88 FEB.T.1932

ON BRIEFS

New Jersey Court of Errors and Appeals

Between
OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION CO.,
Complainants-Appellants,
and
EARL H. JOHNSON and LINCOLN LINES, INC.,
Defendants-Appellees.

ON APPEAL FROM THE COURT OF CHANCERY.

State of the Case

PATRICK H. HARDING,
Solicitor for Complainants-Appellants.
LOUIS B. LE DUC,
Solicitor for Defendants-Appellees.

Sat below:
WALKER, *C.*
LEAMING, *V. C.*

I. F. Huntzinger Co., *Appellate Printers,* Camden, N. J.

Service of 4 copies of the above acknowledged this 1st of October, 1931.
Louis B. Le Duc

88

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

10

The complainants, Otto G. Schultz, of Morristown, in the County of Morris and State of New Jersey, and the Public Service Interstate Transportation Co., a corporation of the State of New Jersey, respectfully show:

1. That complainant, Otto G. Schultz, is and for many years past has been engaged in the operation and promotion of transportation lines in the State of New Jersey.

20

2. That complainant, Public Service Interstate Transportation Company, is and has for a long time been engaged in the operation of transportation lines in the State of New Jersey and other States of the United States, and that it is and has been for some time operating a transportation system consisting of buses between New York, in the State of New York, and Atlantic City, in the State of New Jersey, and the City of Wilmington, in the State of Delaware.

30

3. That on or about October 22nd, 1928, defendant, Earl H. Johnson, and the Williamstown-Philadelphia Bus Co., a corporation of the State of New Jersey, entered into an agreement, in writing,

with complainant, Otto G. Schultz, whereby complainant, for a consideration of ninety-five thousand dollars ($95,000.00), agreed to purchase certain real estate and all of the stock and equipment of said defendant, Earl H. Johnson, and said Williamstown-Philadelphia Bus Co., in and to a certain bus line operating between Williamstown, in the State
10 of New Jersey, and Philadelphia, in the State of Pennsylvania, a copy of which agreement is annexed hereto, made part of this bill and marked Exhibit A.

4. That complainant, Otto G. Schultz, did, within the time fixed for settlement in said agreement, and on or about January 22nd, 1929, fully execute and carry out every promise and covenant made in said agreement for performance by him to be made, and
20 did pay to defendant, Earl H. Johnson, the full consideration called for therein.

5. That, among other things, it was provided in said agreement that the said Earl H. Johnson should not, from and after the date of final settlement under said agreement, engage directly or indirectly in the operation of bus lines between the State of New Jersey and any other State, except as manager, officer or employee of complainant, Otto G.
30 Schultz.

6. That on or about March 19th, 1931, and after the making of the agreement aforesaid and final settlement thereunder, defendant, Earl H. Johnson, caused to be incorporated under the laws of the State of Delaware, a company known as Lincoln

Lines, Inc., of which Charles G. Bishop, G. Dudley Gray, F. M. Farry, all of Wilmington, Delaware, are named as incorporators, and that the total authorized capital stock of said corporation is two thousand shares of no par value.

7. That immediately thereafter, and on or about the 6th day of May, 1931, said corporation began to operate a line of three buses on a regular schedule for the transportation of passengers between New York City, in the State of New York, and Atlantic City, in the State of New Jersey, and between the latter-named city, in the State of New Jersey, and the City of Washington, in the District of Columbia, but carrying passengers also from points in the State of New Jersey to points in the State of Delaware and State of Maryland, as well as to said City of Washington, and is still operating said line.

8. That said Lincoln Lines, Inc., is wholly and solely controlled by defendant, Earl H. Johnson, and said operation is under his management, control and supervision, and that said incorporators of Lincoln Lines, Inc., are not the real shareholders thereof and have no interest whatever therein, but that the stock of said Lincoln Lines, Inc., is in the control and possession of defendant, Earl H. Johnson.

9. That the incorporation of said Lincoln Lines, Inc., was to mask or screen the personalty of Earl H. Johnson in said operation and was done to circumvent the terms of said agreement and to defraud complainants of all their rights therein and thereto.

10. That said Otto G. Schultz acted as agent for said Public Service Interstate Transportation Co., a corporation about to be organized at or about the time of the making of said agreement, and that on or about January 1st, 1930, the said complainant, Otto G. Schultz, transferred all his right, title and interest in and to said agreement, of said Earl H. Johnson and the Williamstown-Philadelphia Bus Co, to Public Service Interstate Transportation Co.

11. That the operation of said line in violation of said agreement works irreparable damage and injury to complainant, Otto G. Schultz, in his business as a promoter, in that said operation jeopardizes the rights and opportunities of said complainant, Otto G. Schultz, to make or complete any contracts for the sale or purchase of transportation lines in the future, and subjects him to liability by reason of his assignment to complainant, Public Service Interstate Transportation Co., with said restriction included in said assignment.

12. That the operation of said line in violation of said contract works irreparable injury to complainant, Public Service Interstate Transportation Co., in that it deprives it, as principal and assignee of said Otto G. Schultz, of the full benefit of said agreement by reason of the operation of a competitive line, thus causing great diminution in the revenue of said Public Service Interstate Transportation Co. in the operation of its line of buses to and from the points aforesaid, and by further reason of the failure of either defendant to adequately respond in damages because of the financial irre-

sponsibility of defendant, Earl H. Johnson, who is a man of meagre financial means, and of the total irresponsibility of Lincoln Lines, Inc., which has neither money nor property from which complainant could recover damages, and the impossibility of easily ascertaining damages by reason of the long and extensive territory over which defendants' buses are operating and the great expense which would be incurred to check from day to day the volume of business done by defendants.

In consideration thereof, and for as much as complainant is without adequate remedy without the assistance of this Honorable Court where matters of this nature are particularly cognizable and relievable, therefore prays:

1. That said Earl H. Johnson and said Lincoln Lines, Inc., may answer this bill of complaint and each statement herein made.

2. That they may set forth and discover who are the stockholders of defendant, Lincoln Lines, Inc.; what interest, if any, they have in said stock, and what interest defendant, Earl H. Johnson, has in said Lincoln Lines, Inc., and how much stock he holds therein.

3. That the said defendants, Earl H. Johnson and Lincoln Lines, Inc., their officers, agents and employees may be enjoined and restrained from operating buses or bus lines anywhere in New Jersey, where said operation is between New Jersey, and any other State, that a decree may go against said

defendants that they are violating the terms of the agreement hereinbefore referred to, and that a writ of injunction may issue out of and under the seal of this Honorable Court, to enjoin and restrain a further violation thereof.

4. That a writ of subpoena may issue command-
10 ing the defendants to answer this bill of complaint and abide by such decree as this Court may make in the premises.

PATRICK H. HARDING,
Solicitor for Complainants.

State of New Jersey, }
County of Camden, } ss.
20

OTTO G. SCHULTZ, of full age, being duly sworn according to law, on his oath deposes and says:

I am one of the complainants mentioned in the foregoing bill of complaint. I have read same and know the contents thereof. The matters and things therein set forth, so far as they relate to my own acts, are true, and so far as they relate to the acts of others I believe them to be true.

Particularly is it true that on or about October
30 22nd, 1928, defendant, Earl H. Johnson, and the Williamstown-Philadelphia Bus. Co., made and entered into an agreement in writing, with me, whereby I agreed, for a consideration of ninety-five thousand dollars ($95,000.00), to purchase certain real estate and all the stock and equipment of both defendant, Earl H. Johnson, and the Williamstown-

Philadelphia Bus Co., in and to a certain bus line operating between Williamstown, New Jersey, and Philadelphia, in the State of Pennsylvania, and that I did make settlement, in full, as called for under the terms of said agreement.

It was provided in said agreement as follows:

> "The party of the first part, Earl H. Johnson, agrees that he will not, from and after the date of said final settlement, engage directly or indirectly in the operation of bus lines between the State of New Jersey and any other State, except as manager, officer or employee of the said party of the second part."

That on or about March 19th, 1931, defendant, Earl H. Johnson, caused to be incorporated under the laws of the State of Delaware, a company known as Lincoln Lines, Inc., and which said company shortly thereafter, and on the sixth day of May, 1931, began to operate a line of three buses on a regular schedule for the transportation of passengers between New York City, in the State of New York, and Atlantic City, in the State of New Jersey, and between the latter-named City, in the State of New Jersey, and the City of Washington, in the District of Columbia, but carrying passengers also from points in the State of New Jersey to points in the State of Delaware and State of Maryland.

That said Lincoln Lines, Inc., is wholly and solely under the management, control and supervision of the said defendant, Earl H. Johnson, and that the alleged incorporators of said Lincoln Lines, Inc., have no interest whatever therein, and that all of the stock of said corporation is in the possession

and under the control of said Earl H. Johnson, and that the incorporation of said company was to screen the personalty of Earl H. Johnson, and to circumvent the terms of said agreement and defraud complainants of their rights in same.

That I did act as agent for said Public Service Interstate Transportation Co. in the purchase of the real estate, buses and equipment of the said Earl H. Johnson and the Williamstown-Philadelphia Bus Co., and that having secured full title to all of said buses and equipment, I did, on or about the 1st day of January, 1930, transfer all my right, title and interest therein, together with all my right, title and interest in said agreement, to Public Service Interstate Transportation Co.

That the operation of said line by said Lincoln Lines, Inc., in violation of the terms of said agreement, works irreparable damage and injury to me by reason of the fact that it jeopardizes my opportunities to make or complete contracts for the sale of the transportation lines in the future, as it would be impossible for me to carry on the business of promoter unless the contracts I make would be strictly adhered to, and that the operation of said line in violation as aforesaid, works like irreparable injury and damage to Public Service Interstate Transportation Co. by reason of the fact that it offers a competitive service to the lines of Public Service Interstate Transportation Co. and thereby brings about a diminution in the revenue of the lines of Public Service Interstate Transportation Co.

That neither Earl H. Johnson nor Lincoln Lines, Inc., would be able to respond adequately to any

damages for any action that I or Public Service Interstate Transportation Co. might bring against them in the courts of law, by reason of the financial irresponsibility of defendant, Earl H. Johnson, who is a man of very meagre financial means, and of the total irresponsibility of Lincoln Lines, Inc., which has neither money nor property in its own name. 10

OTTO G. SCHULTZ.

Sworn and subscribed before me this 10th day of June, 1931.

JACK I. GOLDSTEIN,
Atty.-at-Law of N. J.

THIS AGREEMENT, made this twenty-second 20 day of October, nineteen hundred and twenty-eight, by and between EARL H. JOHNSON and WILLIAMSTOWN-PHILADELPHIA BUS CO., a New Jersey corporation, parties of the first part, and OTTO G. SCHULTZ, of New York City, party of the second part.

WITNESSETH, that the parties of the first part for and in consideration of the sum of ninety-five thousand ($95,000.00) Dollars, to be paid as herein- 30 after set forth, agrees to sell to the party of the second part all of the right, title and interest of the party of the first part individually in real estate owned by him on the Sicklertown Road, Monroe Township, Gloucester County, New Jersey, and known as the garage property, which is approxi-

mately a breadth of sixty feet on said road by a depth of approximately one hundred and fifty feet.

The said Williamstown Bus Co., agrees to sell and deliver one hundred per cent. of the stock of said company and also all the right, title and interest of said company in and to certain busses hereinafter enumerated and set forth in the schedule
10 annexed to this agreement, as well as all of the tools, appliances and equipment on said busses and in said garage.

Said real estate shall be free and clear of all encumbrances, and the title of which shall be good and marketable. Said personal property and said stock shall be free and clear of all encumbrances and any tax due the State or the United States.

The party of the second part agrees to make payment for said real estate and said personal property
20 and stock as follows:

Ten Thousand ($10,000.00) Dollars on the signing of this agreement, the receipt of which said sum is hereby acknowledged by the party of the first part; Thirty-seven thousand, five hundred ($37,500.00) Dollars at the time of final settlement which shall be within ninety days from the date hereof, and the balance in ten notes of forty-seven hundred and fifty ($4750.00) Dollars each, and payable consecutively in from one to ten months from the date
30 thereof, which said notes shall bear interest at the rate of six per cent. per annum.

The party of the second part agrees to employ Earl H. Johnson as Manager of operation of said Company at a weekly salary of seventy-five dollars per week from and after the time of final settlement and for a period of one year from said date.

The party of the first part, Earl H. Johnson, agrees to deliver at the time of final settlement to the party of the second part all of the stock of said company, together with the resignations of all officers and directors.

It is understood and agreed by and between the parties hereto that if the party of the second part defaults in the payment of any of said notes hereinbefore referred to as any such note shall mature for a period of ten days after the date of said maturity then all of said notes shall immediately become due and payable. Any provision therein to the contrary notwithstanding.

