GOLDSOLL *v.* GOLDMAN.

NEVILLE J.

[1913 G. 1401.]

1914

July 20, 21, 22, 23, 24, 27.

Restraint of Trade—Covenant—Reasonable Protection of Covenantee—Severability of Covenant—Procuring Breach of Covenant—Cause of Action—Damages—Proof of Damage—Damages inferred—General Observations on the Present State of the Law relating to Covenants in Restraint of Trade.

At the date of the covenant hereinafter mentioned the plaintiff Goldsoll carried on business as a dealer in imitation jewellery at 7, Old Bond Street under the name of Tecla, and Terisa, Limited, a company in which the defendant Goldman held substantially all the shares and all the debentures, carried on a similar business at 8, New Bond Street. The plaintiff carried on, or was interested in, similar businesses, under the name of Tecla, in Paris, New York, Vienna, Berlin, and other cities.

In June, 1912, the plaintiff Goldsoll and the defendant Goldman entered into an agreement for the purpose of putting an end to competition between them, whereby Goldman agreed to discontinue the business of the Terisa Company, and not allow the name Terisa to be used in a similar business for two years from October 22, 1912; and covenanted that he would not for the like period "either solely or jointly with or as agent or employé for any other person persons or company directly or indirectly carry on or be engaged concerned or interested in or render services gratuitously or otherwise to the business of a dealer in real or imitation jewellery in the county of London or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man or in France, the United States, Russia, or Spain, or within twenty-five miles of Potsdamerstrasse, Berlin, or St. Stefans Kirche, Vienna."

Goldsoll and the London Tecla Gem Company, Limited, a company to whom Goldsoll had transferred his business, brought this action against Goldman, Sessel, a former manager of the Terisa Company, and S. Sessel & Co., a company under whose name Sessel and his wife had started an imitation jewellery business at 14, New Bond Street, for injunctions against Goldman restraining breaches of his covenant, and against the other defendants restraining them from procuring and inducing such breaches:—

Held, on the facts, that Goldman had committed breaches of his covenant, and the defendants Sessel and S. Sessel & Co. had induced him to break his contract.

Held, also, (1.) that the covenant was not too wide because it extended to real jewellery, though the plaintiff's business was chiefly if not entirely confined to imitation jewellery. (2.) That the covenant was too wide in area unless severable; but that the covenant not to carry on business in the United Kingdom or the Isle of Man was severable from the rest, and was not too wide. (3.) That damages are essential

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to the right of action which a covenantee has against one who induces his covenantor to break his contract, but that there was sufficient evidence of damages. (4.) In a case where the breach which has been procured would in the ordinary course inflict damage on the plaintiff, the plaintiff may succeed without proof of particular damage.

AT the date of the agreement hereinafter mentioned the plaintiff Goldsoll was carrying on the business of a dealer in imitation pearls known as Tecla pearls and other real and imitation jewellery at 7, Old Bond Street, London, under the style of Tecla, and a company called Terisa, Limited, was carrying on the business of dealers in imitation pearls known as Terisa pearls and other real and imitation jewellery at 8, New Bond Street. The defendant Goldman held substantially all the shares in, and the whole of the debentures issued by, Terisa, Limited. This company was in liquidation, and a receiver of its undertaking had been appointed on behalf of the defendant Goldman in his capacity of debenture-holder.

The plaintiff Goldsoll also carried on, or was largely interested in, similar businesses carried on under the name of Tecla, or names of which Tecla formed part, in Paris, New York, Vienna, Berlin, and other parts of the world.

By an agreement under seal dated June 25, 1912, and made between the plaintiff Goldsoll of the one part and the defendant Goldman of the other part, after reciting that the agreement was entered into with a view to merging the interests of the plaintiff Goldsoll and the defendant Goldman, and avoiding mutual competition in the sale of real and imitation jewellery in the United Kingdom and elsewhere, it was agreed that Goldsoll should form a company to which he would transfer his said business carried on at 7, Old Bond Street under the name of Tecla in which the defendant Goldman should take an interest, and the defendant Goldman for that and other valuable considerations entered into the agreement following :—

Clause 8. "The said Joseph Goldman hereby covenants and agrees with the said Frank Joseph Goldsoll and shall also forthwith upon formation separately covenant and agree with Tecla Limited and any other company formed in accordance with the provisions of these presents, that he will not prior to the 31st

day of October 1912 (save so far as it may be necessary for him so to do to realise his interest in Terisa Limited) and for a period of ten years from the 31st day of October 1912 (save so far as the said Joseph Goldman may in accordance with the provisions hereof be interested in the London Tecla business) either solely or jointly with or as agent or employee for any person or persons or company directly or indirectly carry on or be engaged or concerned or interested in or render services (gratuitously or otherwise) to the business of a vendor or dealer in real or imitation jewellery in the county of London, England, Scotland, Ireland, Wales, or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man or in France, the United States of America, Russia, or Spain, or within twenty-five miles of Potsdamerstrasse, Berlin, or St. Stefans Kirche, Vienna."

