Equity--Injunctive Relief--Inducing Breach of Contract--Trade Libel (Paramount Pictures, Inc., et al. v. Leader Press, Inc., 106 F.2d 229 (10th Cir. 1939))

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EQUITY—INJUNCTIVE RELIEF—INDUCING BREACH OF CONTRACT—TRADE LABEL.—The plaintiff corporation alleged that it was engaged in the production and distribution of motion pictures; that it distributed its pictures to theatres for exhibition under license agreements which provided that the advertising of the pictures must conform to certain formal and artistic standards set by the plaintiff; that knowing these facts and circumstances, the defendant manufactured, sold, and distributed advertising of the plaintiff’s pictures which advertising was inartistic, grotesque, misleading, containing deceptive information bringing discredit upon the pictures and damaging and impairing the good will of the plaintiff as well as injuring and jeopardizing its business integrity. On appeal by the plaintiff from a judgment sustaining the demurrer, held, reversed. The plaintiff’s complaint that the defendant’s advertising violated the license agreement or wrongfully disparaged the plaintiff’s business set forth a good cause of action. Paramount Pictures, Inc., et al. v. Leader Press, Inc., 106 F. (2d) 229 (C. C. A. 10th, 1939).

“The right to have one’s contractual relations free from the disruptive influence of third parties has repeatedly been declared to be a valuable property right, and thus entitled to the protection of a court of equity provided the other grounds for equitable interposition are present.”

To establish the tort of interference with contractual relations, most authorities agree that the element of malice has long been supplanted by the test of foreseeability. The primary consideration is whether the defendant observed the proper standard of care in his negotiations with respect to the already existing contract. That standard is based upon the doctrine of foreseeability and if, as a reasonable man, the defendant should have anticipated the results, the standard has been violated. In the instant case, the court called the conduct of the defendant in selling inferior advertising to the plain-

PRUDENCE (4th ed. 1919) § 1696: “Some courts have intimated that either a general building scheme or an express declaration in the covenant is essential; but the better view seems to be that the intent may be otherwise determined.”


* Carpenter, Interference With Contractual Relations (1928) 41 HARV. L. REV. 728, 745; HARPER, TREATISE ON THE LAW OF TORTS (1933) 476; Chipley v. Atkinson, 23 Fla. 206, 1 So. 134 (1877); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

* Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923) (The action of C is malicious in that with knowledge of A’s rights he intentionally and knowingly and for unworthy and selfish purposes violates them by inducing B to breach his contract. It is a wrongful act, done intentionally, without just cause or excuse, and from this a malicious motive is to be inferred. This does not necessarily mean actual malice or ill-will but the intentional doing of a wrongful act without legal or social justification. This action is predicated not on the intent to injure, but on the intentional interference, without justification of A’s contractual rights, with knowledge thereof).
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tiff's licensee a "wrongful contribution or inducement to the breach of
the license agreements." 4 Regardless of his motive or intent 5 the
wrongdoer will be held liable provided he acted with knowledge of
the existing contract, 6 unless he can show that his conduct was justi-
fiable or privileged in that he was advancing some public interest or
an equal or superior right of his own. 7 Justification cannot be based
on the defendant's freedom to enter into contracts where injury will
result to the contract rights of another although he is motivated by a
desire to further his own business interests. 8 Nor does the fact that
the plaintiff and defendant are in competition offer justification. 9