The party of the first part, Earl H. Johnson, agrees that he will not from and after the date of said final settlement engage directly or indirectly in the operation of Bus lines between the State of New Jersey, and any other State, except as the Manager, Officer or employee of the said party of the second part.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and the said Corporation has affixed its seal signed and attested by its President and Secretary.

Earl H. Johnson (SEAL)

WILLIAMSTOWN-PHILADELPHIA BUS CO.,

By Earl H. Johnson, Pres.

Otto G. Schultz.

Signed, Sealed and Delivered
in the presence of
Clifford A. Baldwin,

Attest Martha A. Johnson,
Sec.
Signed, sealed and delivered
in the presence of
Clifford A. Baldwin.

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10 Schedule of Busses annexed to contract dated October 22nd, 1928, by and between Earl H. Johnson and Williamstown-Philadelphia Bus Co., party of the first part and Otto G. Schultz, party of the second part:—

White Busses	Serial No.
	138832
	131945
	148967
	148656
	139728
	139259
	133006
	134584
	133310
	137439
	135813

20

STUDEBAKER BUSSES	SERIAL NO.
	2092582
	2098746
	2098742

30

ORDER.

(Filed June 16, 1931.)

IN CHANCERY OF NEW JERSEY. 10

Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill for Injunction. Order. 20

Upon reading the bill of complaint and the affidavits thereto annexed, in the above cause, and on motion of Patrick H. Harding, of counsel with complainants: 30

It is, on this 16th day of June, A. D. nineteen hundred and thirty-one, ordered that the defendants and each of them, show cause before the Chancellor, at the Chancery Chambers, Court House, in the City of Camden, on the 22nd day of June (daylight saving time), 1931, at ten o'clock in the forenoon,

or as soon thereafter as counsel can be heard, why an injunction should not issue, restraining and enjoining the defendants from operating a bus line or buses from the City of New York, in the State of New York, to the City of Atlantic City, in the State of New Jersey, and from Atlantic City, in the State of New Jersey, to points in Delaware, Maryland, and the District of Columbia, in accordance with the prayer of said bill; and

It is further ordered that a copy of the bill, affidavits, and this order, which need not be certified, be served on each of said defendants respectively, within four days from the date of this order.

Respectfully advised,

E. B. Leaming,

V. C.

SUPPORTING AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

10

Between Otto G. Schultz and Public Service Interstate Transportation Co., *Complainants,* and Earl H. Johnson and Lincoln Lines, Inc., *Defendants.*	On Bill for Injunction. Order to Show Cause. Affidavits.

20

State of New Jersey, }
County of Camden, } ss.

George Booz, of full age, being duly sworn according to law, on his oath deposes and says:

I am an employee of Public Service Interstate Transportation Company of New Jersey. I am assistant manager of Southern Division of that company. 30

I am acquainted with Earl H. Johnson, who resides at Williamstown, New Jersey, and who was formerly in the employ of Otto G. Schultz and afterwards of Schultz Management, and subsequent to

that time of Public Service Interstate Transportation Company.

Mr. Johnson was employed with Otto G. Schultz, of Schultz Management, and Public Service Interstate Transportation Co., for a little over two years.

To the best of my recollection, he tendered his resignation to Public Service Interstate Transportation Co. about March 15th, 1931, but was paid up to April 1st, 1931.

Mr. Johnson informed me at the time he resigned that he was dissatisfied with the amount of his wages, and stated that by reason of the present economic conditions he was obliged to get into some private business. He told me that he would not do anything to antagonize Public Service Interstate Transportation Co. I do not know, but I believe that at the time he was talking to me he was fearful that I was suspicious that he might enter the bus business as an independent operator.

About three or four weeks later, I heard some rumor that Mr. Johnson had purchased some bus equipment from the White Company, a manufacturer of buses. I asked Mr. Johnson about this and he stated that he did not use any of his money to buy any buses, but that there was a new company about to start in operation called the Lincoln Lines, Inc. He told me practically everything about this company, where the buses were purchased, how many, the name of the manufacturer, and stated that the buses would be delivered shortly. He, however, stated that he was not an officer of the company. This conversation, so far as I can recall, took place in the early part of April, 1931, at Mr. John-

son's home, at Williamstown, New Jersey. I had called on him as a result of the rumor that he was going into the bus business. The day following this conversation I met Mr. Johnson in Camden, and at that time he practically admitted that he was identified with the Lincoln Lines, Inc., and discussed with me and some others, the question of making of the operation a tourist business, so that it would not in 10 any way interfere with Public Service Interstate Transportation Company operation and thus violate the terms of an agreement which I knew Mr. Johnson had made on behalf of Mr. Schultz and Public Service Interstate Transportation Company. While Mr. Johnson did not say so, he left me and the others to this conversation, under the impression that he would likely do only a tourist business. Subsequently, Mr. Herbert E. Harper, manager of the Southern Division of Public Service Interstate 20 Transportation Company; Mr. Patrick H. Harding, attorney for the company, and myself, endeavored to have Mr. Johnson give us a letter, or put in writing, that he did not intend to do a regular passenger business between New York and Atlantic City, New Jersey, and Atlantic City, New Jersey, and Wilmington, Delaware.

Subsequently, I heard that the operation of Lincoln Lines, Inc., had been started on May 6th, 1931. It was first operated between New York and Atlantic 30 City, and then on May 30th, 1931, it was extended to operate from New York via Atlantic City to Washington, D. C.

After the operation was started, I received word from Atlantic City of various rumors that some of

our men were about to leave our employ and become interested in this new line. One of the men was purposely transferred to Camden, in order to remove him from the temptation of leaving his employment and going with the other line. Notwithstanding this, however, this man did take a position with the Lincoln Lines, Inc. I called Mr. Johnson, who I understand was managing the line. I made this call at his home at Williamstown, New Jersey, and asked him if it was true that he had employed one of our men from the terminal. He said it was true that he had employed him. I also learned since that time that Mr. Johnson has employed three men who were driving buses out of our Williamstown garage, and also a man who was used as a station man at Williamstown. All of these men were under the direct supervision of Mr. Johnson when he was in charge of the line of Public Service Interstate Transportation Company operating between Williamstown and Philadelphia.

In one of my conversations that I had with Mr. Johnson respecting the operation of the Lincoln Lines, Inc., wherein he left me under the impression that he would do only a tourist business, he stated that he would not do anything to run a service for a fare less than that being charged on Public Service Interstate Transportation Company buses. Notwithstanding his declaration, the line is operating on special excursion, three-day round trip, $3.75. This compares with a one-way fare of $3.00 and a round trip fare of $5.50 charged on the Public Service Transportation Company buses.

George W. Booz.

Sworn and subscribed before me this 15th day of June, 1931.

THOMAS M. MADDEN,
Attorney-at-Law of N. J.

State of New Jersey, }
County of Camden, } ss. 10

ALBERT J. HEBRANK, of full age, being duly sworn according to law, on his oath deposes and says:

I am employed by Public Service Interstate Transportation Company, and have charge of the New York Terminal, at 220 West 45th Street, New York City, N. Y.

I am familiar with a new bus company operation which has recently been started from the Claridge 20 Hotel, 45th Street and Broadway, New York City, to Atlantic City, in the State of New Jersey, and Washington, D. C.

I am also acquainted with Earl H. Johnson, who I understand is identified with Lincoln Lines, Inc. I am also acquainted with Edward Harrington and William Van Lloy, who are identified with Lincoln Lines, Inc.

I understand that Mr. Harrington is temporarily engaged in field service for the Lincoln Lines, Inc., 30 traveling pretty much between New York City and Atlantic City, New Jersey. I do not know that he has any given title.

On Sunday, June 14th, 1931, I met Mr. Harrington in New York City, and we entered into a conversation regarding its operation. During the con-

versation Mr. Harrington told me of the new Lincoln Lines, Inc., which operates between New York City and Atlantic City, New Jersey, and stated that he was working for that company. He told me that Mrs. Johnson, wife of Earl H. Johnson, is president of the Lincoln Lines, Inc.; that Earl H. Johnson is secretary and treasurer, and that William Van Lloy is vice-president and general manager.

I have checked the operation of Lincoln Lines, Inc., between New York City and Atlantic City, New Jersey, several times, and for that purpose have gotten a number of its time tables and literature, specimens of which are attached to this affidavit and marked respectively, Exhibits C1, C2.

I know that William Van Lloy was for some time employed by Public Service Interstate Transportation Company, at Williamstown, New Jersey, as station master, and sometime prior to that time, I believe that he had been employed by Mr. Earl H. Johnson when he was engaged in operating the Williamstown-Philadelphia Bus Co.

ALBERT J. HEBRANK.

Sworn and subscribed before me this 15th day of June, 1931.

THOMAS M. MADDEN,
Attorney-at-Law of N. J.

EXHIBIT C1.

LINCOLN LINES, Inc.
PULLMANS FIT FOR ROYALTY
Superior Motor Service
COACHES EQUIPPED WITH SAFETY GLASS 10

(Photograph)

Between
NEW YORK
LAKEWOOD
ATLANTIC CITY
WILMINGTON
BALTIMORE
WASHINGTON
FREQUENT DEPARTURES FROM 20
Plane Bus
Steamer
UNITED

Coast to Coast
and Canada
HOTEL
CLARIDGE

Bus Depot
BROADWAY
and 44th ST.

Phone BRyant 9-036 3-0350-0246

(Stamped): 30

LITTLE HUNGARIAN
RESTAURANT
305 MAIN ST.
LAKEWOOD, - N. J.
H. S. STEINHOUSER
Phone 724

LINCOLN LINES

Pullman's Fit for Royalty

Porter Service On Every Coach

BETWEEN
NEW YORK, LAKEWOOD, ATLANTIC CITY, WILMINGTON, BALTIMORE, WASHINGTON
Direct Connections for New Jersey Coast Resorts—The South and the West

Please Read Down — Please Read Up

SCHEDULE

A. M.	A. M.	P. M.	P. M.	P.M.	Daylight Saving Time	P. M.	P. M.	P. M.	P. M.	A. M.
7.45	10.15	12.20	3.00	7.15	Lv. Brooklyn, 13- 4th Ave.....Ar.	12.10	3.00	5.00	8.05	12.15
8.30	11.00	1.00	3.30	6.30	Lv. NEW YORK.....Ar.	12.45	3.30	5.35	7.35	11.45
					United Bus Depot					
					Hotel Claridge					
					Bway. & 44th St.					
8.35	11 05	1 05	3 35	6 35	Consolidated Bus Office					
					36th St. & 6th Ave.					
8.40	11 10	1 10	3 40	6 40	Short Line Bus Depot					
					247 West 34th St.					
8.50	11 20	1 20	3 45	6 50	Continental Travel Co.					
					239 Fifth Ave., 27th St.					
	11 35	1.35	3 55		Holland Tunnel, N. Y.....				7.15	11 25
	11 55		4.15	7.40	Elizabeth, N. J.....	11.35	2.25	4 20		
	12.10		4.20	7.50	Rahway, N. J.....	11.30	2.10	4 05		
TUNNEL	12.17		4.27	7.57	Woodbridge, N. J.....	11.15	2.03	4.00		
	12.25	LIMITED	4.35	8.00	South Amboy, N. J.....	11.05	1.55	3.50		
	12.30		4.40	8.05	Morgan, N. J.....	11 00	1 50	3.45		
	12.50		4.50	8.10	Matawan, N. J.....	10.55	1.40	3.35		
	1.00		5.00	8.15	Marlboro, N. J.....	10.50	1.35	3.30		
	1.05		5.05	8.20	Freehold, N. J.....	10.45	1.30	3 25		
10.50	1.20	3.15	5.20	8.30	Ar. LAKEWOOD .....Lv.	10.40	1.25	3.20	5.55	9.40
11.00	1.35	3.25	5.35	8.45	Lv. LAKEWOOD .....Ar.	10.30	1.10	3.10	5 40	9.30
	1.50		5.55	9.00	Tom's River, N. J.....	10.20	12.50	2.50		
	1.55		6.00	9.05	Pinewald, N. J.....	10.10	12.40	2 20		
	2.05		6.15	9.15	Barnegat, N. J.....	10.00	12.30	2.30		
HOLLAND	2.15	LINCOLN	6.30	9.30	Manahawkin, N. J.	9.45	12.15	2.15	TUNNEL	TUNNEL
	2.25		6.40	9.40	West Creek, N. J.	9.35	12 05	2.00		
	2.30		6.50	9.50	Tuckerton, N. J.	9.25	11.55	1.55		
	2.35		7 05	10.00	New Gretna, N. J.....	9.10	11.40	1.40		
	2.55		7.25	10.25	Absecon, N. J.....	8.50	11.20	1.20		
12.40	3.10	5.10	7.40	10.40	Ar. ATLANTIC CITY.....Lv.	8.30	11.00	1.00	3.30	7.30
12.50				10 50	Lv. ATLANTIC CITY.....Ar.				3 00	6.15
					Mays Landing, N. J.....					
					Pleasantville, N. J.....					
VIA					Malaga, N. J.....				HOLLAND	HOLLAND
					Elmer, N. J.....					
2 20				12 10	Woodstown, N. J.....					
					Penns Grove, N. J.....					
2 55	VIA HOLLAND TUNNEL	VIA HOLLAND TUNNEL	VIA HOLLAND TUNNEL	12 45	Wilmington, Del.....	VIA STATEN ISLAND	VIA STATEN ISLAND	VIA STATEN ISLAND	12.35	4.40
3 00				12 50	Wilmington, Del.				12.05	4.35
					Elkton, Md.					
					Northeast, Md.					
				VIA STATEN ISLAND	Perryville, Md.				VIA	VIA
					Havre de Grace, Md.....					
					Havre de Grace, Md.....					
					Aberdeen, Md.					
6 00				3 50	BALTIMORE, MD.				10.05	2.40
6 05				4 00	BALTIMORE, MD.				10.00	2.30
					Laurel, Md.					
7 30				5 30	WASHINGTON, D. C.....				8.30	1.00

Coaches will stop on signal at any town en route. Light face means A. M.—Dark face means P. M.

