exists in this case. And finally, the complainant fails to come within any of the exceptions to the mutuality doctrine.[10]

It is submitted that the decree for the transfer of the shares should have been denied.

Restrictive Covenants—Injunctions Against Third Parties—Complainant, a laundry operator, seeks an injunction against the three defendants, his former route men, who formed a rival laundry corporation, and are soliciting his customers. All three had made restrictive covenants not to compete with the complainant for one year after the termination of their employment. Two of the defendants, Vander Sluys and Vanderweert, were still bound by their covenants when they entered into the competing business, but the covenant of the third defendant, Schoone-Jongen, had expired. *Held,* injunction granted as to all three defendants. *Vander May v. Schoone-Jongen,* 128 N.J.Eq. 338, 16 A. 2d 138 (Ch. 1940).

In so far as the defendants Vander Sluys and Vanderweert are concerned, the case presents no difficulty. It is elementary that, if a negative covenant made by an employee is fair and reasonable in the protection it affords the employer, equity will enforce it by injunction.[1] But when it is sought to restrain Schoone-Jongen from pirating the customers of the petitioner a different question arises. As noted above, the negative covenant made by him had expired before he entered into

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in developing the mine. The court rendered a decree for specific performance against the defendant. In an article entitled "'Lack of Mutuality' Rule" by W. Cook in 36 YALE L. JOURNAL 897-913 (1927), the author points out that the result is justified if we can find that it was factually not probable that the plaintiff would abandon his mining operations after the decree was entered. In the principal case, complainant did not expend huge sums of money nor did he do anything which would indicate he would always be willing to perform his services.

10. Hoppes v. Hoppes, 190 Indiana 166, 129 N.E. 629 (1921). In this case the court pointed out that had the complainant already performed his part of the contract, it would have granted relief.

1. Owl Laundry Co. v. Banks, 83 N.J.Eq. 230, 89 A. 1055 (Ch. 1914).

competition with his former employer. Hence, the restraint which has issued against him must take root, not in theory of contract, but rather in the equitable relationship between him and the other two defendants, who wrongfully broke their covenants in forming the competing laundry company. And thus the problem for consideration is whether or not in entering into that relationship, the defendant violated any rights of the complainant of which a court of chancery can take judicial cognizance.

In cases involving trade secrets, of which an employee has gained knowledge through a confidential relationship, equity finds no difficulty, even in the absence of a restrictive covenant, not only in restraining the employee from divulging the secrets to others, but also in restraining the recipient of the information from making any use thereof, if the recipient had induced the disclosure knowing it was in violation of a negative covenant, or of the confidence reposed in the employee.[2] And though the Courts seem singularly unwilling to discuss the theory on which the injunction against the third party is based, it would appear to rest in the notion of interference with contract relations as a specific tort.[3] While this notion is well recognizeod in the law today,[4] a study of the cases reveals that equity has never acted against third parties to protect an established business from competition on this ground alone.[5] Protection of property rights is likewise invariably involved. Wherefore, the issue of the injunction can be rationalized equally well on the principle that no one has a right to appropriate the property of others without making payment therefor. And we feel that to grant a restraining order against a third party when protection of property rights is not

2. Stone v. Grasselli Chemical Co., 65 N.J.Eq. 765, 55 A. 736, 63 L.R.A. 344 (E. & A. 1903).

3. For a summary of the law on this point, see 16 Am. & Eng. Encycl. L. 1109.

4. Lewis Kamm, Inc. v. Hink, 113 N.J.L. 582, 175 A. 62 (E. & A. 1934).

5. We refer here solely to actions in which, on the basis of a negative covenant, either express or implied, equity has enjoined the operation of a business in competition with the complainant. These cases are unique, and must be considered in a class by themselves, for such covenants are prima facie void as being in restraint of trade, and will only be enforced, if the protection they afford the covenantee is fair and reasonable. Owl Laundry Co. v. Banks, *supra* note 1, and 5 NEWARK LAW 415. Other cases not involving this specific point, wherein the injunction issues solely on the basis of interference with contract relations, will be found in the note in 11 LRANS 202.

concerned, merely because he is in business with the covenantor, is beyond the scope of chancery, not only for the reason that such action is without precedent, but also because it is unnecessary for the protection of the covenantee's contractual rights.

By way of illustration consider for a moment the typical "trade secret" case, in which the employee has under contract, or through a confidential relationship, gained knowledge of a secret, though perhaps unpatentable, process of manufacture.[6] A rival entrepreneur then induces the employee to disclose the information so acquired. Clearly, to grant an injunction against the employee alone after this disclosure, would not adequately protect the covenantee, for then his rival would still be free to use his trade secret—a use which would amount to an appropriation of property without compensation.[7] Wherefore the competitor is wisely restrained along with the unfaithful servant.