The defendant Goldman also agreed that he would make himself absolute owner of the Terisa business, cause the assets thereof to be realized in the usual course of business without advertising or holding any sale at reduced prices, and cause the business to be discontinued and prevent the trade mark or name Terisa being used in connection with the sale of or dealing in real or imitation jewellery. The agreement also contained clauses fixing money penalties for breaches of each clause.

By a further agreement dated November 2, 1912, and made between the same parties, it was provided that in the events which had happened the restrictions contained in clause 3 of the first agreement should cease at the expiration of two years from July 7, 1913.

In pursuance of the said agreement a company called the London Tecla Gem Company, Limited, was formed and acquired the said business carried on by the plaintiff Goldsoll, and by an indenture dated December 30, 1912, and made between the Société Tecla, Limited, of the first part, the plaintiff Goldsoll of the second part, and the London Tecla Gem Company, Limited, of the third part, the benefit of the said agreements with Goldman was assigned to the London Tecla Gem Company.

This action was commenced on July 29, 1913, by Goldsoll and the London Tecla Gem Company against Goldman,

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S. Sessel & Co., and J. H. Sessel, alleging that the defendant Goldman had committed breaches of the covenant on his part contained in the first agreement, and that the defendants J. H. Sessel and S. Sessel & Co. had knowingly incited, procured, and induced such breaches, and aided and abetted the violation of the said agreement. J. H. Sessel was the managing director of Terisa, Limited, until the winding-up, and he and his wife had since September, 1912, been carrying on at 14, New Bond Street the business of selling imitation pearls in the name of S. Sessel & Co. The lease of 14, New Bond Street had been taken in the name of Mrs. Sessel, but it was alleged to have been applied for by Goldman. It was further alleged that the business was really Goldman's and that he had, in breach of the agreement, handed over a great part of the stock in trade of Terisa, Limited, to the Sessels without payment, and that letters and customers coming to the old address at 8, New Bond Street were sent on to No. 14 and there supplied with imitation pearls under the name "Terisa," and that Goldman had given the Sessels a register of names of the customers of Terisa, Limited, and certain cards on files containing other such names. It was also alleged that Goldman was interested in the businesses of a dealer in real or imitation jewellery carried on at 5, George Street, Hanover Square, under the name Palmeira Pearl Company, and other like businesses carried on in the neighbourhood under the names of Topaz and Warwick respectively.

The plaintiffs claimed (1.) an injunction restraining Goldman from breaches of his covenant at 14, New Bond Street or 5, George Street, Hanover Square, or elsewhere in the county of London or France; (2.) an injunction restraining the other defendants from procuring, inciting, or inducing the defendant Goldman to violate his covenants; (3.) an injunction against all the defendants using the name Terisa in connection with dealing in real or imitation jewellery; (4.) payment by Goldman of the penal sums fixed by the agreement; (5.) damages against the other defendants.

The defences were that no breach had been committed; that the covenant was too wide because it included real jewellery; too wide in area and not severable; that inciting a covenantor

to break his contract was not actionable unless damages were proved, and there was no proof of damage; that the remedy for such inciting was not an injunction but damages.