DIRECT CONNECTIONS FROM NEW YORK
For THE WEST AND NEW ENGLAND
—also—
Connection made at Washington
FOR ALL POINTS IN THE SOUTH
Atlantic City—Ocean City
VENTNOR—MARGATE—LONGPORT—
STRATHMERE 10
—and—
Sea Isle City—Wildwood
Cape May

This time table is subject to change without notice. It shows the time buses may be expected to arrive and depart from stations, and while every effort is made to operate on such schedule, such times are not guaranteed, and no responsibility is assumed for failure to operate on schedule.

As a matter of accommodation, tickets are sold 20 over various connecting lines. Interline agreements are made only with companies considered reliable. The Company assumes no liability for connection with or service over any connecting line, beyond refunding the price paid for the ticket when no portion of such ticket has been used over the connecting line.

BAGGAGE LIABILITY LIMITED TO $10.00 AND
THEN ONLY WHEN BAGGAGE IS
CHECKED. 30

Interstate Passengers Only Carried.
De Luxe Motor Coaches
for Charter
Outings - Schools
Rates on Applications
Suggested All Expense Tours

VIA THE LUXURIOUS COACHES
LINCOLN LINES
ATLANTIC CITY

3 DAYS ALL EXPENSES $18.50

Leave Any Day

1st Day: Leave New York 3.30 P. M.
Arrive Atlantic City 4 hours later. Room
10 and meals at hotel Madison, Jefferson
2nd Day: In Atlantic City.
Room and meals included.
3rd Day: Breakfast and lunch at hotel.
Leave Atlantic City 3.30 P. M.
Arrive New York 7.35 P. M.

WASHINGTON D. C.

3 DAYS ALL EXPENSES $22.00

Leave Any Day

1st Day: Leave N. Y. 8.30 A. M.
20 Arrive Washington 7.30 P. M.
Room at hotel Cairo.
2nd Day: In Washington. Room and meals.
Morning and afternoon
Sightseeing trips.
3rd Day: Leave Washington 8.30 A. M.
Arrive N. Y. 7.30 P. M.

Atlantic City & Washington

4 DAYS ALL EXPENSES $29.00

Leave Any Day

30 1st Day: Leave N. Y. 3.30 P. M.
Arrive Atlantic City 7.40 P. M.
Evening dinner and room.
2nd Day: Breakfast and lunch included.
Leave Atlantic City 3.10 P. M.
Arrive Washington 7.30 P. M.
Room included.

3rd Day: In Washington. Room and meals.
Morning and afternoon sightseeing trips included.

4th Day: Breakfast included. Leave 8.30 A. M.
Arrive New York 7.35 P. M.

Tours Arranged Anywhere —
LINCOLN LINES, Inc.
Terminals 10
NEW YORK
UNITED BUS DEPOT
Hotel Claridge, 44th St. & Broadway
Phone: BRyant 9-0363

CONSOLIDATED
BUS TICKET OFFICE
36th St. and 6th Ave.
LOngacre 5-7162
SHORT BUS DEPOT
247 West 34th St. 20
LOngacre 5-4644

EMPIRE TRAVEL SERVICE
20 Cortlandt Street
BArclay 7-1385
CONTINENTAL TRAVEL CO.
239 FIFTH AVENUE LExington 1-4870
IN BROOKLYN
Bklyn Union Motor Coach Terminal
13 Fourth Avenue 30
NEvins 8-9412
IN LAKEWOOD
THE LITTLE HUNGARIAN RESTAURANT
IN ATLANTIC CITY
2211 Atlantic Avenue
Phone: Bell 4-6740

HOTEL MADISON
Illinois Avenue
IN WILMINGTON
IN BALTIMORE
IN WASHINGTON

10

EXHIBIT C2.

LINCOLN LINES
DIRECT COACH SERVICE TO
NEW YORK,
WILMINGTON, BALTIMORE
and WASHINGTON
Newest and Latest Type $20,000 Coaches
20 PORTER SERVICE ON EVERY COACH
5 DEPARTURES DAILY
From Atlantic City Direct to
Brooklyn and New York
8.30 A. M., 11.00 A. M., 1 P. M.,
3.30 P. M. and 7.30 P. M.
SPECIAL EXCURSION
3 DAY ROUND TRIP $3.75
$3.00 One Way $5.50 Round Trip
INTERNATIONAL BUS TERMINAL
30 2211 ATLANTIC AVE., Nr. Missouri
For Information and Reservations DIAL 4-6740
NEW YORK TERMINAL:
Hotel Claridge—44th & Broadway
Coaches Leave New York for Atlantic City
8.30 A. M., 11 A. M., 1 P. M., 3.30 P. M., 7.15 P. M.
(Other side):

3 DAYS TO NEW YORK $18.50
ALL EXPENSE HOURS
Includes Transportation, Hotel and Meals
(Photograph)
These DeLuxe Coaches Chartered for All Occasions
RATES ON APPLICATION

10

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill for Injunction. Affidavit of Service.

20

30

State of New Jersey, }
County of Camden, } ss.

JACK I. GOLDSTEIN, of full age, being duly sworn according to law, on his oath deposes and says, I am a resident of the City and County of Camden

and State of New Jersey, and connected with the office of Patrick H. Harding. I did, on the sixteenth day of June, nineteen hundred and thirty-one, serve on Earl H. Johnson individually and on Lincoln Lines, Inc., through Earl H. Johnson, manager, a true copy of the bill, order to show cause and affidavits of George Booz and Albert J. Hebrank by
10 delivering same personally to Earl H. Johnson, at the office of the Lincoln Lines, Inc., 2211 Atlantic Avenue, Atlantic City, N. J.

JACK I. GOLDSTEIN.

Sworn and subscribed to before me this seventeenth day of June, 1931.

JULIA M. CAREY,
A Notary Public of N. J.

20

30

ANSWERING AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

10

Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill for Injunction. Answering Affidavit.

20

State of New Jersey, }
County of Camden, } ss.

EARL H. JOHNSON, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am one of the defendants in this cause, and 30 reside at Williamstown, N. J. I have read the affidavits attached to the bill of complaint herein of Otto G. Schultz, George Booz, and Albert Hebrank, and make this affidavit, on behalf of myself and the other defendant herein, Lincoln Lines, Inc., in reply thereto.

2. It is true that on October 22, 1928, I entered into a written agreement on behalf of myself and the Williamstown-Philadelphia Bus Co. with the complainant, Otto G. Schultz. I believe the copy of said agreement annexed to the bill of complaint to be a true copy. The said agreement was the culmination of about two months' negotiations with
10 the complainant, Schultz. I was very much interested to know whether or not the Williamstown-Philadelphia line would be operated by Mr. Schultz himself. As one-half of the purchase price to be paid me was in notes, I was fearful lest Mr. Schultz would immediately retransfer the business and then evade his personal liability on the notes. As I suspected that he was acting in the matter as an agent of the Public Service Interstate Transportation Co. of this State, or one of its group of af-
20 filiated companies, I inquired specifically whether such was the case, as I had no intention of accepting Mr. Schultz's notes if he was not the real buyer. To this question Mr. Schultz, in the presence of his counsel, Patrick H. Harding, Esquire, replied with emphasis, and without reservation, that "Public Service" had nothing whatever to do with the deal. I find now, in Mr. Schultz's affidavit, the sworn admission that:

> "I did act as agent for said Public Service
> 30 Interstate Transportation Co. in the purchase of the real estate, buses and equipment of the said Earl H. Johnson and Williamstown-Philadelphia Bus Co."

It was in reliance upon this original representation now shown to be false that I finally agreed to

the terms set forth in the written agreement affixed to the bill of complaint herein.

3. The Williamstown-Philadelphia Bus Co., a New Jersey corporation which I controlled by stock ownership and personally operated, maintained a local transportation service by bus from Williamstown, Gloucester County, New Jersey, via the Black Horse Pike, to Camden, New Jersey, and thence to Philadelphia, Pennsylvania, a distance of some 23 miles. My company had been in operation for three years before the sale to Schultz, and during that time had operated solely on this route, and had served no other territory than that between Williamstown and Philadelphia.

4. One of the considerations moving me to make the sale was the undertaking by Mr. Schultz, incorporated in the written agreement, to have me retained as general manager of the Williamstown-Philadelphia Bus Co., all stock of which company was being turned over to Mr. Schultz. After retaining me in this position for a month, however, I was given the additional responsibility of directing a body shop established by Schultz for repair of the buses, and later was also given charge of a paint shop. I also spent a great deal of time visiting towns throughout Southern New Jersey and attending council meetings in order to obtain local rights for the various lines operated under Schultz or his companies, this work taking most of my nights.

5. In the early part of 1930 Schultz purported

to transfer the control of the Williamstown-Philadelphia Bus Co. to Public Service Interstate Transportation Co., complainant herein, and from that time on I was employed directly by that company. In July of 1930 I was placed in charge of the Ocean City terminus of the "Public Service" bus lines, but continuing in charge of the Williamstown-Philadelphia line. The result was that I was compelled to travel constantly between Ocean City and Philadelphia, and in this travel to use my own motor cars. During the year 1930 I ran my two cars about 60,000 miles, buying and paying myself for all tires, tags, automobile insurance, and repairs. I repeatedly requested the complainant company to reimburse me for these expenses, which cost me an average of $25.00 a week for the year in question, but they always refused to do this. I had about $10.00 additional expenses, besides, and as my stipulated salary of $75.00 a week was not increased, I found that I was not earning enough to maintain my wife and children. Furthermore, the necessity I was under of spending my nights at Ocean City, had forced me to move my family from my home in Williamstown to Ocean City, which was a source of additional expense and inconvenience.

6. Under these circumstances, I told George Booz and Herbert E. Harper, of the Public Service Interstate Transportation Co., that it was impossible for me to continue in that company's employ. These gentlemen acquiesced in my view of the necessities of my situation, but declined to pay the heavy personal expense under which I was operating for their company. In considering what other opening might

be available to me, I found I was practically limited to the business of bus transportation, in which I had been exclusively engaged for many years past. A service station which I had formerly operated I had had to sell out in 1929 in order to give 100% of my time to operation for Schultz. I did not consider that the concluding clause of my written agreement with Schultz forbade me from engaging in the 10 operation of a bus line which would in no way compete with my original line from Williamstown to Philadelphia. I understood that the restriction imposed on me was to be read with Schultz's agreement to employ me for one year, and that only during that period was I precluded from entering into competitive employment. Furthermore, my agreement had been made with Schultz and not with Public Service Interstate Transportation Co. I accordingly made plans for establishing a new bus trans- 20 portation passenger line from New York City to Washington, D. C., to operate through Atlantic City, and to avoid the heavy congested area around Jersey City, Newark and Philadelphia. Originally, my intention was to run my buses from New York to Atlantic City and thence to Wilmington, and my printed schedules showed a stop at Wilmington. This plan, however, was abandoned in order to make time, and the line from the time it was operated has entered the Philadelphia-Washington road south 30 of Wilmington, passing through Newcastle, Delaware.

7. This proposed route avoided altogether the route between Williamstown and Philadelphia formerly operated by me, and did not intersect that

route at any point. Furthermore, it was intended primarily as a trunk line between the two large metropolitan areas of New York and Washington, with shorter hauls between Atlantic City and New York added. While I did not see that this proposed operation in any way violated my written agreement with Schultz, I took the precaution of getting
10 legal advice thereon, and was advised that the proposed operation in no way violated the obligations of my agreement with Schultz.

