

thus placed in the position of declaring on one cause of action and attempting to recover on another, as this special contract was inconsistent with the common law liability of defendant."

CONTRACTS IN RESTRAINT OF TRADE—CONSTITUTIONAL LAW.

East Jersey Water Co. v. City of Newark, et al. (New Jersey Chancery, July, 1924) 125 Atl. 578.

Complainant and Respondent, among others, entered into a contract whereby complainant should construct and turn over to respondent a system of waterworks, and restricting the territory in which water could be sold. After taking over the Newark system, that city having an excess supply, sold water to two outlying towns neither of which was within the territory specified, and both of which could otherwise have been served by complainant.

The argument arose on a motion to strike out the bills of complaint.

Held, by the court that the territorial restriction in the contract was void as being in restraint of trade since it was conceived with a necessity of life, to wit, water. Since the water delivered by the city in violation of the territorial restriction is definitely ascertainable in gallons at a specified rate, there is no grounds for equity jurisdiction, and the complainant has an adequate remedy at law.

Although there was a prior suit involving the same question, the doctrine of *res adjudicata* does not apply, the parties not being identical in the two cases.

As to the only constitutional point, it was held that where a contract in its inception was void as being in restraint of trade, the provision as to the impairment thereof has no application.

CRIMINAL LAW—WRIT OF PROHIBITION.

State ex rel. Meininger v. Brewer, Circuit Judge. (Supreme Court of Missouri, July, 1924) 264 S. W. 1.

Relator had been convicted of embezzlement, sentenced, and had appealed. While his case was pending on appeal, the circuit court had taken steps to try relator on indictments for felony which had been found before the conviction for embezzlement. He thereupon began this proceeding in prohibition, and the issue arises whether the circuit court has jurisdiction to try the relator for the other offenses during pendency of his appeal. Relator relies on Sec. 3697 Rev. Stat. 1919.