Jenkins, K.C., *Schwabe*, K.C., and *W. E. Vernon*, for the plaintiffs. This is not a case of master and servant but of vendor and purchaser, and in the latter case a covenant in restraint of trade is construed more liberally by the Courts. If the limit of space considered as a whole is too wide it may be severable. Here there are three distinct areas. There is first the county of London or the United Kingdom, which may be treated as one area; secondly, there is France, the United States, Russia, or Spain; and, thirdly, there is the twenty-five mile limit from Berlin or Vienna. The plaintiffs' place of business is in London, and on the evidence the restriction against carrying on the business of a dealer in real or imitation jewellery in the United Kingdom is perfectly reasonable having regard to the fact that they obtain customers from all parts of England, Scotland, and Ireland by means of their advertisements in the daily newspapers, and on the authorities the covenant is severable as to space and not wider than is reasonably necessary for their protection if limited to the United Kingdom. It is submitted that the plaintiffs under clause 3 of the agreement are entitled to an injunction against the defendant Goldman limited to the United Kingdom: *Mallan* v. *May* (1); *Price* v. *Green* (2); *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (3); *Baines* v. *Geary* (4); *Lamson Pneumatic Tube Co.* v. *Phillips* (5); *Davies, Turner & Co.* v. *Lowen* (6); *Bromley* v. *Smith* (7); *Haynes* v. *Doman* (8); *Badische Anilin und Soda Fabrik* v. *Schott, Segner & Co.* (9); *Rousillon* v. *Rousillon* (10); Matthews on Restraint of Trade, p. 94; Halsbury's Laws of England, vol. xxvii. pt. v. p. 572, § 1109. Further, the defendant J. H. Sessel with full knowledge of the terms of the agreement of June, 1912, has wilfully induced the defendant Goldman to break

(1) (1843) 11 M. & W. 653.
(2) (1847) 16 M. & W. 346.
(3) [1894] A. C. 535.
(4) (1887) 35 Ch. D. 154.
(5) (1904) 91 L. T. 363.
(6) (1891) 64 L. T. 655.
(7) [1909] 2 K. B. 235.
(8) [1899] 2 Ch. 13.
(9) [1892] 3 Ch. 447.
(10) (1880) 14 Ch. D. 351.

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that contract to the detriment of the plaintiffs. The defendant Goldman has made over to the defendants Sessel & Co., which is really the business of the defendant J. H. Sessel, the cards and register of customers of the old business of Terisa, Limited, and has in other ways assisted the defendant Sessel. The plaintiffs have suffered damage and are entitled to an injunction and damages against the defendants J. H. Sessel and Sessel & Co. It is not necessary to prove particular damage. It is sufficient if the necessary result of the defendants' acts is to cause damage to the plaintiffs. Here the plaintiffs' business began to fall off from the time that the defendants Sessel & Co. set up the rival business at 14, Old Bond Street: *Allen* v. *Flood* (1); *Lumley* v. *Gye* (2); *Merryweather* v. *Moore* (3); *Lumley* v. *Wagner* (4); *Bowen* v. *Hall* (5); *Quinn* v. *Leathem* (6); Kerr on Injunctions, 5th ed. p. 503.

Rigby Swift, K.C., and *Lincoln Reed*, for the defendant Goldman. The evidence fails to establish any conspiracy between Goldman and J. H. Sessel, or any breach by Goldman of the provisions of the agreement of June, 1912. We do not deny that a covenant may be severable. But Goldsoll at the date of the agreement was only a dealer in artificial stones, and the restriction against carrying on business in real or imitation jewellery is unreasonable and wider than is necessary for the reasonable protection of the plaintiffs, and the limit of space is also too wide. To limit the covenant to the United Kingdom is making a new contract for the plaintiffs: *Mason* v. *Provident Clothing and Supply Co.* (7); *H. Leetham & Sons* v. *Johnstone-White* (8); *Nevanas & Co.* v. *Walker & Foreman.* (9)

Peterson, K.C., and *Droop*, for the defendants S. Sessel & Co. The covenant is too wide not only in area but because it prevents the covenantor trading in any jewellery, real or imitation, whereas the business to be protected is only the dealing in a particular sort of imitation pearls.

(1) [1898] A. C. 1.
(2) (1853) 2 E. & B. 216.
(3) [1892] 2 Ch. 518.
(4) (1852) 1 D. M. & G. 604.
(5) (1881) 6 Q. B. D. 333.
(6) [1901] A. C. 495.
(7) [1913] A. C. 724, 745, 746.
(8) [1907] 1 Ch. 322.
(9) [1914] 1 Ch. 413.

Further the claim against S. Sessel & Co. is for inducing a breach of contract or for conspiracy. Whichever way this is put the remedy is an action for damages, not an injunction.

Pollock on Tort, 9th ed. p. 329, lays it down that " as a rule it is the damage wrongfully done, and not the conspiracy, that is the gist of actions on the case for conspiracy " ; that is taken from the judgment of Bowen L.J. in *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1) *Quinn* v. *Leathem* (2) was decided on the same principle. The head-note is, " A combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him . . . . is, if it results in damage to him, actionable " ; and Lord Lindley in his judgment in the same case says: " The principle which underlies the decision reaches all wrongful acts done intentionally to damage a particular individual and actually damaging him." Lord Esher in *Temperton* v. *Russell* (3) states the law in the same way; the House of Lords in *Quinn* v. *Leathem* (4) differed from some part of Lord Esher's judgment, as laying too much stress on malice, but they did not question this statement. The foundation of this right of action is damage done, and here there is no evidence of any damage and the remedy as against S. Sessel & Co. is damages and not an injunction.