8. I discussed my general plans very frankly with the responsible agents of the Public Service Interstate Transportation Co. in my territory, telling Messrs. Booz and Hebrank what I proposed to do. I resigned from my employ with that company in March last, and was able about a month later to
20 complete my plans and the organization of a corporation and to start operation of the new line. This company, Lincoln Lines, Inc., was incorporated under the laws of Delaware. I am the president of the company, my wife is secretary and treasurer, and William VanLoy is vice-president and general manager. The company is controlled by me through stock ownership. It is not true that it was organized for the purpose of concealing my identity therewith, but, on the contrary, for the usual commercial pur-
30 pose of securing the advantage of operation as a corporate entity rather than as an individual. My connection with the company was never concealed from the complainants.

9. The Washington-New York line of Lincoln Lines, Inc., is not in competition with any line of

the Public Service Interstate Transportation Co. Half of my company's buses start from Brooklyn and the other half from the Bronx on 162nd Street. Neither of these widely separated sections of Greater New York are served by the "Public Service," whose buses terminate at 44th Street and Broadway, New York City, twelve miles from the Bronx terminus of my line. No "Public Service" buses 10 connect with Washington via Atlantic City. Nor do any other bus lines operate between New York and Washington from termini in the Bronx or Brooklyn; nor do any other lines on such route pass through Atlantic City. It is untrue, as alleged by Mr. Booz, that I stated that I would not operate for a fare less than that charged on "Public Service" buses. As a matter of fact, however, the fare charged by Lincoln Lines, Inc., for a single trip between Atlantic City and New York of $3.00 and 20 of $5.50 for a round trip is the same rate regularly charged by all lines operating between New York and Atlantic City. We do have a $3.75 excursion rate, which is the same charge made by one of our competitors, the Capital Coach Co., this rate being for three days only. A large amount of our business is in the sale of tourist tickets, entitling the passenger to hotel accommodations and meals free of charge at Washington. Ninety per cent of our tickets are sold in either New York or Washington, 30 and only about 10% in New Jersey.

10. I note the charge that I persuaded Ed Harrington to leave his employ with the complainant company in order to join my company. This is not true. Mr. Harrington was sent by complainant com-

pany from Atlantic City to Camden, where he was to be put on night duty, to which he was not used, and where he would be separated from his family. Because of this he resigned, and shortly thereafter sought employment with me. I had nothing to do with inducing him to leave his former employ.

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11. In this connection, I should add that Mr. Booz, who has made an affidavit for the complainants, when he learned that Harrington was coming with me, called me on the telephone, and, pretending to play the part of a personal friend, told me "confidentially" that Mr. Harrington had been sent by "Public Service" to seek employment with me as a "Public Service" spy, and that his advice was that I ought to drop him at once. I was asked by
20 Mr. Booz not to let any one know this, as it would involve the latter in charges of disloyalty against the complainant company. This stratagem was merely a clumsy device intended to deprive me of Harrington's services.

12. William VanLoy, now one of the officers of my company, I have known from boyhood at Williamstown, and my new operation was planned in association with him.

30

13. The other three men whom I am charged with having secured from "Public Service" employ all came to me for jobs, without any prior solicitation on my part. I cannot imagine that their severance from the "Public Service" payroll in any way embarrasses that company, in view of the immense de-

mand for jobs by unemployed experienced bus drivers.

14. It is untrue that I am "a man of very meagre financial means" and it is also untrue that Lincoln Lines, Inc., is not responsible, that company having a very large investment of high-price buses. These buses are six in number, not three, as alleged by complainants. The business of Lincoln Lines, Inc., is a profitable one, and is gradually developing. We have operated continuously on our schedules since May 6, 1931.

EARL H. JOHNSON.

Sworn to and subscribed before me this
day of June, A. D. 1931.
(Seal)

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

10

Between Otto G. Schultz and Public Service Interstate Transportation Co., *Complainants,* and Earl H. Johnson and Lincoln Lines, Inc., 20 *Defendants.*	On Bill for Injunction. Hearing on Return of Order to Show Cause for Restraint Pendente Lite. Conclusions.

Patrick H. Harding, Esq., for complainants.
Louis B. LeDuc, Esq., for defendants.

Leaming, V. C.:

30 Complainant Schultz purchased from defendant Johnson and the Williamstown-Philadelphia Bus Company, a New Jersey corporation, a certain "bus line," which was operating between Williamstown, New Jersey, and Philadelphia, Pennsylvania. The purchase embraced the real estate and chattels used in the operation of that bus line, and may be here

assumed to have embraced its good will. In the contract of sale defendant, Johnson, who owned the real estate and operated and practically owned the corporation, covenanted as follows:

> "The party of the first part, Earl H. Johnson, agrees that he will not from and after the date of final settlement engage directly or indirectly in the operation of bus lines between the State of New Jersey, and any other State, except as the manager, officer or employee of the said party of the second part."

Complainant, Schultz, has transferred his rights under that agreement to complainant, Public Service Interstate Transportation Company.

Defendant, Johnson, has since become president of the Lincoln Lines, Inc., and controls and practically owns that corporation. That corporation operates a bus line from New York to Atlantic City and thence to Washington, D. C.

Complainants now seek to enforce by injunction the covenant of defendant, Johnson, above quoted. The present application is for restraint *pendente lite.*

The obligations arising from covenants of this nature have been considered by our Courts so frequently that almost every aspect of the subject has been determined. A review of the cases seems unnecessary. Such contracts are in restraint of trade and for that reason cannot be enforced to prevent the vendor of a business from engaging in a business similar to that which he has sold, in a territory beyond the territory in which the business which was sold was transacted at the time of the

sale, or, at most, beyond any extension of that territory, by expansion of the business sold, as might have been reasonably contemplated by the parties, at the time of the sale. The cases of Trenton Potteries Co. v. Oliphant, 58 N. J. Eq. 507, and Fleckenstein Bros. Co. v. Fleckenstein, 76 N. J. Eq. 613, need only be cited in support of that established rule.

Johnson is not operating in that territory. His route from New York to Atlantic City and thence to Washington in no way enters or interferes with the patronage of the territory in which the Williamstown-Philadelphia Bus Co. operated or contemplated operating the time of the sale to Schultz.

The notion that this purchase was made by complainant, Schultz, in the interest of complainant, Public Service Interstate Transportation Company, who now operates a bus line from New York to Atlantic City, adds nothing to the operative force of the Johnson covenant. The business conveyed, and not other unrelated businesses which may be elsewhere owned by the purchaser, delineates the territory within which the covenant may be lawfully enforced.

Restraint will be denied.

Determined July 8, 1931.

ORDER DENYING PRELIMINARY INJUNCTION.

IN CHANCERY OF NEW JERSEY.

10

Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill for Injunction. Order Denying Preliminary Injunction.

20

This Court, by order dated June 16, 1931, having ordered the defendants to show cause, on June 22, 1931, why an injunction should not issue restraining and enjoining the defendants from operating a bus line or buses from the City of New York, State of New York, to the City of Atlantic, State of New Jersey, and from Atlantic City, State of New Jersey, to points in Delaware, Maryland, and the District of Columbia, in accordance with the prayer of the bill of complaint herein, and the complainants appearing before the Court on June 22, 1931, by Patrick H. Harding, Esquire, and the defendants

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appearing by Louis B. LeDuc, Esquire, and affidavits having been filed in support of and in opposition to the said order to show cause, and the Court having read and considered the said affidavits and heard and considered the arguments of counsel, and being of the opinion that the contract between the complainant, Otto G. Schultz, and the defendant, Earl H. Johnson (the Williamstown-Philadelphia Bus Co.), wherein said Earl H. Johnson agreed not to engage in the operation of bus lines between the State of New Jersey and any other State, and enforcement of which contract by injunction is sought herein, is in restraint of trade insofar as the operation by Earl H. Johnson of the lines of the defendant, Lincoln Lines, Inc., is concerned, and, therefore, void and unenforceable in equity.

It is, therefore, on this 17th day of July, 1931, ordered that the said order to show cause be, and the same is, hereby dismissed and the temporary restraint prayed by the defendants is hereby denied, costs to abide the final event.

E. R. Walker,
C.

Respectfully advised,
E. B. Leaming,
V. C.

[Endorsed]

Approved as to form.

.....
Sol'r of Complainants.

NOTICE OF MOTION TO STRIKE.

IN CHANCERY OF NEW JERSEY.

10

Between Otto G. Schultz and Public Service Interstate Transportation Co., *Complainants,* and Earl H. Johnson and Lincoln Lines, Inc., *Defendants.*	On Bill for Injunction. Notice of Motion to Strike.

20

To Patrick H. Harding, Esquire, Solicitor for Complainants:

Please take notice that I shall move the Court of Chancery on Monday, July 20th, 1931, at the hour of ten o'clock (daylight saving time) in the forenoon thereof, or as soon thereafter as counsel can be heard, at the Court House in the City of Camden, New Jersey, to strike the bill of complaint in the above-entitled cause, upon any or all of the following grounds, viz.:

30

1. That the said bill of complaint does not state a cause of action in equity.

2. That the contract referred to in said bill of complaint, specific performance of which is sought herein, is in restraint of trade, void and unenforceable; and

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3. That the substantial matters in dispute between the parties have been disposed of by the decision of the Court of Chancery denying the preliminary injunction sought by the complainants.

LOUIS B. LEDUC,
Solicitor of Defendants.

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ORDER STRIKING BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

10

Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill for Injunction. Order Striking Bill of Complaint.

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The defendants, moving to strike the bill of complaint filed in this cause, and the said motion coming on to be heard in the presence of Patrick H. Harding, Esquire, solicitor for the complainants, and Louis B. LeDuc, Esquire, solicitor for the defendants, and after hearing and considering the arguments of counsel; and it appearing that the 30 contract between the complainant, Otto G. Schultz, and the defendant, Earl H. Johnson (and Williamstown-Philadelphia Bus Co.), referred to in the bill of complaint, specific performance of which contract is sought herein, is in restraint of trade insofar as the operation by Earl H. Johnson of the lines of

the defendant, Lincoln Lines, Inc., as alleged, is concerned, and, therefore, void and unenforceable in equity;

It is, on this 22nd day of July, 1931, ordered, adjudged and decreed that the said bill of complaint be dismissed, with costs to the defendants.

E. R. Walker,
C.

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Respectfully advised,
E. B. Leaming,
V. C.

[Endorsed]

20 Approved as to form.

.....
Sol'r of Complainants.

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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

85/315.

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Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants.*	On Bill, &c. Notice of Appeal.

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The complainants, Otto G. Schultz and Public Service Interstate Transportation Co., on bill for injunction, hereby appeal from a final order dismissing the bill of complaint in the above-entitled cause made on the 22nd day of July, 1931, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. Said order was made by the Chancellor on the advice of Vice-Chancellor Leaming.

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PATRICK H. HARDING,
Solicitor for Complainants.

I conceive there is good cause for appeal in the above-entitled cause.

PATRICK H. HARDING,
Counsel for Complainants.

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[ENDORSED]

Service of within notice of appeal, made this day of , 1931.

.....
Counsel for Defendants.

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PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION Co., *Complainants-Appellants,* and EARL H. JOHNSON and LINCOLN LINES, INC., *Defendants-Appellees.*	On Appeal from the Court of Chancery. Petition of Appeal.

20

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Otto G. Schultz and Public Service Interstate Transportation Co., the appellants in the above-entitled cause, respectfully shows that: 30

1. Petitioners find themselves aggrieved by a certain order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 22nd day of July, 1931, in a certain cause in the said Court of Chancery, wherein said Otto G. Schultz and Public

Service Interstate Transportation Co. were complainants and said Earl H. Johnson and Lincoln Lines, Inc., were defendants, in this respect, to wit:

That the said order adjudges that the contract between the complainant, Otto G. Schultz, and the defendant, Earl H. Johnson (and Williamstown-Philadelphia Bus Co.), referred to in the bill of complaint, specific performance of which contract is sought herein, is in restraint of trade insofar as the operation by Earl H. Johnson of the lines of the defendant, Lincoln Lines, Inc., as alleged, is concerned, and, therefore, void and unenforceable in equity, and accordingly dismissed the bill of complaint.

Petitioners therefore appeal from said order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous, in that said order should have sustained the validity of the contract existing between the complainant, Otto G. Schultz, and defendant, Earl H. Johnson, and set forth in the bill of complaint, in that said contract is valid and enforceable in court of equity and not in restraint of trade.

Petitioners therefore pray that the said order of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

PATRICK H. HARDING,
Solicitor for and of Counsel with Appellant.

Served on Louis B. LeDuc, Aug. 10th, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

Otto G. Schultz and Public Service Interstate Transportation Co.,
Complainants-Appellants,

and

Earl H. Johnson and Lincoln Lines, Inc.,
Defendants-Appellees.

On Appeal from the Court of Chancery.

BRIEF OF APPELLANT.

