SUPREME COURT
SECOND DIVISION

ANSELMO FERRAZZINI,
***Plaintiff-Appellee*,**

-versus-

G.R. No. 10712
August 10, 1916

CARLOS GSELL,
***Defendant-Appellant*.**
x----------x

D E C I S I O N

TRENT, *J.*:

This action was brought to recover damages for an alleged wrongful discharge of the plaintiff, who had been employed by the defendant for an indefinite time to work in the latter's industrial enterprises in the city of Manila. The defendant admitted that he discharged the plaintiff without giving him the "written advice of six months in advance" as provided in the contract, but alleged that the discharge was lawful on account of absence, unfaithfulness, and disobedience of orders. The defendant sought affirmative relief for a further alleged breach of the contract by the plaintiff after his discharge. From a judgment in favor of the plaintiff the defendant appealed and now urges that the trial court erred (1) in finding that the plaintiff's discharge was not justified and (2) in declining to consider the counterclaim and enter judgment in accordance therewith.

1. The plaintiff engaged his "skilled service" to the defendant for the entire existence "of this agreement" at a fixed monthly salary and agree "to devote his entire time and efforts to the best of his knowledge and skill exclusively in carrying out in the most satisfactory manner possible all of the work which may be entrusted to him during the existence of this contract and undertaking, furthermore, to exercise a strict discretion in all matters pertaining to the work so entrusted to him and the whole thereof."

The relation of master and servant, which was created by the contract, cast certain duties and obligations upon the parties, which they were bound to discharge and fulfill; the foremost, on the part of the master, were those of furnishing the servant with a reasonably safe place to work, to pay him for his services, and not to discharge him until the expiration of six months after notice; and the foremost, on the part of the servant, were those of loyalty, faithfulness, and obedience to all reasonable orders not inconsistent with the contract. Consequently, if the plaintiff's discharge were without just cause, it was in violation of the contract of service and he is entitled to recover. Otherwise, he is not, because the breach on his part must necessarily have occurred before his discharge. Hence, the defendant must prove justification for his act for the reason that it was in contravention of the six-months clause in the contract. In order to justify the dismissal of the plaintiff, the defendant must show that the plaintiff was guilty of conduct which can be construed to be a breach of some express or implied provisions in the contract of service. If it has been show that the plaintiff's conduct was inconsistent with the due and faithful performance of his duties, his discharge was justified. In view of the fact that the determination of these questions necessarily requires a careful review of the evidence and in view of the further fact that we cannot accept the trial court's findings upon these important points, we think it advisable to set forth briefly the substance of all of the material testimony submitted by both parties.

> "ANSELMO FERRAZZINI: On Friday evening at supper there was some talk about Mr. Gsell measuring the goods for the umbrellas. Then I said that if Mr. Gsell does this, it is my idea that he has no confidence in his employees. I was talking to everybody in general. There were present Mr. Specht, Mr.

Alberto Ferrazzini and Mr. Inhelder. Mr. Specht was an employee of the defendant at the time. I do not remember telling Specht that he was not receiving sufficient salary. The only thing I remember distinctly is that I said ‘ that Mr. Gsell does not seem to have any confidence in us.’

“Q. Is it not a fact that shortly, or sometime before your discharge, you had been in the habit of leaving the factory for considerable periods in the morning to go outside for the purpose of taking a drink? — A. As long as I have been with the firm of Carlos Gsell I was allowed in the morning ten or fifteen minutes during the hot season to absent myself to have a drink of beer or whisky and soda; and the same in the afternoon.

“Q. Is it not a fact that Mr. Bender, the manager of the factory, had repeatedly spoken to you, or had several times spoken to you about your habit of leaving the factory for the purpose of taking a drink, and had prohibited you from doing it, forbade you do it? — A. He merely told me not to do it such an ostentatious manner. Mr. Bender told me that Mr. Gsell did not like to see me go out in the forenoon and afternoon; I told him that Mr. Gsell himself had told me on one occasion that if I had to have a drink I could go out for it and it would be all right; this was in the presence of Mr. Landvatter.

“Q. Then, am I to understand that when you went out to take a drink it was because you must have one? — A. Yes, of course.

“Q. Is it not a fact that Mr. Bender had conversations with you, at least once in the month of March, regarding this matter? — A. I don’t remember it.