Dighton Pollock, for the defendant J. H. Sessel.

Jenkins, K.C., in reply. The inclusion of real jewellery cannot make the covenant too wide; no jeweller deals exclusively in imitation jewellery, and very few, if any, exclusively in real.

The cases of *National Phonograph Co.* v. *Edison-Bell Consolidated Phonograph Co.* (5), *Exchange Telegraph Co.* v. *Gregory & Co.* (6), and *Quinn* v. *Leathem* (4) shew that it is not necessary to prove special damages in a case of wrongful interference with contractual right, and that the Court will grant an injunction. Damage will be inferred in a clear case such as we have here. He also referred to Addison on Torts, 8th ed. p. 7.

Cur. adv. vult.

(1) (1889) 23 Q. B. D. 598, 616.
(2) [1901] A. C. 495, 535.
(3) [1893] 1 Q. B. 715, 729.
(4) [1901] A. C. 495.
(5) [1908] 1 Ch. 335.
(6) [1896] 1 Q. B. 147.

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July 27. NEVILLE J. Before dealing with the particular case before me, I wish, having had once more to go into the cases, to say something on this branch of the general law.

A question has been raised as to the incidence of the burden of proof in actions upon covenants in restraint of trade. Cases have been cited in which contradictory views seem to have been expressed, and I desire therefore to state my own opinion on the point. In the first place, let me point out that the question of reasonableness is for the Court and, in the absence of evidence on either side, the Court would not necessarily decide in favour of the plaintiff or in favour of the defendant. The nature of the contract itself may be such as to justify the Court in drawing an inference of reasonableness or unreasonableness in the absence of evidence. For instance, if a London shopkeeper sued upon a covenant restricting the covenantor from carrying on a similar business within a quarter of a mile of and in the same street as the shop of the covenantee, I should have little difficulty, in the absence of evidence to the contrary, in holding that the restriction was reasonable, while were the restriction under such circumstances to extend to the whole of the United Kingdom, I should, in the absence of evidence, hold without hesitation that the restriction was unreasonable. In the first of these cases, therefore, the burden of proof would fall upon the defendant the covenantor; in the second upon the plaintiff the covenantee. There are, however, no doubt many cases in which unassisted by evidence the Court would find it difficult, if not impossible, to draw any inference as to reasonableness at all. With whom lies the burden of proof in such cases? The answer to this question, in my opinion, depends upon what the true proposition of the law on contracts in restraint of trade may be. If it be that covenants which restrain trade to an unreasonable extent are void, then I think the burden would lie with the covenantor to shew that the covenant did so unreasonably operate. If, on the other hand, the true proposition be that covenants in restraint of trade are void with an exception in favour of covenants which do not restrain it to an unreasonable extent, then I think that the burden would be with the covenantee. In my opinion, the latter proposition is the correct one. Consequently, if the plaintiff sues

upon a contract in restraint of trade which does not on the face of it appear to the Court reasonable and the plaintiff calls no evidence, judgment should be given for the defendant: see on this point *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (1)

When is a covenant in restraint of trade reasonable? By the common law of England, contracts in restraint of trade were void, and this is, in my opinion, still the law subject to the exception which has been grafted upon it. The exception dates from a comparatively early period. The reason for the common law rule is not far to seek. Such contracts were held to be contrary to public policy because it was considered to be in the interest of the community that every man should be entitled to carry on his lawful business or exercise his lawful calling without restraint. I believe the origin of the exception to the general rule arose from the consideration that the community was not interested in the question of where a man exercised his calling, and therefore, if abundant opportunity for so doing were left, the community was not injuriously affected by a man contracting not to do so within a limited area, but it was held to be unreasonable that a man should be prevented from exercising his calling even in a limited area if no advantage thereby accrued to the other party to the contract. Consequently, although the area prohibited were of small extent, yet if it was more than necessary to protect the business of the latter it would be void. Now in earlier days the ambit of any business was never large enough to cause its protection to limit unreasonably a man's opportunities outside; and consequently the protection of the covenantee proved a satisfactory test of whether the excluded area was unreasonably large. In my opinion the exception itself was contrary to sound principle. When contracts are treated as contrary to public policy it is because their tendency is injurious, and in such cases it has not, I think, been the practice of the Courts to examine the circumstances of each case which offends against the rule and consider whether substantial injury to the public interest has arisen or is likely to arise from the contract under consideration. The

(1) [1894] A. C. 535.