The bill filed in this cause seeks to restrain the operation of a line of buses by defendants, Earl H. Johnson and Lincoln Lines, Inc., anywhere in New Jersey, where said operation is between New Jersey and any other State.

The restraint requested is based on a contract entered into by complainant, Otto G. Schultz, and defendant, Earl H. Johnson, and the Williamstown-

Philadelphia Bus Company, dated May 22nd, 1928. By the terms of the contract Schultz purchased, for a consideration of ninety-five thousand dollars ($95,000), all of the stock and equipment of the said Johnson and said company. The following clause was part of the contract:

> "The party of the first part, Earl H. Johnson, agrees that he will not from and after the date of said final settlement engage directly or indirectly in the operation of bus lines between the State of New Jersey and any other State, except as the manager, officer or employee of the said party of the second part."

The defendant, Johnson, admits the making of the contract, acknowledges having received the full consideration set forth in the contract and admits that the other defendant, Lincoln Lines, Inc., was incorporated by him and is wholly and solely under his control. He also admits that said line is operating buses on a regular schedule between New York City, in the State of New York, and Atlantic City, in the State of New Jersey, and between the latter city and Washington, in the District of Columbia. He admits he has violated his contract and seeks to justify the breach on the ground that said contract is violative of the common law, in that it is unlimited as to time and unreasonable as to territory. He further pleads ignorance as to the terms of the contract and tries to place a construction on the terms which is at complete variance with the language.

Under a clause of the contract Schultz agreed to employ Johnson for a period of one year at a fixed weekly salary from and after the time of final set-

tlement. Schultz did employ Johnson for over a year, and Schultz's successor, Public Service Interstate Transportation Company, continued Johnson in said employment without any change in the fixed salary, until Johnson voluntarily resigned on March 15th, 1931. Shortly thereafter, and on May 6th, 1931, Johnson started the operation of the bus line under the name of Lincoln Lines, Inc., between the points aforesaid.

Johnson first asks the Court to believe that he was not treated right by Public Service Interstate Transportation Company, in that said company imposed on him greater responsibilities than his job as manager of the Williamstown-Philadelphia Bus Company called for, and that the company curtailed his expense account. He offers these suggestions as the reason for his resignation. His speedy entry into the bus business five weeks after he received his final pay check, April 1st, 1931, would indicate that Johnson was preparing the layout, schedule, route and purchase of these buses while he was still in the employ of the latter-named company, and that the real motive of his resignation was to enter the bus business.

He next pleads with the Court to believe that he thought the restraint imposed by his own covenant was co-extensive only with the covenant made by Schultz to employ him as manager. In view of the fact that he was represented by a very able member of the Bar, whose name appears on the agreement as a witness, the plea is rather weak, and like the foregoing lacks the ring of sincerity.

As a final plea he asks the Court to believe that he honestly thought, when he signed the contract,

that the restraint was only to cover the territory of the line he had sold complainant, *viz.,* the territory between Williamstown, New Jersey, and Philadelphia, Pa.

None of these defenses will stand the light of examination when the contract itself is read. The contract is very simple. The clause employing Johnson as manager of the purchased line is entirely separate from the clause of restraint, and the language used in the latter clause, "between the State of New Jersey and any other State," can be susceptible of only one meaning.

Public Service Interstate Transportation Company, as defendant admits, operates bus lines between New York City and Atlantic City, and between Atlantic City and Wilmington, Delaware. Defendant tries to escape his covenant by declaring his line is not competitive, alleging it does not proceed over the same routes. He does not deny that his line runs to and from the same terminal cities as Public Service Interstate Transportation Company's buses, thus entering into direct competition for the business of those cities.

Upon application for preliminary restraint by complaint the Court denied the relief, and subsequently, upon application of the defendant, the Court dismissed the bill of complaint upon the ground that the contract set forth in the bill of complaint was void and unenforceable in equity.

Decisions on Points in Controversy.

Contract in restraint of trade in competition.

Duration of time.

One of the earliest cases in this State on the question of duration of time in a contract of this nature is that of *Carll v. Snyder,* 26 Atl. 977, Court of Chancery (not officially reported). Vice-Chancellor Bird, in passing on this particular question, said:

> "I am equally well satisfied that the insistment that the restraint is indefinite as to time and therefore unreasonable, ought not to prevail.
>
> I think a careful study of the case of Mitchel v. Reynolds, reported in One Smith leading cases, 9th Edition, 694, with the various annotations both by the English and American editors will satisfy the mind as to the principles upon which contracts of this nature, not only may well be, but really ought to be supported when indefinite as to time. The purchaser of such good-will may fairly be supposed to purchase, not only for his own immediately use or benefit, but for the use of his personal representatives, in the same sense that he purchases personal property or real estate. *I can see no just reason for his not being able in the law to make such an investment which shall pass to his assigns, executors or administrators. It cannot be said, when it is limited to a particular district, that this in any manner interferes with sound public policy.* It would not be a violation of the rule which required such contracts

to be in harmony with the interests of the community at large in case the stipulation were to be that the covenantee should not carry on the trade in question for twenty or thirty years, and, if not for that period of time, then certainly it would not be if the covenant extended to a lifetime."

He who has energy and integrity enough to establish a business which is worthy of the name, and for which others will bid a fair price, will not want the protection of the paternal hand to make his footprints in other quarters. *In the following cases there was no limit as to time, and it will be observed that in many of them resistance was made to their enforcement on this account, but without success*:

Richardson v. Peacock, 26 N. J. E. 40; 28 N. J. E. 151, and 33 N. J. E. 597; Hitchock v. Coker, 6 Adol & E. 439; Hastings v. Whitley, 2 Exch. 611, Mallan v. May 11 Mees & W. 653; Browser v. Bliss, 7 Blackf. 344; Pierce v. Fuller, 8 Mass. 223; Palmer v. Stebbens, 3 Peck 188; Match Co. v. Reeber, 106 N. Y. 473; 13 N. E. Rep. 419, 4231."

The above was a case to restrain defendants who had sold all their interest in an iron business to complainant from carrying on such business within the limits of the City of Trenton.

In the case of *Scherman v. Stern,* 117 Atlantic 631, 93 N. J. Equity 626, the Court held:

"It is no objection of an agreement not to compete with a mercantile business that the

restraint is unlimited in point of time when it is reasonably limited in point of space."

Mr. Justice Trenchard said:

"Neither the fact that the restraint was unlimited in point of time, nor the fact that the obligation remains in force after the above mentioned store will be sold to other persons, renders the covenant unreasonable. *The restraint was no greater than was necessary to afford fair protection to the complainants.* The Sterns had influence with the trade in that line in the Borough of Metuchen, and the complainants reasonably desired to avoid the exercise of that influence to their prejudice. In purchasing the good will of the business, they may be fairly supposed to have purchased, not only for their own immediate purpose and benefit, but for the purpose of sale or perchance, for the use of their personal representatives. *If the defendants desired to continue in a similar line of business, the whole world was open to them. If they desired to engage in another line of business in Metuchen, they were at liberty to do so.*"

In the case of *Trenton Potteries v. Oliphant,* 58 N. J. Equity 507, Chief Justice Magie, speaking for the Court of Errors and Appeals, said:

"It is of public interest if everyone may freely acquire and sell and transfer property and property rights."

Further,

"It is of public interest that he shall be able

to make such a sale at a fair price and that his purchaser shall be able to obtain by his purchase that which he desired to buy. *Obviously the only practical mode of accomplishing that purpose is by the vendors contracting for some restraint upon his acts preventing him from engaging in the same business in competition with that which he has sold.* His contract to abstain from engaging in such competitive business is a contract in restraint of trade, but one which has been recognized as not inimical to but permitted by public policy.

Therefore, while the public interest may be that trade in general shall not be restrained *yet it also permits and favors* a restraint of trade in certain cases. Contracts of this sort which have been sustained and enforced, by the Court, have been generally declared to be such as restrain trade, not generally, but only partially, *and no more extensively than is reasonably* REQUIRED TO PROTECT THE PURCHASER IN THE USE AND ENJOYMENT of the business purchased, and are not otherwise injurious to *public interest.*''

It was objected in this case that the contract extended the restraint upon respondents over too great a period of time. The ages of respondents indicated that at the expiration limit of the time in the contract, fifty years, probably some of them would have been dead. It was insisted that this provision in the contract was unreasonable because of the long time of restraint.

The Court held:

> *"That whether the restraint was reasonable or unreasonable was not to be determined by the disadvantageous effect it would have upon respondents but by considering whether the restraint to which, for what they received as a sufficient consideration, they bound themselves was reasonably required to protect the purchaser in the enjoyment of his purchase."*

It seems under the law of contract that the result of a review of the English authorities shows that where the restraint is without qualification, it is unreasonable and contrary to public policy but where it is subject to some qualification either as to time or space, the question is whether it is reasonable, and if reasonable, it is good in law. That reasonableness depends on all the circumstances which must be duly weighed in each case.

In the case of *R. H. Perry & Company v. Burns Bros.*, 101 N. J. Equity 409, 139 Atl., page 41, Vice-Chancellor Lewis upheld the contract made by a coal dealer not to engage directly or indirectly as principal agent or investor in the coal business in the limits of the City of Jersey City for the period of twenty years.

The defendant breached the contract and entered into the business. It was urged by the defendant in that case that the covenant in its entirety was too vague and uncertain to admit of specific application and that it was indivisible in its nature and that, therefore, covenant should not be enforced.

The Vice-Chancellor in upholding the validity of the contract quoted *Fleckenstein Bros. v. Flecken-*

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stein, 76 N. J. Law 613; 71 Atl. 265, and in answer to this contention said:

> "To my mind, however, it seems clear that the defendant sold the business in question to the complainant and took its pay, therefore, which it still retains. Under the law applicable to that situation, I think that the covenant was clearly necessary for the protection of the business as it existed at the time of the sale; and to that extent it is not in opposition to public policy and may be enforced."

In the case of *Fleckenstein Bros. Co. v. Fleckenstein,* above cited, Chief Justice Gummere, speaking for the Court of Errors and Appeals, said:

> "Nevertheless, there is much force in the contention that a person who purchases the good will of a business with the purpose of extending its scope, is entitled to bargain with his vendor against competition within the territory into which he designs to extend it and that such a contract is not opposed to public policy when the area which it embraces is not greater than that which the parties may fairly anticipate the extended business will cover."

In the present case Johnson knew that this line was being purchased to complete a network of lines covering the entire State of New Jersey, and that to operate a line anywhere in the State would be in direct competition with some line in this network.

In the case of *J. Herreshoff v. A. Boutinean,* 17

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R. I. 3, 19 At. Rep. 712, 8 L. R. A. 469, Supreme Court of Rhode Island, Mr. Justice Stiness said:

> "In determining the reasonableness of a contract, regard must be had to the nature and circumstances of the transaction. For example, if one has sold the good will of a mercantile enterprise, receiving pay for it upon an agreement not to engage in the same business in the same State, for a certain time, such a stipulation would stand upon a different footing from a similar stipulation of a mere servant in an ordinary local business. In many undertakings with modern methods of advertising and facilities for ordering by telegraph or mail, and sending goods by railroad or express, it would matter little whether one was located at Providence or Boston or some other place. In such cases a restriction embracing the State or even a larger territory could not be said on that account to be unreasonable, for without it the seller might immediately destroy the value of what he sold and was paid for."

Vice-Chancellor Leaming, in his conclusions filed in this matter stated (State of Case, p. 39, line 31), such contracts are in restraint of trade and for that reason cannot be enforced to prevent the vendor of a business from engaging in a business similar to that which he has sold, in a territory beyond the territory in which the business which was sold was transacted at the time of the sale, or, at most, beyond any extension of that territory, by expansion of the business sold as might have been reasonably contemplated by the parties at the time of the sale.

The Vice-Chancellor further said (page 40, line 22):

> "The business conveyed and not other unrelated businesses which may be elsewhere owned by the purchaser, delineates the territory within which the covenant may be lawfully enforced."

Here the Vice-Chancellor indicated that if the operation of a bus line by Johnson between Philadelphia and Williamstown had been complained of he would have granted relief, and enforced the restraining covenant of the contract.

Clearly this covenant is not divisible. The defendant contracted (page 11, line 19), that he would not engage in the operation of a bus line between the State of New Jersey, and any other State, except as manager, officer or employee of the complainant. The terms of this covenant are certain and the boundaries or territory set forth are clear and positive. The terms cannot be altered or the territory diminished.

The Vice-Chancellor held that the defendant is operating lawfully between New York and Atlantic City, which it would have been unlawful for him to operate between Williamstown and Philadelphia. If he is operating in violation of the covenant it is either lawful or unlawful, no matter where he is operating.

The Vice-Chancellor failed to give full recognition to the theory set forth in the Fleckenstein Bros. case, above cited, that is, that the restraint would be enforced in that territory to which the business

sold might have been reasonably extended by the contemplation of the parties.