“Q. Were not you frequently spoken to about it? — A. No, sir.

“CARLOS GSELL: The first reason that led to his dismissal was because several months, through April and May, he had the habit of going out in the morning and afternoon for having a drink; not one but many drinks, because he was out sometimes an hour and an hour and a half; and as I have a factory with 400 working people I have to see that certain discipline is

maintained in the factory. I gave instructions to the manager, Mr. Bender, to see that this habit would be dropped, but he (the plaintiff) would not do so. Now what made me pleased to dismiss him was because on a certain night at the mess where he ate with other employees of my house, he provoked one of my employees, a new arrival, and said that all the control I had in the factory was one of mistrust; he said I was suspicious; that I measured the cloth in my office for the umbrellas and that he would not support such treatment from my side; at the same time he said to this new man, got under the contracts was not sufficient to live on and that he should not continue to work for me. I asked the plaintiff about the conversation which he had at the mess and he did not deny it. He said that he did not mean it to be so bad. The factory was prejudice on account of the plaintiff absenting himself, because sometimes I wanted to speak to him, tell him something, and he was not there. I had to wait for him, and then when he came back it was noon perhaps, and it could not be done. I gave instructions to Mr. Bender, the manager, to stop the plaintiff's going out without permission. I did not exactly authorized the plaintiff to go out to drink. I always wanted to stop this. The plaintiff was the older of those who gone out to drink. The plaintiff held a responsible position. In the first place it was his duty to make repairs to the machinery in all the departments; later he was entrusted with the various departments — not at the same time; once he had the bleaching department; once he had to help out in the umbrella factory; and then he was in charge of the hat factory. The plaintiff had other employees under him.

"CARL BENDER: I came to the Philippine Islands in the middle of March as the defendant's manager. I saw that the plaintiff was frequently out of the factory. I told him that he was not allowed to leave the factory without my permission. He kept up the habit of going out in the morning and afternoon for an hour or more and I told him the second time. He told me that he had permission from the former manager to go out and take a drink. I again told him he must not go out without my permission. Notwithstanding these orders, he was out one whole Saturday afternoon and I reported him to the defendant. The plaintiff went out without permission some thirty-five

times after I ordered him not to do so. I had the other employees search for him, but they could not find him. He would go out four or five times a week.

"HERMAN INHELDER: I was present at the mess in June when that conversation took place. We were discussing several things, including the business and the way the umbrella factory was run. The plaintiff spoke in a manner that indicated that Mr. Gsell did not trust Mr. Specht. I did not want to have this kind of a conversation going on there and I told the plaintiff he had better leave the house.

"Q. Did the plaintiff say anything with respect to the amount of salary, which Mr. Specht was receiving? — If so what? — A. I won't pretend that Mr. Ferrazzini said it that night, about the salary, but he said it on several occasions before, and-well- what he did say was that Mr. Specht ought not to work so much for such a small salary.

"ALBERTO FERRAZZINI: I was present when the conversation took place in the mess one evening of June last. A discussion arose about Mr. Gsell exercising control over the merchandise or goods. Then the plaintiff said that this seemed to show that Gsell had no confidence in Mr. Specht. Mr. Specht was in charge of the umbrella department. The conversation was then carried on in German and I could not understand what they said.

"HANS SPECHT:I am foreman of the umbrella factory of the defendant. During the conversation at the mess the plaintiff told me that the defendant had no confidence in me. I protested and then the plaintiff tried to prove it by stating that the defendant was investigating things in the umbrella factory, verifying the goods for the umbrellas. The plaintiff said nothing about my salary at that time, but on a previous occasion he told me that I was foolish at my age to work for such a small salary. I reported the matter to the defendant."

The plaintiff admits that he stated to those present at the mess that if the defendant measured the cloth for the umbrellas, " It is my idea

