to have made this a final and conclusive test, without any regard to the nature of the contract, or whether the public would or not suffer, or be likely to suffer, any inconvenience or detriment if the contract should be enforced. On the other hand, it seems

more reasonable to consider the question of area only a subordinate and not a dominant consideration; and that while some contracts might be void, because unreasonable, if the territory covered by them were small, other contracts of an entirely different nature might be valid, even if a much larger area was included. It depends, or should depend, upon the nature of the business, and whether such business could be done throughout a large area by one occupying a central position therein; or whether such business must from its very nature be limited to a circumscribed locality. In the latter case a contract might be void when embracing a much smaller territory than in the former.

Thus in the business of a surgeon dentist, which requires the personal presence of the practitioner and the patient at the same place, a restraint of practice within the distance of one hundred miles may be an unreasonable restraint, as was held in *Horner* v. *Graves*, 7 Bing. 735; s. c. 5 Moore & Payne 768.

So extensive a restriction is not necessary to protect the promisee in his own business, and might, therefore, be detrimental to the public in the remote places, and tend to deprive them of such services, and without being of any benefit to any one. The promisee does not need the protection; he can not supply the demand throughout the entire prohibited territory, and consequently some persons must or may suffer, if the contract be enforced.

On the other hand in the business of an attorney and solicitor, which to a large extent may be carried on by correspondence or by agents, a restraint of practice within a distance of one hundred and fifty miles from London (*Bunn* v. *Guy*, 4 East 190), or even throughout the whole realm (*Whittaker* v. *Howe*, 3 Beav. 383), may well be held valid.

It may be true that a covenant not to practice some kind of trade anywhere in the country, kingdom or state, may be void as to that particular kind of business, as held in *Taylor* v. *Blanchard*, 13 Allen 370; *Alger* v. *Thacher*, 19 Pick. 51; *Wright* v. *Ryder*, 36 Cal. 357; *More* v. *Bonnet*, 40 Cal. 251; *Hinde* v. *Gray*, 1 Man. & Gr. 195; *Ward* v. *Byrne*, 5 M. & W. 548, and some other cases. While in other trades or business a different decision should be made, as decided in many recent cases.

Thus it was long since held in Massachusetts that a contract was valid not to run a stage from Boston, Mass., to Providence, R. I., in opposition to the plaintiff's line, although the route embraced part of two states: *Pierce* v. *Fuller*, 8 Mass. 223 (1811). The same rule was applied to a bond "to cease to have any concern in the business of boating on Connecticut river," and "not to directly or indirectly promote any other boatmen to compete with the plaintiff in the business of boating," although the space covered by the contract was the whole length of the Connecticut, almost three hundred miles, and across the whole state of Connecticut, Massachusetts (where the contract was made), and between the states of Vermont and New Hampshire. *Palmer* v. *Stebbins*, 3 Pick. 188 (1825).

And in *Perkins* v. *Lyman*, 9 Mass. 522 (1813), a contract was upheld, made in Boston, where the parties resided, by which one covenanted not to engage in traffic to the northwest coast of America, for the purpose of there purchasing furs, to carry to China, although the whole of the contract was to be performed out of the state where made.

In *Chappel* v. *Brockway*, 21 Wend. 161 (1839), the court say, "The objection" there made "seems to take it for granted that a valid restraint cannot extend beyond a particular town or city. That is not the rule. When a good reason appears for allowing the parties to contract, the restraint may extend far enough to afford a fair protection to the other party. *How far this will be must*

depend in a great degree upon the nature of the trade or business to which the contract relates."

On the same principle it was held in *Harms* v. *Parsons*, 32 Beav. 328 (1862), that a contract not to carry on the trade or business of a horse-hair manufacturer, "within two hundred miles from the town of Birmingham," was valid, although the effect of it was to prohibit the promisor from carrying on the business in any part of England or Wales, except in a corner of Cornwall, and also in parts of Scotland and Ireland; the Master of the Rolls saying, "The cases lay down this principle: *that if the nature of the trade requires it*, the extent excluded may be very great indeed."

In *Jones* v. *Lees*, 1 H. & N. 189 (1856) the plaintiff, having a patent for some improvements in slubbing and roving machines, for fourteen years, sold to the defendant a license to use the invention any where in England, and the defendant covenanted he would not, during said fourteen years, make or sell any of said machines in England, without the invention of the plaintiff being applied to them. The contract was held valid, BRAMWELL, B., saying, "It is objected that the restaint extends to all England; but so does the privilege. The cases with respect to the sale of a good will do not apply, because there the trade, which is the subject-matter of the sale, is local, and therefore a prohibition against carrying them on beyond that locality would be useless; here, however, there is no limit to the place within which the license is to be exercised.