Here the business sold was purchased by the complainant, Schultz, who was acting as a promoter for a state-wide bus company, to the knowledge of the defendant, Johnson, and for that reason the entire State of New Jersey was made the territory covered by the restraining covenant.

RESTRAINT AS TO TIME OR SPACE.

In the case of *Artistic Porcelain Co. v. Boch,* 76 N. J. E. 533, 74 At. R. 680, Vice-Chancellor Walker held as valid a covenant restricting the defendant from manufacturing a certain kind of porcelain door knobs for a period of five years and unlimited as to space.

The Vice-Chancellor in speaking of the reasonableness or unreasonableness of such restraints said:

> "In these cases it is held that the Court will presume that the parties intended to make a valid contract, and that they designed to provide a restraint which will be reasonable."

The Vice-Chancellor further said:

> "But where it is subject to some qualification either as to time or space, the question is whether it is reasonable, and if reasonable it is good in law; that reasonableness depends upon all the circumstances which must be duly weighed in each case.

In the case of *Magie, et al. v. Wilson,* 144 Atlantic Reporter 13, Court of Chancery (not officially reported).

In this case complainant asked restraint upon defendant who in violation of a covenant not to engage in the same business (meat) within a radius of twenty blocks, was operating a butcher shop within eight blocks of the business sold.

Vice-Chancellor Leaming said:

> "Defendant Wilson directly or indirectly is engaging in the same line of business as that of complainant and at a place contemplated by his covenant; *conscience and fair dealing demand restraint.*"

GENERAL RULE.

The general rule regarding this matter is found in 13 *Corpus Juris,* page 469; par. 2116, contracts:

> "*Even according to the early rule, it is no objection to an agreement reasonably limited in point of space that it is unlimited in point of time and may therefore continue during the whole life of the party restrained.* Thus the Courts have repeatedly sustained as valid agreement by the vendor of a business trade or profession, or by employees, etc., without limitation as to time not to carry on the business trade or profession in a certain town, village, city or county, even though it be a large city, within certain limits of a city, in a town or city and vicinity or at any place which will interfere with the business sold. The Courts

have also sustained an agreement not to run a stage on a specified road, and an agreement by a vendor of a milk route not to serve over the same route. An agreement not to engage in a certain business in a certain town while another carries on the same business there is valid."

THE EARLY CASES.

Many of the early cases are confirmatory of the principle laid down that if restraint imposed on employment or competition is reasonable as to time or space the contract is valid, so in the case of *Allkin v. Vreeland,* 36 Atlantic Reporter 479, Court of Chancery (not officially reported), Vice-Chancellor Emery denied an injunction to enforce a restrictive covenant forbidding the defendant to do business within an area of one thousand miles of the place of business sold when it appeared that at the most the area covered by the seller prior to the sale was one hundred miles surrounding the place of business. For this reason the Vice-Chancellor held the covenant unreasonable.

However, the covenant was for a permanent restriction, not specifying any period of time, and it is rather odd that the Court made no comment on this phase of the restriction.

In the case of *Stevens v. Brady,* 106 N. J. Equity 410; 151 Atlantic Rep. 92, Vice-Chancellor Backes refused a temporary injunction, pending the final hearing to restrain defendant from doing business anywhere in the United States because it appeared

that the defendant had not been doing business in all of the States at the time he sold the business.

The question of time did not enter into the determination of this matter inasmuch as it was limited to fifteen years.

The case of *Wyder v. Milhomme,* 96 N. J. L. 500; 115 At. 380, was an action in damages for breach of a covenant which prevented the defendant from engaging in the silk finishing business, when the business he sold was conducted in a somewhat restricted territory surrounding New York City, from engaging in the business anywhere in the United States.

There the Court speaking by Mr. Justice Parker, said:

> "It forbids defendant from engaging in a business for which he is fitted by training and experience anywhere in a territory many times larger *than the actual or reasonably expected field of operations of the covenantee;* and to the same extent deprives the public of his usefulness in the capacity in question."

In the case of *Mandeville v. Harman,* 42 N. J. E. 185; 7 Atlantic Rep. 37, complainant sought to restrain defendant from practicing medicine in Newark forever. The bill was dismissed.

However, this case has been somewhat overruled by the case of *Marvel v. Jonah,* in the Court of Errors and Appeals, 83 N. J. Equity 295, 90 Atlantic Rep. 1004.

This was a suit by the complainant to enjoin defendant from practicing medicine in Atlantic City for three years. On hearing the lower Court denied relief but on appeal the Court of Errors and

Appeals reversed the lower Court and granted the prayer of the bill.

The case of *Sternberg v. O'Brien,* 48 N. J. Equity 370, 22 Atlantic Rep. 348, was a bill by Sternberg to prevent O'Brien from engaging or being employed in an installment business for a period of one year after he left complainant's employ, in the City of Newark.

The Court in saying this was unreasonable said:

> "Put in another form, the fault imputed to the contract is that: Though employed in a single capacity, in a particular business the defendant cannot, for a year after he has ceased to be employed by the complainant, take employment as a coachman, waiter or in any other capacity from any person engaged in the installment clothing business in either Newark or Jersey City without committing a breach of his contract."

In the case of *Palumbo v. Piccioni,* 89 N. J. Equity 40, 103 Atlantic Rep. 815, Vice-Chancellor Leaming said:

> "Valid covenants in partial restraint of trade are classified as agreements by a seller of a property or business not to compete with a buyer in such a way as to derogate from the value of the property or business sold."

In this case the learned Vice-Chancellor allowed an injunction against the seller of a shoe repair business from doing business in the entire City of Camden.

In the case of *Nachamkis v. Goldsmith,* 101 N. J.

Law 356, 128 Atlantic Rep. 238, the Court of Errors and Appeals held that in the sale of a wholesale cracker and biscuit business the provision that seller would not engage in that business for ten miles surrounding the territory then served by seller was valid.

Mr. Justice Kalisch said:

> "An agreement not to engage in or pursue a particular business or profession, when made on a good consideration, with one whose business interests is to prevent competition, is valid, if restrained within reasonable limits, is too well settled to be regarded as an open question."

CONCLUSIONS.

Limitation as to space.

The restraint imposed on Johnson as to space is reasonable. If Johnson's theory is correct that he was only to be restricted from Williamstown to Philadelphia. Then nothing would prevent Johnson to operate between Berlin, Haddonfield, Woodbury, Moorestown and Philadelphia in direct competition with Public Service Lines. Johnson knew Public Service lines were state wide in operation and he knew when Public Service paid him ninety-five thousand dollars and imposed the restraint it was to protect its property throughout the State of New Jersey.

Transportation covers a large field. Johnson may still operate in forty-seven States outside of New Jersey. He may operate from New York to Wash-

ington even, providing he does no business in New Jersey.

It might be here remarked that the subject of the contract is an interstate, not a local line, not a public utility, but a line that many operate from New Jersey to California into any other State in the Union without restriction. His field of operation is large, but the restriction is very small.

He who seeks equity must do equity.

Johnson does not come into court with clean hands. He admits he received the full consideration for his contract. He keeps the money. Violates his contract and asks a Court of Equity to protect his wrong doing. Times have changed since the days of Blackstone. Business has changed, and the ethics of honest, legitimate business is to deliver the goods for the consideration. Every time a person is permitted on some technicality to violate a contract it shakes business and undermines the confidence business men have in the sanctity of agreements.

Johnson should not have the penny and the cake too.

The distinction between contracts in restraint of employment and in restraint of competition.

If the cases relating to restraints in contract are closely scrutinized there is a wide variance between the decisions relating to restraint of personal work or service and restraint of competitive business. A

careful reading of the former class of cases shows that restraint was in some cases denied because of inadequate consideration or because the limitation of time or space compared with degree of protection was wholly out of proportion to the service or thing to be protected. It was not unusual in the early days for the employer at the time of employment and without any consideration other than the employment itself to exact of the employee in case of resignation or dismissal a contract not to take like employment again for some time and not within certain territory. Under our modern decisions such contracts, except in very unusual circumstances, are not sustained.

The second class of cases, however, rest upon an entirely different basis. Here the contract is for the purchase of a business. Unless the purchaser gets the benefit of some reasonable restraint on the vendor not to carry on the business sold, he takes nothing by his purchase, as the vendor could easily command his old customers and get a fair proportion of the new ones to the detriment of the contract. When the contract is made with a corporation or for the benefit of a corporation it should be surmised that the contract will continue for the corporate life. Otherwise, if territory and not time were the essence of the contract the contract might be of little value to the corporation.

Scope of the restraint.

The contract recognizes that Johnson is the Williamstown-Philadelphia Bus Co. It treats Johnson

individually as a business. It does not bar him from working at anything or entering any business except the transportation business, and his affidavit shows he has only been in that business six years, three of which were with the complainants. The concluding paragraph of his affidavit, while not disclosing his financial situation indicates he would have no trouble operating a bus line elsewhere or entering into some other business. He does not belong to that class in the cases where the Court suggests the restraint might possibly mean inability to secure employment. He bargained with complainant for the largest sum of money he could obtain for his business. His price was his equipment and the covenant not to engage in the bus business again in New Jersey. It would be grossly inequitable and unthinkable to let Johnson enjoy the fruits of his sale and repudiate his covenant.

Restraint involving utility or quasi utility companies.

This question is raised by defendant upon the theory that the public has an interest in the subject-matter of the contract. This is hardly true here since neither Johnson nor the Williamstown-Philadelphia Bus Company are public utilities. If they were they would be subject to the jurisdiction of our Public Utility Commission. In fact, when utility lines are sold the contract must be approved by the commission. An interstate bus company in this respect differs very much from an intra-state company, or a gas, water or electric light company,

all of which are subject to our laws relating to utility companies.

The public could hardly suffer any harm by a sale or transfer of any of these interstate operations as today they are almost as numerous as gasoline stations or chain grocery stores. The public will more likely be helped than hurt by a lesser numer of operators and a better and more coordinated service.

The failure of Congress to pass any legislation regulating the operation of interstate buses has left the business in chaotic condition. At the present time these buses operate anywhere between the States, subject only to local police control. Any person can operate such a line. No permits or licenses to operate, other than is required of ordinary motor vehicles are necessary. They can start when they please, stop when they please and go where they please. They are only commercial enterprises, subject to barter and sale without any legal interference or control. If the vendee does not protect himself by contract there is no protection, because the thing sold is not a utility.

For the reasons set forth, appellants respectfully pray that the said order of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden and that appellants may have such other relief in the premises as to this Court shall seem proper.

PATRICK H. HARDING,
Solicitor for Complainants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

OTTO G. SCHULTZ and PUBLIC SERVICE INTERSTATE TRANSPORTATION CO.,
Complainants-Appellants,

and

EARL H. JOHNSON and LINCOLN LINES, INC.,
Defendants-Appellees.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF DEFENDANTS-APPELLEES.

This appeal brings up an order advised by Vice-Chancellor Leaming dismissing the complainants' bill. This dismissal was based on the previous decision of the Court denying an injunction *pendente lite* to the complainants, on the ground that the contract sought to be enforced was in restraint of trade insofar as it was claimed to affect the acts of the defendant, and hence, void and unenforceable. The

memorandum opinion of the Vice-Chancellor is set forth on pages 38 to 40 of the Record. Dismissal of the bill, on motion of the defendants, followed as a matter of course. The sole issue to be determined on this appeal, therefore, is the validity of the contract sued on as it bears on the operations of the defendants herein complained of.

THE FACTS.

The contract in question (Record, pp. 9 to 11) covered the sale on October 22, 1928, to the complainant, Otto G. Schultz, by the Williamstown-Philadelphia Bus Co. of the latter's garage property and its 14 passenger buses, together with all its equipment and the good-will of its bus business—the good-will being transferred through the delivery by the defendant, Earl H. Johnson, of all the outstanding corporate stock of the vendor company. The purchase price of $95,000 was to be paid half in cash and the balance in ten notes, maturing consecutively "every one to ten months" from the date of the contract.

In consideration of the sale the defendant, Earl H. Johnson, individually agreed (in the last paragraph of the contract, Record, p. 11, lines 16 to 22) that he would not:

> "from and after the date of said final settlement engage directly or indirectly in the opera-

tion of bus lines between the State of New Jersey and any other State, except as the manager, officer or employee of the said party of the second part (the complainant, Schultz)."

The bus line thus sold to Schultz had for three years previous been operated by the vendor company exclusively between Williamstown, in Gloucester County, and Camden and Philadelphia (see third paragraph of Bill, Record, pp. 1-2). The Court will take judicial notice of the fact that Williamstown is a suburb of Philadelphia and Camden, distant some 23 miles from the former city.