that he has no confidence in his employees." Mr. Specht, the foreman of the umbrella factory, says that "During the conversation at the mess, the plaintiff told me that the defendant had no confidence in me." The plaintiff testified that he did not remember telling Specht that he (Specht) was not receiving sufficient salary, while Inhelder testified positively that the plaintiff stated on several occasions that Specht also testified positively that "he (the plaintiff) told me that I was foolish at my age to work for such a small salary." As to the plaintiff's absenting himself during working hours for the purpose of drinking, we have, on the one hand, the plaintiff's testimony to the effect that as long as he had been with the firm of Gsell he had been "allowed in the morning ten or fifteen minutes during the hot season to absent himself to have a drink of beer or whiskey, and the same in the afternoon," and that "the manager merely told me not to do it in such an ostentatious manner." While, on the other hand, we have the testimony of the defendant wherein he states that he instructed his manager, Mr. Bender, to direct the plaintiff to discontinue his habit of drinking during working hours, and the testimony of the manager (Bender) to the effect that he expressly directed the plaintiff not to go out without permission. But the plaintiff violated his express order some thirty-five times, keeping up habit of going out (for the purpose of drinking) in the morning and afternoon for an hour or more at a time. All of the foregoing show a course of conduct on the part of the plaintiff inconsistent with the due and faithful performance of his duties as an employee of the defendant. He sought to create a feeling of unrest among the employees by including them to believe that the defendant had no confidence in them and that at least one employee was not receiving sufficient salary. If it were true that the defendant was measuring the cloth for the umbrellas, he had a right to do so and this fact would not justify the plaintiff in saying that the defendant had no confidence in the employees. Likewise, if it be true that the defendant or his manager did at first authorize the plaintiff to absent himself during working hours for the purpose of drinking, the defendant had a perfect right to withdraw this permission at anytime he saw fit to do so. In fact, the defendant, through his manager, expressly directed the plaintiff to cease leaving the factory for that purpose, but the plaintiff violated this order numerous times. The plaintiff, being at times foreman and at other times in charge of important departments of the factory wherein some four hundred employees were at work, it cannot be questioned but that the

defendant not only had a right to prohibit drinking during working hours, but it was his duty to do so for his own interests and the safety of his other employees. But it is intimated in the record that the defendant discharged the plaintiff on account of the conversation at the mess. If it be true that the defendant gave this as his sole reason for so acting at the time he discharged the plaintiff, yet he would not be prevented from setting up at the trial the fact that the plaintiff continued to disobey his orders with reference to absenting himself for the purpose of drinking. The defendant was, at the time he discharged the plaintiff, authorized to take into consideration the latter's whole course of conduct in determining whether the contract of employment should be terminated. We are, therefore, convinced that real error was committed by the trial court in its findings of fact and that the record fully justifies a reversal of such findings, and a declaration to the effect that the defendant was justified in terminating the contract of employment.

2. At the opening of the trial in the court below and before any testimony had been taken, counsel for the defendant stated:

> "I desire to amend my answer at this time by the addition of the following paragraph:
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> "The defendant further alleges for a second and further defense to the complaint herein, and for a counterclaim thereto, that the plaintiff has engaged in business in the Philippine Islands since leaving the service of the defendant and without the defendant's request or consent, in violation of his contract with the defendant; wherefore, the defendant demands judgment against the plaintiff for the sum of ten thousand pesos.
>
> "By the COURT: If the plaintiff does not claim any time to answer the new pleadings, the court will grant the amendment as asked for.
>
> "By Mr. SOTELO: I note my exception to the admission of a counterclaim at this time; I have no time to prepare myself to meet it.

> "By the COURT: The court has stated that if counsel for the plaintiff requires time to answer or meet this counterclaim he will be granted time to do so.
>
> "By Mr. SOTELO: The attorney for the plaintiff answers to the court that much time has been lost already since the filing of the complaint and the trial, and he wants to go to trial in order that the plaintiff may get what he is justly entitled to."

Testimony in support of the counterclaim was duly introduced before the close of the trial. In the final decision the court said:

> "The court is of the opinion that the defendant's so-called amendment to his answer, dictated by counsel to the official stenographer, and not 'upon motion filed in court, and after notice to the adverse party and an opportunity to be heard,' must be disregarded in the consideration of this case."

This is manifest error. The verbal petition was expressly granted and the proffered amendment accepted by the court. Plaintiff's counsel noted his exception to this ruling and signified his willingness to proceed with the trial. All thereafter considered the answer as thus amended. We must, therefore, dispose of the defendant's counterclaim upon the merits.

