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Trade Competition - Effect of Motive

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TRADE COMPETITION—EFFECT OF MOTIVE.—Does the motive with which one enters into what is ostensibly trade competition with a business rival have any significance in the law? Motive is used, following Judge Smith's careful limitation of the term, to signify the feeling which makes the actor desire to obtain the result aimed at. A conclusion that motive is immaterial in this connection can be sustained by formal logic. A man has a "right" to engage in business, even though his rival be injured thereby. One may exercise a legal right, regardless of his motives in doing so. Therefore, business competition, if the methods be lawful, is not affected by the motives of the competitor. There is highly respectable authority which would justify approaching the question in this way. See the opinions in *Allen v. Flood,* [1898] A. C. 1.

Such a solution ignores the real difficulties inherent in the "right" to engage in business, and shows the slipping from a qualified meaning in the premise to an unqualified one in the conclusion mentioned by Mr. Justice Holmes when he described the word "right" as "one of the most deceptive of pitfalls." *American Bank & Trust Co. v. Federal Reserve Bank,* 256 U. S. 350. Motives do make a difference in the legal effects of many acts one has a "right" to do. They may make a defendant liable for what would otherwise be a privileged communication of defamatory matter; they may make him liable for having instituted criminal proceedings against a plaintiff. Modern authority even cuts down the time-honored right of a landowner to do as he pleases on his premises, and says that an unsightly fence built solely to spite his neighbor is an actionable wrong. *Flaherty v. Moran,* 87 Mich. 52; *Barger v. Barringer,* 151 N. C. 433.

A sounder method of approaching the problem has the sanction of modern authorities. The intentional infliction of temporal damage is a cause of action and requires justification if the defendant is to escape. See *Aikens v. Wisconsin,* 195 U. S. 194, 204. Injuries suffered by one person in business competition with another are, of course, not the basis for recovery at law. *Passaic Print Works v. Ely,* 105 Fed. 163. This is a rule of policy based, as Holmes puts it, on the "economic postulate that free competition is worth more to society than it costs." COLLECTED LEGAL PAPERS, 121. But the law marks the legal limit of immunity for what one business rival may do to a competitor. Force and intimidation exerted against the latter's customers and employees, for instance, have long been under the ban. *Garret v. Taylor,* Croke, James, 567. The courts are here confronted with the delicate but inevitable task of drawing the lines so as to promote the maximum of freedom for business enterprise, with its attendant public benefit, and the minimum of unnecessary hardship upon individual plaintiffs who seek relief from more powerful and perhaps less scrupulous rivals.

Suppose one man starts a competing business, not to benefit himself, but actuated solely by personal animosity toward his competitor, the object being to injure or ruin the latter. Has the injured party a cause of action? The much cited Minnesota decision of *Tuttle v. Buck*, 107 Minn. 145, answered the question affirmatively, and this answer has met with judicial approval in some later cases. *Dunshee v. Standard Oil Co.*, 152 Ia. 618; *Boggs v. Duncan-Schell Co.*, 163 Ia. 106. On paper, this seems entirely sound. Injuries to his means of livelihood suffered by a plaintiff in the course of actual competition must go unrecompensed, it is true. But here the competition is but simulated. The law is being asked to protect a defendant from liability for harm done in the indulgence of his own malevolence. Surely no public policy demands the recognition of such an immunity.

The danger in such a doctrine comes on the practical side. We must look here not to this particular wrong-doing defendant but to the great body of *bona fide* competitors. Judge Smith puts it succinctly: "We think that the rarely occurring punishment of a personal enemy, who has masked his hostility under the guise of competition, would not offset the harm caused honest competitors by their being compelled to litigate the question of the fairness of their motives whenever assailed by a disappointed rival." 20 HARV. L. REV. 453, 454. An analogy may be found in the policy of giving absolute immunity to the relevant remarks of judges, counsel and witnesses in a law suit.

Supposing, however, that the claim of the individual plaintiff is thought to be too strong to be disallowed, even at the risk of subjecting real competitors to litigation, will recovery then be limited strictly to cases where ill will to the plaintiff is the sole actuating motive of the defendant's acts? An interesting decision of the New York Court of Appeals indicates that this is where the line is to be drawn. *Beardsley v. Kilmer*, 236 N. Y. 80, 140 N. E. 203. The defendant was one of the proprietors of the business of manufacturing the well-known patent medicine, "Swamp Root." The plaintiff was manager and part owner of a newspaper published in the city where both parties lived. Plaintiff in his paper published attacks upon the defendant and his business. The defendant started another newspaper in the city, secured subscribers and advertisers, and after a time the plaintiff's paper discontinued publication and plaintiff lost his place. The court held that the plaintiff could not recover. There was undoubtedly evidence, it was said through Hiscock, C. J., that one of the purposes of the defendants in establishing the paper was revenge upon the plaintiff for his attacks. But the purpose of self-protection from what was honestly believed to be persecution was not unlawful, "but quite the contrary." Further, there were facts to show that the defendants started the paper as a business enterprise for profit to themselves and benefit to the community. Either was sufficient justification, it was said, even though tinged with animosity toward the plaintiff.

Surely the court gives us good law and good sense in limiting liability to cases (again borrowing from Mr. Justice Holmes) of "disinterested malevolence." Numerous instances of bad blood between business rivals, sometimes developed in the course of competition itself, will occur to anyone. It would be unfortunate if the law required every successful business man to submit the

question of the purity of his motives to a jury upon the demand of his disappointed rival. The limitation of liability to cases of pure malevolence finds support in decisions fixing responsibility for spite fences, *Kuzniak v. Kosminski*, 107 Mich. 444, and injurious acts done by a real estate owner in offering property for sale. *Holbrook v. Morrison*, 214 Mass. 209. A note in 22 COL. L. REV. 665, commenting upon the New York case in a lower court, cites a collection of many legal essays and cases upon the general question.

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