The purchaser, Schultz, is described in the first paragraph of the bill of complaint (Record, p. 1) as having been "for many years past * * * engaged in the operation and promotion of transportation lines in the State of New Jersey." The sale was to him and not to the co-complainant, Public Service Interstate Transportation Co., to whom, however, some sixteen months later and in the early part of 1930, Schultz sold and transferred all of his rights in the contract in question (see paragraph 10 of the Bill, Record, p. 4).

The contract (Record, p. 10, lines 32 to 37) contemplated the employment of the defendant, Johnson, by Schultz as manager of the line purchased, and Johnson actually entered upon such employment and continued therein both under Schultz and under the Public Service Interstate Transportation Co. when the line was transferred to it. He continued in such employ until March, 1931, when he severed relations with Public Service, and shortly thereafter organized the defendant, Lincoln Lines,

Inc., and started through it the operation of a trunk line between New York, Brooklyn and Washington, D. C., via Atlantic City, N. J., and Wilmington, Del. (paragraphs 6 to 8 of the Bill, Record, pp. 2 to 3).

This new line, it will be noted, in no way encroaches upon the Williamstown-Philadelphia route formerly operated by the defendant, Johnson; nor is it claimed that it in any way affects the operation of the former line. The two do not come in contact nor intersect at any point, and serve wholly different territories. The trunk line from New York to Washington is designed to connect large metropolitan areas, as compared with the purely suburban route from Williamstown to Philadelphia. Even those buses which operate solely between Atlantic City and New York on the defendant's schedules cover a line many times the length of the Williamstown-Philadelphia line, and serve an entirely different territory. The whole operation of the defendant is, therefore, an essentially different business than that of his former company, and the two are not comparable except to demonstrate their complete dissimilarity.

Nevertheless, the complainants brought their suit to enjoin the entire operation of the defendant, claiming that the same was in literal violation of Johnson's covenant against competition. On the hearing of the application for a preliminary injunction—all of the facts being before the Court—Vice-Chancellor Leaming held that the covenant, insofar as it might be held to apply to the new operation of the Lincoln Lines, Inc., was unenforceable because in restraint of trade, and void. The opinion of the Court is summed up in the following passage:

"The obligations arising from covenants of this nature have been considered by our Courts so frequently that almost every aspect of the subject has been determined. A review of the cases seems unnecessary. Such contracts are in restraint of trade and for that reason cannot be enforced to prevent the vendor of a business from engaging in a business similar to that which he has sold, in a territory beyond the territory in which the business which was sold was transacted at the time of the sale, or, at most, beyond any extension of that territory, by expansion of the business sold, as might have been reasonably contemplated by the parties, at the time of the sale. The case of *Trenton Potteries Co. v. Oliphant,* 58 N. J. Eq. 507, and *Fleckenstein Bros. Co. v. Fleckenstein,* 76 N. J. L. 613, need only be cited in support of that established rule.

"Johnson is not operating in that territory. His route from New York to Atlantic City and thence to Washington in no way enters or interferes with the patronage of the territory in which the Williamstown-Philadelphia Bus Co. operated or contemplated operating at the time of the sale to Schultz" (Record, pp. 39-40).

This would seem to dispose of the case, but complainants in paragraph 12 of their bill charged in general terms that defendants' new line competed with certain other lines of the complainant, Public Service Interstate Transportation Co., and this allegation has been made the excuse for an additional argument in appellants' brief. No indication was

given in the bill as to the termini and routes of these alleged lines of this co-complainant. Nor was it alleged in the bill, nor shown in the affidavits accompanying it, that such alleged lines of the Public Service Company were actually in operation at the time of the sale of the Williamstown-Philadelphia line; nor that, if in operation, the defendant, Johnson, had any knowledge thereof. The Public Service Interstate Transportation Co. was not a party to the contract, and although the bill alleges that Schultz in executing the same acted as that company's agent, it is not claimed that this secret agency was disclosed to Johnson. The complainants' affidavits, no more than their bill, purport to establish this fact; while the answering affidavits of the defendant, on the other hand, make it clear that Johnson understood he was dealing with Schultz alone, and that Schultz intended to operate alone the Williamstown-Philadelphia line (Record, p. 30, lines 10 to 28).

The contention now is that these unidentified lines of the Public Service company were intended to be protected by Johnson's covenant against competition. Thus, at the foot of page 10 of the appellants' brief, the statement is made that:

> "Johnson knew that this line (Williamstown-Philadelphia) was being purchased to complete a network of lines covering the entire State of New Jersey, and that to operate a line anywhere in this State would be in direct competition with some line in this network."

Similar statements appear at the head of page 13, near the bottom of page 18 and at the middle of

page 4 of appellants' brief, the appellants inaccurately stating in the last-mentioned instance that "defendant admits the operation of Public Service" bus lines between New York City, Atlantic City, and Wilmington, Delaware. All of these statements of fact are completely outside the allegations of the bill of complaint, and of the affidavits used by complainants at their hearing for a preliminary injunction. (We note further that the contrary appears from the uncontradicted affidavit of the defendant—Record, pp. 30-31, 34-35).

Nor, if true, would the existence, at the time of the contract, of bus lines of the vendee in any way tend to enlarge the valid obligations of the vendor's contract not to compete; since that contract can only have a binding obligation with reference to the bus line sold, and to any reasonable extension thereof. The learned Vice-Chancellor has summed up the matter thus:

> "The notion that this purchase was made by complainant, Schultz, in the interest of complainant, Public Service Interstate Transportation Company, who now operates a bus line from New York to Atlantic City, adds nothing to the operative force of the Johnson covenant. The business conveyed, and not other unrelated businesses which may be elsewhere owned by the purchaser, delineates the territory within which the covenant may be lawfully enforced" (Record, p. 40, lines 17 to 27).

We submit that the memorandum opinion of the Court below presents an unanswerable statement

of the law as applicable to the contract and facts here involved. If the contract cannot be sustained in its relation to the present operations of the defendant, the Court was clearly right in dismissing the bill. We do not find in the facts presented any question which admits of doubt or difficulty, but in order that the subject may be fully covered we are submitting herewith a brief consideration of the law of this State on the subject of partial restraints of trade, as the same has been developed through the decisions of our Courts, and have appended thereto a collection of cases from other States involving contracts restricting the competition of carriers.

THE LAW.

The covenant in question, being admittedly in restraint of trade, is invalid unless it can be demonstrated that it was reasonably necessary to the protection of the covenantee, Schultz, for the purposes of the agreement in which it was inserted. The burden was upon the complainants to satisfy the Court that the protection stipulated was reasonable in the sense of the rule of law hereinafter discussed.

It will be noted that the restraint which this covenant imposed is absolute and unlimited as to time, while limited as to space. The failure to provide any limitation of time, while not necessarily fatal to the contract, is an important element to be taken into consideration with the unreasonable limitation

of space. That limitation, as will be noted, is by no means a narrow one. All transportation by bus in interstate commerce from this State is forbidden the defendant, irrespective of whether or not such transportation is in any way related to the business which the complainant-vendee purchased from the defendant.

The Law of Partial Restraint.

The ancient rule of the common law was that contracts in general restraint of trade were against public policy and unenforceable. *Ipswich Tailors Case,* 77 Reprint, 1218; *Dutton v. Poole,* 2 Lev. 210; 83 Reprint, 523. This is still fundamental law in this State. *Brewer v. Marshall,* 19 N. J. Eq. 537; *Stevens, etc., v. Brady,* 106 N. J. Eq. 410. Later, in England, the famous case of *Mitchell v. Reynolds,* 1 P. Wms. 181 (1711), imposed the further rule, adopted to modern needs, that contracts in *partial* restraint of trade were not necessarily invalid, but if not inimical to the public interest and providing only a restraint reasonably necessary for the protection of the contracting parties, might be enforced.

It is with this rule of law that we are particularly concerned in the case at bar. All of our law on the subject of partial restraints derives from *Mitchell v. Reynolds,* and the reasoning therein enforced has never been seriously questioned. What constitutes a reasonable necessity for restraint has been the subject of repeated adjudication, and we have in New Jersey a large body of authority on the subject.

Where the restraint is imposed as incidental to a contract of sale of a business, the question is ordinarily as to whether or not the restraint goes beyond a reasonable protection to the vendee against the competition of the vendor.

> "* * * Whatever restraint is larger than the necessary protection of the party, can be of no benefit to either. It can only be oppressive, and if oppressive, it is, in the eye of the law, unreasonable and void, on the ground of public policy, as being injurious to the interests of the public. The rule, as thus stated, is the law of this State. Chief Justice Beasley, in pronouncing the judgment of the Court of Errors and Appeals, in *Brewer v. Marshall,* 4 C. E. Gr. 537, said: 'And so far has this principle (that contracts in restraint of trade are void) been carried, that even in cases in which the restraint sought to be imposed is only partial, it has been repeatedly held that such agreement will be void unless it be reasonable, and that no such agreement can be reasonable in which the restraint imposed on the one party is larger than is necessary for the protection of the other.' "
>
> *Mandeville v. Harman,* 42 N. J. Eq. 185, 190-1, per VanFleet, V. C. (1886).

In *Scherman v. Stern* (E. & A. 1922), 93 N. J. Eq. 626, the agreement was not to compete with the vendee in the retail candy and tobacco business in Metuchen. In upholding a preliminary injunction, the Court of Errors said:

> "* * * in a contract not to engage in a competing business, the restraint must be reasonable, and the test to be applied in deciding whether the restraint is reasonable or not is to consider whether it is only such as is necessary to afford a fair protection to the interest of the party in whose favor it is given, and not so large as to interfere with the interests of the public."

* * * * * * *

> "The restraint was not greater than was necessary to afford fair protection to the complainants" (p. 630).

In *Palumbo v. Piccioni,* 89 N. J. E. 40, (1918), Vice-Chancellor Leaming advised, and on further application upheld, a preliminary injunction at the instance of the vendee of a shoe repairing business who had purchased the business of a competitor under agreement by the latter not to engage in a similar business in Camden for five years. The following extract from the opinion discloses the underlying considerations which control the enforcement of such contracts:

> "* * * no conventional restraint of trade can be enforced unless the covenant embodying it is merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from

the dangers of an unjust use of those fruits by the other party."

* * * * * * *

"Agreements in partial restraint of trade ancillary to the sale of a business appear to be sanctioned primarily because of the recognized value of what is known as the good-will of a business. It is held to be alike to the interest of the public and the owner of a business, that the owner should be privileged to sell that valuable asset and protect the purchaser in its acquisition, providing the restraint be no more extensive than is reasonably required for that purpose, and be not otherwise injurious to the public interest by reason of any peculiar circumstances of the case. *Trenton Potteries Co. v. Oliphant,* 58 N. J. Eq. 507, at page 514; 43 Atl. 723; 46 L. R. A. 255; 78 Am. St. Rep. 612. In such transactions the public interests are deemed fostered rather than injured, since the seller has been enabled to reap the fruits of his industry, and the business is continued in the hands of a new purchaser; the business with its new proprietor takes the place of the old; the commodities of the trade are as open to the public as they were before; and the same employment is furnished to others as before" (p. 816).

The principles above discussed require a more definite rule for their application. Such a rule has been developed in the line of decisions by the Court

of Errors and Appeals, beginning with the famous case of *Trenton Potteries v. Oliphant,* 58 N. J. Eq. 507. These cases hold that reasonable protection to the vendee requires only that a vendor should be precluded from engaging in the same business as that which he has sold within any part of the territory in which the business sold was transacted or within any extension of such territory as might have been reasonably contemplated by the vendor and vendee at the time of the sale. The same thought had been expressed in *Mitchell v. Reynolds:*

> "For what does it signify to a tradesman in London what another does at Newcastle?"

A further refinement of this rule has permitted our Courts in most cases to find that the contract between the parties is divisible in the sense that while the full scope of the conventional restraint may be unlawful, as going beyond necessary protection to the vendee, nevertheless, so much of restraint as inhibits a practice of the business within its former territory may be found by construction to be forbidden by the contract, and, hence, to be the subject of enforced restraint by the courts.

The first of this line of cases is the *Trenton Potteries* case, wherein the Court of Errors, in 1899, enforced partial restraint under a contract that forbade a number of individual vendors from manufacturing pottery-ware "within any State in the United States of America or within the District of Columbia, except in the State of Nevada and the territory of Arizona," for a period of fifty years. While this stipulated restraint was illegal, the Court

held that it could be construed to embrace an intention by the parties to prohibit competition by manufacture within the State of New Jersey.