That portion of the contract upon which the defendant's counterclaim is based reads as follows:

> "That during the term of this contract, and for the period of five years after the termination of the employment of the said party of the second part, whether this contract continue in force for the period of one, two, three or more years, or be sooner terminated, the said party of the second part shall not engage or interest himself in any business enterprises similar to or in competition with those conducted, maintained or operated by the said party of the first part in the Philippines, and shall not assist, aid or encourage any such enterprise by the furnishing of information, advice or suggestions of any kind, and shall not enter into the employ of any enterprises in the Philippine Islands, whatever, save and except after obtaining special

> written permission therefor from the said party of the first part. It is further stipulated and agreed that the said party of the second part is hereby obligated and bound to pay unto the party of the first part the sum of ten thousand pesos, Philippine currency, (P10,000) as liquidated damages for each and every breach of the present clause of this contract, whether such breach occurred during the employment of the said party of the second part or at any time during the period of five years from and after the termination of said employment, and without regard to the cause of the termination of said employment."

The plaintiff admits that he entered the employment of Mr. Whalen in the Philippine Islands as a foreman on some construction work for a cement factory within a few days after his discharge and without the consent, either written or verbal, of the defendant. This work was entirely different and disassociated from that engaged in by the defendant Gsell, yet this act of the plaintiff was a technical violation of the above-quoted provisions of the contract wherein he expressly agreed and obligated himself "not to enter into the employment of any enterprise in the Philippine Islands, whatever, save and except after obtaining special written permission therefor" from the defendant. The question now arises whether these provisions of the contract are valid and binding upon the plaintiff.

Counsel for the defendant in their printed brief say:

> "There is no doubt as to the validity of the contract, Gsell vs. Koch (16 Phil. Rep., 1) has settled that question in a similar contract and that decision has never been criticized, but is cited as recently as 1914 with approval. (Lambert vs. Fox, 26 Phil. Rep., 588)."

An examination of these cases, as well as others in point, is necessary in order to determine whether or not the questions has been settled, and if we find that it is still an open one in this jurisdiction, we must proceed with the case. In pursuing this inquiry it is well to bear in mind (1) that the case under consideration has been tried in both courts exclusively upon the theory that the local law alone is applicable to the contract and (2) that the business in which the

plaintiff became engaged was entirely different and distinct from that conducted, maintained or operated by the defendant.

In Gsell vs. Koch, supra, a demurrer was sustained upon the ground that the allegations in the complaint did not constitute a cause of action, and after defendant declined to amend, judgment was entered dismissing the action. On appeal this order was reversed and the record returned with instructions to direct the defendant to answer. The paragraph in the written contract, upon which the judgment of this court rests, reads:

> "Third. The said Pedro Koch binds himself to pay in cash to Mr. Gsell the sum of ten thousand pesos if, after leaving the firm of C. Gsell, and against the latter's will, he shall engage directly or indirectly in carrying on any business in which the said Carlos Gsell is at present engaged, or within the two and one-half years fixed for the duration of the present contract in these Islands, either as an employee or member of a firm or company, or on his own account; and he furthermore binds himself to pay in cash to Mr. Gsell an equal sum of ten thousand pesos for each violation of any secret of the business entrusted him."

The plaintiff in that case was engaged solely and exclusively in the manufacture of umbrellas, matches, and hats. The secrets process for making straw hats had costs the plaintiff some P20,000 and the defendant Koch, after having entered having learned the secret process employed by the plaintiff, left the plaintiff's service and engaged in the manufacture of straw hats in violation of the above-quoted provisions of the contract, using the trade secrets which he had thus learned. The provisions in the contract against the engaging in the manufacturing of straw hats in the Philippine Islands were held to be reasonably necessary for the protection of the plaintiff and not oppressive in so far as the defendant was concerned. In the case under consideration the contract goes far beyond that which formed the basis of the action in the case just cited. Here the plaintiff Ferrazzini was prohibited from engaging in any business or occupation whatever in the Philippine Islands for a period of five years after the termination of this contract of employment without special written permission from the defendant. This plaintiff became engaged, as we have said, as a foreman in a cement factory, while the

defendant in the other case became engaged in identically the same business which his employer was carrying on, that is, the manufacture of straw hats. Consequently, the reasons which support the validity of the contract in the one case are not applicable to the other. The same is true of the case of For now vs. Hoffmeister (6 Phil. Rep., 33), wherein the decision rests solely upon the question whether the contracts was in violation of the contract labor laws. No other questions was submitted or decided in that case. Therefore, whether the clause under consideration is valid and enforcible is still an open question.