In the present action the subject matter of the restrictive covenants was knowledge of the identity and laundry requirements of the petitioner's customers, naturally acquired by his route men in the course of their employment. Since this knowledge can be comparatively easily acquired by anyone, simply by following the route men, it has been quite universally held that information so obtained does not constitute a trade secret, and that the employer possesses no property right therein.[8] In these situations the court can give the complainant full protection as covenantee by limiting the application of the injunction to those bound by covenant. Third parties in business with them, with notice of their violation, will not after such injunction issues, benefit through knowledge wrongfully obtained, as when a trade secret is involved for, when the covenantors are forced to cease operating on their routes, they no

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6. Stone v. Grasselli Chemical Co., *supra*, note 2.

7. A trade secret is property. Salomon v. Hertz, 40 N.J.Eq. 400, 2 A. 379 (Ch. 1885).

8. Lewitter v. Adler, 101 N.J.Eq. 74, 137 A. 541 (Ch. 1927); Abalene Exterminating Co. v. Oser, 125 N.J.Eq. 329, 5 A. (2d) 738 (Ch. 1939) apparently contra is distinguished in Haut v. Rossbach, 128 N.J.Eq. 77, 15 A. (2d) 227 (Ch. 1940) on the ground that few people are sufficiently bothered by rodents to employ a professional exterminator, and if they do require one, endeavor to keep it a secret. See also Fulton Grand Laundry Co. v. Johnson, 140 Md. 359, 117 A. 753 (1922) and the note at 54 A.L.R. 350.

longer exert their personal influence over those they have solicited. And in laundry and bakery businesses the personality of the route man is the sine qua non of the acquisition and continued trade of the customers.

Another class of cases involving restraint of trade in which equity has often acted against a third party, as well as the covenantor, is that concerning the sale of a business and its good will with a contract by the vendor not to compete for a certain length of time. A rival business is then created in the name of the son or wife of the covenantor. In a petition for injunction equity will in such instances restrain the vendor from violating his contract, and will also restrain the owner of the competing business from causing said violation, by employing the covenantor in any capacity, or advertising to the public that he has any connection with the rival firm.[9] Again the courts seem rather vague as to the legal theory behind the injunction against the third party, appearing in some cases to be motivated by the idea of unjustifiable interference with contract relations,[10] and in others by a feeling that the third party was merely the alter ego of the covenantor.[11] In neither aspect do these decisions sustain the injunction against Schoone-Jongen. In the first place we find again that, contrary to the present situation, a property right—that is, in the good will of the business—as well as a contract is protected by the restraining order. And so far as the second rationalization is concerned, suffice it to say that Schoone-Jongen was obviously the alter ego of no one but himself.

Finally, in neither the "trade secret" cases nor the "sale of business good will" cases are the injunctions against the strangers to the covenant nearly so all-inclusive as the one with which we are confronted. They purport to restrain use of information wrongfully acquired, or the employment of the vendor of the business, but we submit that never

9. Fleckenstein v. Fleckenstein, 66 N.J.Eq. 252, 57 A. 1025 (Ch. 1904).

10. In the Fleckenstein case, *supra* note 9, after mentioning the wrongful interference with contract relations, Vice-Chancellor Stevenson continued with reference to the strangers to the covenant, i.e., the wife and brother of the vendor, "They are guilty of what may be deemed to be a form of unfair competition, which is a fraudulent tort entirely distinct from conduct, which merely causes someone to break his contract."

11. Wiegand Glass Co. v. Wiegand, 105 N.J.Eq. 434, 148 A. 174 (Ch. 1930); Howell v. Keck, 127 N.J.Eq. 87, 11 A. 2d 365 (Ch. 1940).

do they enjoin the third party from further competing with the covenantee, which is the effect of the restraint in question. On the contrary, in the Fleckenstein case,[12] the court specifically stated that a covenant, on the sale of a business and good will, not to engage in the same trade was not binding on the covenantor's wife and did not prevent her from establishing a similar business using her own name, although such use would injure the good will of the purchaser of the husband's business. In like manner Schoone-Jongen was not bound by the covenants of his business compatriots, and is free to engage in competition with the complainant. As long as the petitioner obtains all the benefits which a fair observance of the covenants still in force affords, he cannot complain merely because the protection is inadequate for his purposes.[13]

Since we can find no equitable basis on which to issue an injunction against Schoone-Jongen, and since, as we have pointed out, the complainant will be fully protected by a restraining order against the other two defendants alone, it is submitted that the injunction against Schoone-Jongen should not have been granted. If it is felt that after the issuance of such restraining order Schoone-Jongen is still in a position to profit from, and has profited from, customers previously acquired by the other two defendants, leave should be allowed the complainant to take an action in tort against him for damages resulting from his wrongful conduct in entering into business with Vander Sluys and Vanderweert. For such damage the remedy at law is adequate, and equity should not have intervened.

Rule Against Perpetuities — Application to Charitable Gifts — Limitation from Individual to Charity—Testatrix bequeathed all her property to her son and his heirs, with a provision that if he died leaving no descendants, then a valuable portrait was to go to defendant. Upon the death of testatrix, one of her executors delivered the portrait to defendant. The children and widow of the son now deceased, bring a bill for equitable replevin. *Held*, decree for complainant. The heirs have a present posses-

12. *Supra* note 9.
13. Fleckenstein v. Fleckenstein, *supra* note 9.