4 Instant case at 232.  
5 Lamb v. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920) (It was
alleged that the defendant induced the plaintiff's employee to break his contract
with the plaintiff. The defense demurred. The court held the gist of the action
not to be the intent to injure, but to interfere without justification with knowl-
dge of the plaintiff's rights); Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E.
674 (1930) ("Malicious" as malicious procurement of a breach of contract is
actionable, does not mean necessarily actual malice or ill-will but the intentional
doing of a wrongful act without legal or social justification); Mohammed Al
Raschid v. News Syndicate Co., Inc., 265 N. Y. 1, 191 N. E. 713 (1934);
Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923) ("This action is not
predicated on the intent to injure but on the intentional interference without
justification of A's contractual rights with knowledge thereof"); Hustling Co.
538, 52 Sup. Ct. 311 (1931); Tubular Rivet and Steel Co. v. Exeter Boot &
N. Y. 430 (1872); Robbins Drydock, etc. Co. v. Flint, 275 U. S. 303, 48 Sup. Ct. 134 (1927). Contra:
Glanzer v. Shephard, 233 N. Y. 236, 135 N. E. 275 (1922); Cue v. Breeland,
78 Miss. 864, 29 So. 850 (1901).  
6 Bohlen, Incomplete Privilege to Inflict Intentional Invasions of Interests
of Property and Personality (1926) 39 Harv. L. Rev. 307, 314 ("Upon one
thing there is substantial agreement. An act intended to invade another's legally
protected interests is privileged only if done to protect or advance some public
interest or an interest of the actor. If the act is done only for the protection of
one of the actor's interests, it must be an interest of a value greater than, or at
least equal to, that of the interest invaded, or if the interests are similar, the
harm which the act is appropriate to prevent must be substantially equal to or
greater than that which it is intended or likely to cause"); Harper, TREATISE
ON THE LAW OF TORTS (1933) 7; R. & W. Hat Shop v. Scully, 98 Conn. 1, 118 Atl.
55 (1922); Brimelow v. Casson, [1923] 1 Ch. Div. 302; (1925) 38 Harv.
571, 97 N. W. 936 (1924).  
7 Bitterman v. Louisville & N. R. R., 207 U. S. 205, 28 Sup. Ct. 91 (1907);
Lamb v. Cheney & Sons, 227 N. Y. 418, 125 N. E. 817 (1920); Standard Fashion
v. Segal-Cooper, 30 App. Div. 564, 52 N. Y. Supp. 433 (1st Dept. 1898);
Dept. 1921); Montgomery Enterprises Co. v. Empire Theater Co., 204 Ala. 566,
86 So. 880 (1920); Bowen v. Spear, 166 S. W. 1183 (Tex. Civ. App. 1914).  
8 Montgomery Enterprises Co. v. Empire Theater Co., 204 Ala. 566, 86 So.
880 (1920); E. L. Hustling Co. v. Coca Cola, 205 Wis. 356, 237 N. W. 85
(1931), cert. denied, 285 U. S. 538, 52 Sup. Ct. 311 (1931); Heath v. American
It is more difficult to follow the reasoning of the court in respect to the other ground on which it based its decision, and which appears somewhat unusual. The court cites Sections 626 and 629 of the Restatement of the Law of Torts under the topic of Trade Libel. Section 629 defines "disparagement" as "matter which is intended by its publisher to be understood or which is reasonably understood to cast doubt on another's property in lands, chattels or intangible things, or upon their quality." Courts in this country have consistently denied injunctions against trade libels as they have against other libels, in order to uphold the constitutional guaranty of freedom of the press. However, where the libel has been incidental or instrumental to another tortious transaction equity has intervened. Therefore, it does not seem in line with the great weight of judicial authorities that the cause of action should have been sustained on the separate ground that the defendant was disparaging the plaintiff's business. But the court may have construed the libelous acts as falling into the latter category and enjoined them only as an incident of the tort of inducing the breach of the plaintiff's contract.

B. S.

Evidence — Wire Tapping — Interpretation of Federal Communications Act.—(First Case) Defendants appeal from a judgment convicting them of smuggling and concealing alcohol and of conspiracy to do so. An earlier conviction under the same indictment was reversed by the Supreme Court on the ground that the admission of evidence directly procured by means of wire-tapping was

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Book Co., 97 Fed. 533 (1899); Sumwalt Ice & Coal Co. v. Knickerbocker Ice Co., 114 Md. 403, 80 Atl. 48 (1911); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

10 Restatement, Torts (1938) §§ 626, 629.


12 Nann v. Raimist, 255 N. Y. 317, 174 N. E. 690 (1931) (Equity does not interfere to restrain the publication of words on a mere showing of their falsity. It intervenes in those cases where restraint becomes essential to the preservation of a business or other property interest threatened with impairment by an illegal combination or other tortious acts, the publication of the words being merely instrumental and incidental); Gompers v. Buck Stove Co., 221 U. S. 418, 31 Sup. Ct. 492 (1910); Casey v. Typographical Union, 45 Fed. 135 (C. C. S. D. Ohio 1891); Sherry v. Perkins, 147 Mass. 212, 17 N. E. 307 (1888).

13 Pound, Equitable Relief Against Defamation and Injuries to Personality (1915) 29 Harv. L. Rev. 640; (1927) 75 U. of Pa. L. Rev. 258.