Articles 1091 and 1255 of the Civil Code read:

> "ART. 1091. Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations."
>
> "ART. 1255. The contracting parties may take the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order."

Hence, the policy of the law requires that the freedom of persons to enter into contracts shall not be lightly interfered with, but if a contract be not founded upon a legal consideration (causa) or if it conflicts with the morals of the times or contravenes some established interest of society, the courts will not aid in its enforcement.

Passing over the questions whether "consideration" of the American law and the "causa" of the civil law are equivalent and whether there was adequate or legal consideration or "causa" on which the contract was founded, we will limit our further inquiry to the determination of the question whether that part of the contract under consideration is against public policy (orden publico).

Manresa, Vol. 8, p. 606, says:

> "Public policy (orden publico) — which does not here signify the material keeping of public order — represents in the law of persons the public, social and legal interest, that which is

> permanent and essential of the institutions, that which, even if favoring an individual in whom the right lies, cannot be left to his own will. It is an idea which, in cases of the waiver of any right, is manifested with clearness and force. Thus the jurisprudence on the subject of mortgages contains an interesting declarations on this point in a resolution of January 24, 1898, wherein it was held that: 'The power of the husband to give marital permission cannot be validly conferred upon any attorney-in-fact, as the legislator has willed that, for reasons of the interest of society and of family government and discipline it should be vested only in the husband, being personal to him in the highest sense and therefore not capable of being transmitted."

Mucius Scaevola's (vol. 20, p., 505) conclusion is that:

> "Agreements in violation of orden publico must be considered as those which conflict with law, whether properly, strictly and wholly a public law (derecho) or whether a law of the person, but law which in certain respects affects the interest of society."

Articles 1893 and 1895 of Merrick's Revised Civil Code of Louisiana, a civil law state, read:

> "ART. 1893. An obligation without a cause, or with a false or unlawful cause, can have no effect."
>
> "ART. 1895. Illegal or immoral cause. — The cause is unlawful, when it is forbidden by law, when it is contra bonos mores or to public order."

In Fabacher vs. Bryant & Mather (46 La. Ann., 820), the plaintiff and one Thomas Egan were engaged in the business of hauling cotton for the presses in the city of New Orleans. Both of these men were members of the Draymen's Association which had adopted a tariff of charges and undertook to distribute among the members the hauling of the various presses. The owners of the presses were not consulted either as to the prices to be paid or as to those who should do the hauling. They could not obtain draymen outside of the union. They had to engage those designated by the union. The defendants

employed Egan on the latter's representation that he had been so designated. Later the defendants employed the plaintiff upon the same representations. Finally, after investigation, the defendants declined to permit the plaintiff to do the work and carried out their contract with Egan. The plaintiff thereupon instituted this action for damages based upon the breach of his contract by the defendants. On the setting aside of a verdict in favor of the plaintiff by the trial court and an appeal having been duly entered, the Supreme Court affirmed the judgment, directing the dismissal of the case, holding that the plaintiff's contract was plainly repugnant to public policy, citing articles 1893 and 1895 supra. (India Bagging Association vs. Kock, 14 La. Ann., 168; Gravier vs. Carraby, 17 La., 118, 142, and cases collected in 2d Hennen's Digest, p. 1007, No. 1)

In India Bagging Association vs. Kock, supra, an association of eight commercial firms in New Orleans, holders of 7,410 bales themselves for the term of three months not to sell any bagging, not offer to sell any, except with the consent of the majority of them expressed at a meeting; under the penalty of ten dollars for every bale sold or offered for sale. This action was brought against one of the members by the manager of the association for the recovery of a penalty of $7,400 for having sold 740 bales of bagging in contravention of the articles of the association. From a judgment in favor of the association the defendant member appealed and the Supreme Court reversed the judgment saying:

> "The agreement between the parties was palpably and unequivocably a combination in restrain of trade, and to enhance the price in the market of an article of primary necessity to cotton planters. Such combinations are contrary to public order, and cannot be enforced in a court of justice."

By "public policy," as defined by the courts in the United States and England, is intended that principle of the law which hods that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the "policy of the law." (Words & Phrases Judicially Defined, vol. 6, p. 5813, and cases cited.) Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. (Id., Id.) In determining whether a contract is

contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Hartford Fire Ins. Co. vs. Chicago, M. & St. P. Ry. Co., 62 Fed., 904, 906.)

