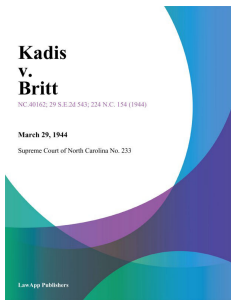


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Author: Supreme Court of North Carolina No. 233

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It is correctly stated in 17 C.J.S., Contracts, sec. 240, that ""the distinction drawn between contracts in general and in partial restraint of trade by which the strict early common law rule invalidating all restraints was relaxed was subsequently replaced by the test of the reasonableness of the restraint."" But it must be added that this test must be applied against a public policy which has come to recognize exceptions to the general rule. Contracts in partial restraint of trade do not escape the condemnation of public policy unless they possess qualifying conditions which bring them within that exception. They are still contrary to public policy and void ""if nothing shows them to be reasonable."" Benjamin on Sale, Seventh Ed., p. 535; *ibid.*, p. 538, quoting Tindal, C.J., in *Horner v. Graves*, 7 Bing., 743. They must be supported under the rule which places the burden upon those who would avail themselves of an exception -- at least to the extent that their reasonableness must be made to appear. Since the determinative question is one of public policy, the reasonableness and validity of the contract is a question for the court and not for the jury, to be determined from the contract itself and admitted or proven facts relevant to the decision. Benjamin on Sale, *supra*, p. 535. The appeal here is from a judgment dissolving the injunction and the evidence is addressed to the court.

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