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# TRADE RESTRAINTS - INDUCING BREACH OF CONTRACT

TRADE RESTRAINTS — INDUCING BREACH OF CONTRACT — Plaintiff had "exclusive requirement" contracts with 90% of the users of electricity in various communities in Texas. Defendant was in the business of selling municipal electric plants to communities under a plan whereby, on assurance that enough users would enter into exclusive contracts to make the plant a success, the defendant agreed to look for payment to the revenue of the plant only. Installation of a municipal plant would, therefore, necessitate breaches of the "exclusive requirement" contracts on the part of some of plaintiff's customers. *Held*, that plaintiff was not entitled to an injunction restraining defendant from inducing plaintiff's customers to breach their contracts. *Fairbanks, Morse & Co. v. Texas Electric Service Co.*, (C. C. A. 5th, 1933) 63 F. (2d) 702.

The statute of 23 Edw. III, passed in 1349, created a remedy for the enticement of one's servant. The decision in *Lumley v. Gye*[1] in 1853 extended the remedy to all cases of inducing a breach of contract where personal services were involved, and in *Temperton v. Russell*[2] the English court held the doctrine applicable to contracts in general. The doctrine has been adopted by a majority of the courts in this country,[3] but has been rejected in a few jurisdictions.[4] It has been suggested that the remedy is applicable only when the breach is sought by the defendant as an end in itself, or as a means of appropriating that which the plaintiff is entitled to under his contract.[5] Support for this view is found in the refusal of the courts to recognize a cause of action for negligent interference with contract relationships.[6] In the principal case, assuming that the evidence would have justified a finding that the defendant was attempting to induce plaintiff's customers to breach their contract, the necessary ulterior motive is present for the defendant is seeking economic gain. The object of this remedy is to protect the contract rights of the plaintiff. In a given class of cases, however, some social interest may conflict with and outweigh the desirability of extending this protection. Thus the social interest in the preservation of the freedom of marriage has resulted in the courts denying recovery from one who has induced plaintiff's fiancé to break his or her marriage contract, regardless of defendant's motive.[7] In the principal case, the court relied mainly on the public interest involved. The court felt that it had before it "a case of a planned and consummated monopoly established by a system of exclusive contracts, enlisting the aid of a court of equity to sanction and perpetuate it."[8] The court suggested that if plaintiff had entered into only a few of these exclusive contracts instead of building up a "system" of contracts of this type, a different result might have been justified.[9] It is submitted that a distinction based on the number of contracts is unsound, and that it is preferable to recognize that in the "exclusive requirement" contract we are confronted with a type of contract where social interest renders it undesirable to afford the law's usual protection against breach brought about by third parties.

M. S.

[1] 2 El. & Bl. 216, 118 Eng. Repr. 749 (1853). Also see Bowen v. Hall, 6 Q. B. D. 333 (1881).

[2] [1893] 1 Q. B. 715.

[3] Doremus v. Hennessy, 176 Ill. 608, 52 N. E. 924 (1898); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

[4] Boyson v. Thorn, 98 Cal. 578, 33 Pac. 492 (1893); Swain v. Johnson, 151 N. C. 93, 65 S. E. 619 (1909).

[5] Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 at 686 *ff.* (1923).

[6] Chelsea Moving & Trucking Co., Inc. v. Ross Towboat Co., 280 Mass. 282, 182 N. E. 477 (1932); Byrd v. English, 117 Ga. 191, 43 S. E. 419 (1903); Robins Dry Dock & Repair Co. v. Flint, 275 U. S. 303, 48 Sup. Ct. 134 (1927); La Société Anonyme de Remorquage à Hélice v. Bennetts, [1911] 1 K. B. 243.

[7] Ableman v. Holman, 190 Wis. 112, 208 N. W. 889 (1926); Homan v. Hall, 102 Neb. 70, 165 N. W. 881 (1917).

[8] Also see Citizens' Light, Heat & Power Co. v. Montgomery Light & Water Power Co., (C. C. M. D. Ala. 1909) 171 Fed. 553 at 560-561.

[9] In John D. Park & Sons Co. v. Hartman, (C. C. A. 6th, 1907) 153 Fed. 24, the same distinction is suggested.