The foregoing is sufficient to show that there is no difference in principle between the public policy (orden publico) in the two jurisdiction (the United States and the Philippine Islands) as determined by the Constitution, laws, and judicial decisions.

In the United States it is well settled that contracts in undue or unreasonable restraint of trade are unenforcible because they are repugnant to the established public policy in that country. Such contracts are illegal in the sense that the law will not enforce them. The Supreme Court of the United States, in Oregon Steam Navigation Co. vs. Winsor (20 Wall., 64), quoted with approval in Gibbs vs. Consolidated Gas Co. of Baltimore (130 U.S., 396), said:

> "Cases must be judged according to their circumstances, and can only be rightly judged when the reason and grounds of the rule are carefully considered. There are two principal grounds on which the doctrine is founded that a contract in restraint of trade is void as against public policy. One is, the injury to the public by being deprived of the restricted party's industry; and the other is, the injury to the party himself by being precluded from pursuing his occupation, and thus being prevented from supporting himself and his family."

And in Gibbs vs. Consolidated Gas Co. of Baltimore, supra, the court stated the rule thus:

> "Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, the contract may be sustained. The question is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable."

Chapter 5, title 13, book 2, of our Penal Code makes it a crime for a person to solicit any gift or promises as a consideration for agreeing to refrain from taking part in any public auction, or attempting to

cause bidders to stay away from such auction by means of threats, gifts, promises or any other artifice, with intent to affect the price of the thing auctioned (Art, 542), or to combine for the purpose of lowering the conditions of labor (Art. 543), or by spreading false rumors, or by making use of any other artifice, succeeds in altering the prices which would naturally be obtained in free competition for merchandise, stocks, public and private securities, or any other thing which may be the object of trade and commerce (Art. 544). And Act No. 98, as amended, of the Philippine Commission likewise makes it a crime for any person or corporation, engaged as a common carrier, to subject any particular person, firm, company, corporation, or locality, or any particular kind of traffic to any undue or unreasonable prejudice or discrimination. To this extent the Legislature has expressly covered the subject and left to the courts to determine in each case whether any other particular agreement or contract is contrary to public policy.

It needs no argument to show that an agreement or contract entered into for the purpose of accomplishing any of the prohibited acts mentioned in the above cited provisions of the Penal Code or in Act No. 98 would be unenforcible as being in violation of positive law. Those falling within the provisions of articles 542 of the Penal Code and Act no. 98 would clearly be agreements or contracts in undue or unreasonable restraint of trade. The meaning given to the word "trade" would determine the question whether those coming within the provisions of article 543 would or would not be the same. If the commercial meaning of the word should govern, and in this sense it has reference to the business of selling or exchanging some tangible substance or commodity for money, or the business of dealing by way of sale in commodities, it would appear that such would not be contracts in restrain of trade. This may be the most common significance of the word "trade," but it is not the only one, nor the most comprehensive meaning in which the word is properly used. In the broader sense, it is any occupation or business carried on for subsistence or profit. Anderson's Dictionary of Law gives the following definition: "Generally equivalent to occupation, employment, or business, whether manual or mercantile; any occupation, employment or business carried on for profit, gain, or livelihood, not in the liberal arts in the learned professions." In Abbott's Law Dictionary the word is defined as "an occupation,

employment or business given in the Encyclopaedic Dictionary is the following: “The business which a persons has learnt, and which he carries on for subsistence or profit; occupation; particularly employment, whether manual or mercantile, as distinguished from the liberal arts or the learned professions and agriculture.” Bouvier limits the meaning to commerce and traffic and the handcraft of mechanics. (In re Pinkney, 47 Kan., 89.) We are inclined to adopt and apply the broader meaning given by the lexicographers.

The contract under consideration, tested by the law, rules and principles above the set forth, is clearly one in undue or unreasonable restraint of trade and therefore against public policy. It is limited as to time and space but not as to trade. It is not necessary for the protection of the defendant, as this is provided for in another part of the clause. It would force the plaintiff to leave the Philippine Islands in order to obtain a livelihood in case the defendant declined to give him the written permission to work elsewhere in this country.

The foregoing are our reasons upon which the short Decision and Order for judgment, heretofore filed, were based.

Torres, Johnson, and Araullo, *JJ*., concur.