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infringement of the rule has been considered fatal to the contract although it might be capable of proof that under the particular contract no injury to the public could arise. But when we come to the consideration of the character of the exception in question as ultimately established, the departure from principle is, to my mind, startlingly apparent. Since the decision of *Rousillon* v. *Rousillon* (1), and possibly before that, the only test of reasonableness has been whether the restriction goes beyond what is reasonably required for the protection of the business of the covenantee. If so, it is void; if not, it is good whatever the result may be to the public and the covenantor. I confess this seems to me a strange inversion of the original rule which, so far from considering only the convenience of the covenantee, regarded only the mischief occasioned to the public by hindering a man from making his living and adding to the wealth of the State by the exercise of his calling. Faint echoes of the original principle are still occasionally heard in the Courts, notably in the speech of the late Lord Macnaghten in the case of *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co.* (2) above referred to. But that such dim recollections of the original principle have no practical bearing upon the decision of the cases is shewn by the fact that in that case a man of genius was restrained from turning his special talents to account in any country in any part of the world, and as the result of the, to my mind, curious process of reasoning in the cases to which I have in general terms referred, this was held to be no injury to the public. I sit here merely to administer the law as I find it, and I am aware that the decisions are too precise and numerous to permit of any reconsideration by the Courts, but I have thought it my duty to say what I have done because, in my humble opinion, the whole of the law in this particular matter is a blot upon what I consider to be in other respects an admirable system of jurisprudence and in the hope that the attention of the Legislature may ultimately be called to the matter. During my connection with the law I have seen more undeserved suffering inflicted by this branch of it than by all the rest put together. I am aware that the question is a thorny one, but there are two comparatively small amendments of the

(1) 14 Ch. D. 351. (2) [1894] A. C. 535.

law which I think would go far to remedy what at present I consider its harshness. Men in want of employment, or, to a less degree, in want of money, are very likely to be induced to sign any document to get it, and there are cases where men on a few shillings a week, for which they give ample consideration in other ways, are induced to sign contracts which make it exceedingly difficult for them to obtain employment elsewhere, and I think it might well be left to the discretion of the Court to refuse an injunction in cases which it considers harsh. In most of such cases the damage caused by the breach of contract is either nil or quite inconsiderable. Again I think that the application of the doctrine of severability of the terms of a contract in restraint of trade has proved mischievous. It seems to me to be in accordance both with principle and justice that if a man seeks to restrain another from exercising his lawful calling to an extent which the law, even as it now stands, deems unreasonable, the contract by which he does so, whether grammatically severable or not, should be held to be void in toto. To hold otherwise seems to me to expose the covenantor to the almost inevitable risk of litigation which in nine cases out of ten he is very ill able to afford, should he venture to act upon his own opinion as to how far the restraint upon him would be held by the Court to be reasonable, while it may give the covenantee the full benefit of unreasonable provisions if the covenantor is unable to face litigation.

It must not be supposed that all I have said about the general tendency of the law as it stands is applicable to the facts of the particular case to which it has now to be applied. [His Lordship then examined the evidence and continued:]

I hold upon the facts that Mr. Goldman presented Mr. Sessel with the balance of the stock of the Terisa business which had to be disposed of by a particular day, and the greater part of which had been sold before closing the business down. I think that he also gave him the right to use and indeed put him into possession of the names of the Terisa customers contained on cards which were kept on a file and in a register, both of which have been traced to the possession and are still in the possession of the person, whoever he may be, who is carrying on the business at 14, New

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Bond Street. I have also come to the conclusion that in some cases at all events letters which were delivered at 8, New Bond Street, which were the former premises of the Terisa Company, were either given or forwarded to the persons carrying on the pearl business at No. 14, New Bond Street.

It appears to me therefore that, although I cannot say that it has been proved that Mr. Goldman has a direct interest in the business, or what that interest may be, I have evidence which is clear beyond doubt that he has rendered services to the business which has been carried on there, and consequently I think that the plaintiffs with regard to Mr. Goldman are entitled to an injunction, if the contract relied on is a contract which is in part good and not void under the general principle to which I have referred in respect of covenants in restraint of trade.