Contracts not to carry on any business or manufacturing any articles which may infringe upon the other party's patent, may well be co-extensive with the extent of the patent, or in other words, throughout the entire country. *Billings* v. *Ames*, 32 Mo. 265 (1862).

So in *Leather Cloth Co.* v. *Lorsont*, Law Rep., 9 Eq. 345 (1869), the vendors of a patent for manufacturing leather cloth in England, sold it to the plaintiffs, and covenanted that they would not directly or indirectly carry on in *any part of Europe*, any manufactory having for its object the manufacture or sale of productions now manufactured by them," &c. And this unlimited covenant was held valid, upon most careful consideration. And the Vice-chancellor said, "No doubt the covenant is expressed in very large and full terms; and it is insisted that the mere fact that the covenant is not to carry on, nor allow to be carried on, "in any part of Europe," is in itself what is called a general restraint of trade, and that what is called a general restraint of trade is a restraint of trade throughout the United Kingdom, and that in that form a restraint of trade throughout the United Kingdom is upon the face of it bad, though something short of it may be allowable, provided the circumstances justify it. I do not read the cases as having laid down that untenable presumption which was insisted upon with so much power by Mr. *Cohen*. All the cases, when they come to be examined, seem to establish this principle, that all restraints upon trade are bad, as being in violation of public policy, unless they are natural, and not unreasonable for the protection of the parties in dealing legally with some subject-matter of contract.

"The principle is this: Public policy requires that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the state of his labor, skill or talent, by any contract that he enters into. On the other hand, public policy requires that when a man has by skill or by any other means obtained something which he wants to sell, he should be at liberty to sell it in the most advantageous way in the market; and in order to enable him to sell it advantageously in the market, it is necessary that he should be able to preclude himself from entering into competition with the purchaser. In such a

case the same public policy that enables him to do that does not restrain him from alienating that which he wants to alienate, and therefore enables him to enter into any stipulation, however restrictive it is, provided that restriction in the judgment of the court is not unreasonable, having regard to the subject-matter of the contract."

The distinction before stated was fully approved by the Supreme Court of the United States in the late case of *Oregon Steam Nav. Co.* v. *Winsor*, 20 Wall. 64 (1873), in which the question was whether a contract was valid by the Oregon Steam Navigation Company, not to run a steamer which they were purchasing of the California Steam Navigation Company, in any of the California waters, for the period of ten years; such stipulation being necessary to protect the vendors from interference with its own business, and the contract was sustained; and the court said, when speaking of the extent of a valid restriction, "It is obvious, at first glance, that this must depend upon the circumstances of the particular case; although from the uncertain character of the subject, much latitude must be allowed to the judgment and discretion of the parties."

Few American cases recognise the principle just indicated more fully than that of the *Morse Twist Drill & Machine Co.* v. *Morse*, 103 Mass. 73, decided in 1869. The defendant there conveyed to the plaintiffs two patents for improvements made by him in twist drills and collets, his machinery and tools, and his rights in the letters patent; and also covenanted for a valuable and sufficient consideration, "to do no act that may injure the company (the plaintiff) or its business, and that he will at no time aid, assist or encourage in any manner any competition against the same. This contract was made in Massachusetts, where all the parties then resided, and about four years afterwards the defendant "entered into the manufacture of other twist drills and collets in Newark, in the state of New Jersey, which he sold in the same markets with the plaintiffs, and in competition with them, at reduced prices, and to the same persons who dealt with the defendant when he was in the employ of the plaintiffs, when he was their superintendent, and endeavored to supply the market with these articles;" and the question was whether the plaintiffs were entitled to an injunction. No allegation was made that the defendant had infringed the patents assigned by him to the plaintiffs, and the case did not rest at all upon that ground, but it was held that the business involved not being local in its character, a contract not to interfere with it might be valid, although not restricted in extent; and the demurrer to the bill was overruled; and CHAPMAN, C. J. (who as justice had delivered the opinion in *Taylor* v. *Blanchard*), after quoting approvingly several late English decisions, added, "In this country, there are periodical publications that have a very wide circulation, and it is obvious that a purchaser of the proprietorship cannot afford to pay the full value, unless he can obtain from the vendor a valid restriction against competition, which restriction shall be as extensive as his interest requires, *though it may cover the whole of a state, or the whole country.* The same would be true as to some books. For example, the author of a popular schoolbook could not sell its proprietorship for its full value, unless he could bind himself not to prepare another book, which should be used in competition with it. The same would be true as to some manufactured articles. The present case furnishes an illustration."

This was followed and approved in a very elaborate and well-reasoned judgment, in *Beal* v. *Chase*, 31 Mich. 491 (1875), where it was held, that a contract by a vendor of a printing and publishing establishment and business and good will, together with a newspaper and the copyrights of certain books