> "It appears by the proofs that the business which appellant purchased of respondents had been carried on by them within an area, roughly speaking, covering the States east of the Mississippi River and north of a line drawn through Richmond and Louisville, including the District of Columbia.
>
> "Appellant contends that such contracts were reasonably required to protect it, not only in the areas in which the business it purchased of respondents had been carried on, but also in other States to which it might extend that business. But this contention I deem to be inadmissible. The validity, in this respect, of such contracts is to be tested by the effect upon the business and good-will sold and purchased. What is reasonably required to protect that may be upheld. But the vendor can no more contract to restrict his use of his trade or calling beyond such protection than he could do if he had made no sale at all. Such a contract would be opposed to public policy.
>
> "But while it results from this view that the contracts in question, *so far as they restrain respondents from engaging in the same business in localities in which the business purchased by appellant of them had never been carried on,* may be opposed to public policy, it does not follow that they are wholly unenforceable. Contracts including distinct and separable obliga-

> tions, some of which are legal and some prohibited, are enforceable as to such obligations as are legal. * * * *These contracts, as to areas described therein in which the acquired business had been carried on, may be enforced upon proper proofs*" (p. 519). (Italics ours.)

The next decision is that of the Court of Errors in 1908, in *Fleckenstein Bros. Co. v. Fleckenstein,* 76 N. J. L. 613. Here the sale of a business of manufacturing pork products enjoined the vendor from engaging in similar business "within five hundred miles of the City of Jersey City" for twenty years. The restraint sought was against a later business opened by the vendor in Jersey City. The Court held:

> "The contract in question is one which is in partial restraint of trade. It is, therefore, under all the cases, not objectionable to public policy unless it goes further than is reasonably required for the protection and enjoyment of the business sold, or unless the restraint is so great as to interfere with the interests of the public. And it may be added that the trend of opinion of the present day is that such a contract is not injurious to the public interests, so long as the area within which the business is restrained is no greater than is covered by the business whose good-will has been sold. 1 Page Cont., 378, and cases cited. Whether a contract which extends the area of restraint beyond the territory within which the business is being carried on at the time of its sale imposes an un-

> reasonable restraint upon trade, is a question upon which courts differ. The preponderance of view seems to be that it does. Nevertheless, there is such force in the contention that a person who purchases the good-will of a business, with the purpose of extending its scope, is entitled to bargain with his vendor against competition within the territory into which he designs to extend it, and that such a contract is not opposed to public policy when the area which it embraces is not greater than that which the parties may fairly anticipate the extended business will cover'' (p. 615).

Next we find the Court of Errors enforcing the rule laid down in the *Potteries* case in *Nachamkis v. Goldsmith,* 101 N. J. L. 356, an appeal from the Supreme Court in an action for damages for breach of a contract not to engage in the wholesale cracker business within a ten-mile radius of territory served by the vendor, for a period of ten years. The nonsuit granted by the lower Court was reversed, the higher Court holding that the plaintiff-vendees were entitled to protection within territory formerly served by the vendors.

The Court of Chancery has repeatedly applied the rule thus laid down by the Court of Errors. In *Althen v. Vreeland* (Emery, V. C., 1897, not officially reported), 36 Atl. 479, the complainant has purchased from the defendant an interest in a partnership engaged in the business of baking crackers. The defendant agreed not to engage in a similar business within 1,000 miles of Newark, without restric-

tion as to time. On final hearing the Court, denying an injunction, held:

> "* * * The business sold did not extend more than 80 or 100 miles from the City of Newark, and was mainly confined to the State of New Jersey and the Cities of New York and Brooklyn. * * * Such protection to the business sold is the limit and test of the reasonableness of the covenant in cases of this character, and, while the reasonableness as to distance must depend on the particular circumstances of each case, it would seem that in cases of sales of business and good-will of the present character —an established manufacturing and mercantile business—the extreme limit of restriction as to space (where the restriction is general as to time) should not extend beyond the territory in which the business is carried on at the time of the sale. * * * The covenant, if entered according to its terms, would not only protect the complainant's business practically from the competition of defendant, but it would also prevent defendant from supplying a territory far beyond the limits of the business sold, and to which the complainant, equally with any other person, should have access in the interest of the public" (p. 480).

In *Perry v. Burns,* 101 N. J. Eq. 409, aff. 143 A. 918, there was a sale of a coal business with a covenant by the vendor not to operate "within the limits of the City of Jersey City and the territory adjacent thereto, which may conveniently be served by wagon

delivery from Jersey City (excepting New York City),'' for a period of twenty years. The defense asserted was that the contract was indefinite and the restriction indivisible. The Court, not dealing specifically with either of these defenses, concluded:

> ''The proofs also clearly indicate to my mind the nature and extent of the business conducted by the defendant at the time of the sale and the general territory within which it was conducted, and within which it was the undoubted intent of the parties that the vendee's operations should be protected by the terms of the restrictive covenant agreed to. The restraint is neither total nor perpetual. It is limited in area and in the time of its operation. It seems to me to be reasonable both as to territory and duration, and no more than is necessary to protect the vendee in the enjoyment and pecuniary advantage of the business purchased'' (p. 42).

The doctrine that a contract providing for an unreasonable restraint upon the vendor's freedom may be divisible so as to discover therein a partial restraint that is reasonable, is developed particularly in the *Trenton Potteries* and *Fleckenstein* cases above cited, and also in *Wyder v. Milhomme* (E. & A., 1921), 96 N. J. L. 500, 502; *Katz v. Newman,* 97 N. J. Eq. 284 (E. & A., 1924), and in *Stein v. Kommit* (Ch., 1929, not officially reported), 147 Atl. 111. We are not, however, particularly concerned in the case at bar with this phase of the law, as the competition complained of lies far outside the original territory of the defendant-vendor's bus-

iness. The cases cited clearly establish the proposition that in the sale of a business reasonable protection to the vendee against competition by the vendor will be determined by reference to the territory in which such business was operated or any reasonably anticipated extension thereof.

In the case at bar the unnecessary restrictions on space imposed in the plaintiff's contract are rendered even more unreasonable by the total lack of any restriction as to time. The restraint is unlimited except by necessity to the life of the vendor. The vendee might die the day after the sale—as suggested in *Mandeville v. Harman, supra*—or the business might prove unprofitable and be abandoned, and the vendor, if complainant's argument is sound, would still be precluded from entering the field. Freedom of trade would thus be impaired without the slightest resultant benefit to the vendee. In a similar situation an injunction was denied in *Althen v. Vreeland, supra.*

We submit that on principle and precedent alike the complainant-vendee's contract exceeded the bounds of validity fixed by our decisions and cannot be enforced against the present operation of the defendants.

Carrier Cases.

A diligent search of the authorities has been made to discover, if possible, any precedents with regard to sale of transportation lines, coupled with a covenant not to compete. Apparently there are no such decisions dealing with motor bus lines—which

are, of course, a fairly recent development. Nor are there any decisions in railroad law which have application to the case at bar. There are, however, a number of old cases involving stage coach and steamship lines, which may be of interest to the Court.

The earliest American decision dealing with an attempted restraint on a public carrier is that of *Pierce v. Fuller* (1811), 8 Mass. 223. There the defendant, operating between Boston and Providence, sold a stage coach and horse to the plaintiff and entered into agreement not to run a stage on the same route in competition with the plaintiff. Suit was brought on the penalty fixed for violation of this covenant. The Court says, in part:

> "Bonds to restrain trade in general are unquestionably bad, as tending to create a monopoly injurious to the public. But bonds to restrain trade in particular places may be good, if executed for a sufficient and reasonable consideration. And in this case, the defendant might restrain himself by his agreement from running a stage on the particular road between Boston and Providence, on a liquidated penalty, for a reasonable and good consideration. And if it does not appear whether the contract was or was not made on good consideration, so that the contract may be either good or bad, it is the *prima facie* presumption of law that the contract is bad, because it is to the prejudice of trade and honest industry—because the mischief to one party is apparent, and the benefit only presumptive; and because the apparent

mischief is not merely private, but also public. Therefore, all contracts barely in restraint of trade, where no consideration is shown, are bad. But in cases of a limited restraint of trade, where it appears from the special circumstances that the contract is reasonable and useful, shall be good."

* * * * * * *

"From examining the pleadings in this case, all that can be collected respecting the contract is, that before and at the time it was made, the defendant was in the occupation of running a stage on the road between Boston and Providence; that when the contract was made, the plaintiff either had set up, or contemplated setting up, a stage on the same road; and that in consideration of one dollar, paid by the plaintiff to the defendant, the latter agreed that he would not run a stage on that road, in opposition to the plaintiff's stage, on penalty of two hundred and ninety dollars. The public appear to have no interest in the question. If the plaintiff did not run his stage, the defendant might run a stage; for it could not be in opposition to the plaintiff's stage. And it is indifferent to the public, which of these run a stage" (pp. 226-227).

Again in *Chappel v. Brockway,* 21 Wend. 157, the same question came before the Supreme Court of New York in 1839. One competitor had bought the boats and property of another with covenant not to

operate packet boats on the Erie Canal between Rochester and Buffalo. The Court held:

> "The common law will not permit individuals to oblige themselves by a contract, where the thing to be done or omitted is injurious to the public. Contracts in restraint of trade are, for the most part, contrary to sound policy, and are consequently held void. This is the general rule. There may be cases where the contract is neither injurious to the public nor the obligor, and then the law makes an exception, and declares the agreement valid. The general presumption is against all contracts in restraint of trade, and, consequently, it lies upon him who seeks to enforce such an obligation to show that it is free from objection" (pp. 158-159).
>
> "* * * The defendant sold out his business of running packet boats between Rochester and Buffalo; and *that cannot be an unreasonable restraint, which is only co-extensive with the business which the defendant agreed to relinquish, and the purchaser expected to acquire*" (p. 162). (Italics ours.)

Again in *Dunlop v. Gregory,* 10 N. Y. 241, the New York Court of Appeals, in 1851, gave renewed expression to the law as laid down in *Chappel v. Brockway,* but in the converse situation of a suit by vendor against vendee. The plaintiffs, operating a steamboat line from New York to Albany, sued for liquidated damages on a contract whereby they sold to defendant one of their steamboats, under agreement by him not to use it north of a certain

point on the Hudson River, *i. e.,* on the plaintiff's route. The Court said:

> "Contracts, upon whatever consideration made, which go to the total restraint of trade, such as obligate a man not to pursue his occupation or exercise his trade, anywhere in the State, are void. Such contracts are injurious to the public, and operate oppressively upon one party without being beneficial to the other. But a contract not to exercise a trade or carry on business in a particular place, made upon good consideration, may be upheld where sufficient reasons are shown for entering into it. The contract, to be upheld, must appear from special circumstances to be reasonable and useful, and the restraint of the covenantor must not be larger than is necessary for the protection of the covenantee in the enjoyment of his trade or business (*Chappel v. Brockway,* 21 Wend. 157; *Nobles v. Bates,* 7 Cow. 309; 2 Saund. 156, Note 1; *Hitchcock v. Coker,* 6 Ad. & Ellis, 438; *Mitchel v. Reynolds,* 1 P. Wm. 181). Within the principles of these cases I think the agreement in question was valid and binding on the defendants" (p. 244).

An interesting case is found in the Scottish Reports—Macfarlane v. Dumbarton (Ct. of Sess. 1899), 36 S. L. R. 771. A steamship carrier between points in the Scottish Lakes sold out to the plaintiffs, the seller to be employed by the plaintiffs. The seller bound himself "not to carry or be concerned in any separate business of a like or similar kind in

the United Kingdom for a period of ten years." Later, the defendant attempted to compete on the old route and plaintiffs sought an injunction, or "interdict," against his engaging in business anywhere in the United Kingdom, or from soliciting plaintiffs' customers. The restraint granted was on appeal confined to the latter head, the Court holding that the contract as an entirety was unreasonable:

> "The whole business of the appellant and the whole business of the respondent was carried on within a very limited area, and I think it would be quite unreasonable that by any interdict to be pronounced the power of appellant to carry on business in other parts of the country should be excluded."

These cases show how uniformly the principle that confines restriction against competition to the field of operation of the business sold have been followed. In closing, it should be noted that the related subject of price-fixing agreements was carefully considered by this Court in *Buckelew v. Martens,* 9 N. J. Adv. R. 493 (not yet officially reported), and the restrictive feature of the contract was condemned irrespective of whether or not there might be any benefit to the public resulting therefrom.

We respectfully submit that the decree below must be sustained.

LOUIS B. LEDUC,
Solicitor for and of Counsel with Defendants-Appellees.

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> "The whole business of the appellant and the whole business of the respondent was carried on within a very limited area, and I think it would be quite unreasonable that by any interdict to be pronounced the power of appellant to carry on business in other parts of the country should be excluded."

These cases show how uniformly the principle that confines restriction against competition to the field of operation of the business sold have been followed. In closing, it should be noted that the related subject of price-fixing agreements was carefully considered by this Court in *Blackley v. Martens*, 8 N. J. Adv. R. 234 (not yet officially reported), and the restrictive feature of the contract was condemned irrespective of whether or not there might be any benefit to the public resulting therefrom.

We respectfully submit that the decree below must be reversed.

LOUIS B. LEBOW,
Solicitor for and of Counsel
with Defendants-Appellees.