In my opinion, the extension of the covenant to the business of a vendor or dealer in real or imitation jewellery is not too wide. I think that such a covenant was only reasonably necessary for the protection of Mr. Goldsoll, having regard to the character of the business, from a rivalry in respect of which he was seeking to protect himself. With regard to the area which is described in clause 3 of the agreement, it is, to my mind, beyond question too wide if you take it as a whole, and therefore I have to consider if it is a case in which one part of the covenant can be severed from another so as to give effect to that part which does not infringe against the common law rule with regard to such covenants. In my opinion, it is severable and it is severable with regard to one part, the county of London, England, Scotland, Ireland or Wales, or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man. I do not see my way to cut that area up in any way. I must take it as a whole. The question then is, Is that too wide for the protection of the covenantee? In my opinion, it is not. This is a case in which the custom is acquired in the main by means of advertisements in the English illustrated papers, and I think it is a matter of notoriety that these papers do penetrate throughout the whole of the United Kingdom and even into so remote a district as the Isle of Man. I think therefore that there is no ground for saying that that limitation is a

limitation in excess of what is necessary for the reasonable protection of the trade of the covenantee. With regard to the defendant Goldman, therefore, what I have said already shews that the plaintiffs are entitled to succeed against him.

Now comes a very much more difficult question, and a question with which the Courts have much less often to deal, about damages in such a case for breach of contract. It is said that Mr. Sessel incited and procured Mr. Goldman to break the contract that I have referred to, with the contents of which Mr. Sessel was aware. In my opinion, Mr. Sessel was fully aware of the terms of the contract made between Mr. Goldsoll and Mr. Goldman, and I also think that in obtaining from Mr. Goldman the names of the customers, the name cards and the register, he was inducing Mr. Goldman to do what he perfectly well knew Mr. Goldman was not entitled to do, and therefore I think he has committed an actionable wrong to the plaintiffs subject to one question, and that is the question of damages. I must say the cases are not very clear upon the point, but in my opinion it is one of those cases in which damages are essential to the right of action by the covenantee against one who has induced his covenantor to break the contract with him. But in this case there is evidence of damage which I think sufficient, and in addition to that I think authorities which bind me—notably the case of *Exchange Telegraph Co.* v. *Gregory & Co.* (1)—shew that in such a case the damage may be inferred, that is to say, that if the breach which has been procured by the defendant has been such as must in the ordinary course of business inflict damage upon the plaintiff, then the plaintiff may succeed without proof of any particular damage which has been occasioned him.

Now in the present case it seems to me clear that there must have been damage done to the plaintiffs by the carrying on of this rival business of precisely the same nature in the immediate proximity of the plaintiffs' place of business. How many orders were lost to the plaintiffs, or whether all the orders obtained by the defendant Sessel were orders which were going or which ultimately would have gone to Tecla, it is impossible of course for anybody to say, but here the main object of the plaintiffs was

(1) [1896] 1 Q. B. 147.

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to put an end to the rivalry of a similar establishment in their vicinity, and that object has been certainly to some extent and probably to a considerable extent defeated by the fact that the names of the customers of the rival firm and orders received in the rival firm have been communicated to a new rival establishment, which, I think, certainly with the connivance of Mr. Goldman and in full knowledge that such connivance was a breach of Mr. Goldman's covenant, has been started by the defendant Sessel. It does not seem to me necessary at the present time to decide who are the owners of the business at 14, New Bond Street, but I will say this, that I am far from satisfied that Mrs. Sessel is any more than a mere nominee of the defendant Joseph Sessel.

I think therefore in the present case I ought to grant an injunction, and the injunction that I propose to grant will follow the terms of the covenant contained in the latter part of clause 3 of the agreement so far as Mr. Goldman is concerned.

With regard to the relief against the defendant Sessel, I have been asked by the plaintiffs to assess the damages. The evidence of damage is of a somewhat general character, and I do not pretend that I am in a position with the smallest approach to accuracy to estimate what the damages are that may have been caused, but I feel no fear that I am exceeding the amount of the actual damage caused to the plaintiffs when I give the damages at 10*l*. Therefore I give those damages against the defendants Sessel and Sessel & Co., and I restrain them from making further use of the name cards and the register disclosing the customers of the old Terisa business and from procuring the defendant Goldman to commit any breach of the covenant he entered into, and I will give the costs of the action against the defendants generally except so far as the costs have been increased by the claims in respect of the businesses carried on under the names of Palmeira, Topaz, and Warwick.

Solicitors: *J. R. Cardew Smith; W. B. Glasier; Beardall & Co.*

J. R. B.