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Torts - Conspiracy, Interference with Trade or Business

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tax should not be levied. *Commonwealth* v. *Lancaster Savings Bank,* 123 Mass. 493; *State* v. *Bradford Bank,* 71 Vt. 234, 44 Atl. 349. The New Jersey cases to the contrary seem to go too far. *In re United States Car Co.,* 60 N. J. Eq. 514, 43 Atl. 673. Although it is not quite clear against whom the tax should be assessed, this difficulty appears purely formal. See cases collected in L. R. A. 1915 E, 218, 219. Priority for state taxes under Virginia law is unquestionable. *Thomas* v. *Jones,* 94 Va. 756, 27 S. E. 813. Priority for taxes is normally treated as a question of procedure, and so determined by the *lex fori. Central Trust Co.* v. *E. Tenn., V. & G. Ry.,* 69 Fed. 658 (C. C. N. D. Ga.). The New York law does not give priority to taxes. *Wise* v. *Wise & Co.,* 153 N. Y. 507, 47 N. E. 788. But since it evidently has no strong policy against such priorities, the court was justified in deciding as it did on grounds of comity. See STORY, CONFLICT OF LAWS, §§ 29 *et seq.* A divergence in this policy and a difference on the facts accounts for the court's disregard of a contrary holding in *Franklin Trust Co.* v. *New Jersey,* 181 Fed. 769 (1st Circ.). See Arthur M. Brown, "Comity in the Federal Courts," 28 HARV. L. REV. 589.

TENANCY IN COMMON — PURCHASE OF PROPERTY BY CO-TENANT AFTER EXPIRATION OF STATUTORY PERIOD FOR REDEMPTION FROM TAX SALE. — The plaintiff and the defendant were husband and wife, owning land as tenants in common. In 1921 the property was sold at a tax sale to X. Two years later, after the statutory period of redemption had expired, the defendant paid the amount of the taxes to X, who conveyed the land to the defendant as her separate estate. Throughout this time and until 1924, the plaintiff and the defendant lived together on this land. In 1924 they were divorced, no mention being made of the property in the divorce proceedings. In this suit by the plaintiff to recover an undivided one-half interest in the property, the trial court decreed that the land be sold, and that after deducting the amount paid by the defendant for the repurchase, one-half the proceeds be paid to the plaintiff. From this decree the defendant appealed. *Held,* that the purchase of a tax title by one co-tenant, even after the period of redemption has expired, inures to the benefit of all the co-tenants. Judgment affirmed. *Bush* v. *Bush,* 275 S. W. 1096 (Tex. Civ. App.).

A co-tenant who buys in property at a tax sale or redeems from another who bought it in, does so for the benefit of all co-tenants. *Sanders* v. *Sanders,* 145 Ark. 188, 224 S. W. 732. *Cf. Collins* v. *Collins,* 59 Hun 620, 13 N. Y. Supp. 28, aff'd, 131 N. Y. 648, 30 N. E. 863. The reason given for this rule is the relation of mutual trust and confidence. If no fiduciary relation in fact exists, the result should be otherwise. See *Stevens* v. *Reynolds,* 143 Ind. 467, 477, 41 N. E. 931, 934. And see 9 HARV. L. REV. 427. When the time of redemption has expired, the fiduciary relationship is generally regarded as having ceased, and one who was a co-tenant may purchase for himself. *Lewis* v. *Robinson,* 10 Watts (Pa.) 354. See *Watkins* v. *Eaton,* 30 Me. 529, 536; *Kirkpatrick* v. *Mathiot,* 4 Watts & S. (Pa.) 251, 254. And see TIFFANY, REAL PROPERTY, § 172. Whatever may be said of the doctrine that a fiduciary relation arises out of a co-tenancy *per se,* its existence in the principal case can hardly be questioned, where husband and wife were living together on the land. It would seem, furthermore, that this fiduciary relation was properly held to have continued as long as the parties remained in joint possession, despite the expiration of the redemption period.

TORTS — CONSPIRACY — INTERFERENCE WITH TRADE OR BUSINESS. — At the instance of a union of retail news-agents of which he was a member, the plaintiff, formerly a customer of R, a wholesale news-agent, transferred his custom to W, another wholesaler. The union requested this action because

R was supplying newspapers to a dealer who had opened a shop in violation of a so-called "distance limit policy" of the union. The defendants were a committee representing the publishers and considered the "distance limit policy" as injurious to their interests. In order to compel the plaintiff to return to R, the defendants threatened to cut off the supplies W obtained from them directly and also to quit supplying S, another distributor who had dealings with W, as long as W continued to supply the plaintiff. The plaintiff brought suit for an injunction, which was granted in the lower court. The decree was reversed by the Court of Appeal, and the plaintiff appealed to the House of Lords. *Held,* that the defendants had not committed nor threatened to commit any wrong against the plaintiff. Appeal dismissed. *Sorrel* v. *Smith,* [1925] A. C. 700.

The House of Lords was unanimous in holding that the plaintiff did not have a cause of action. Two cases were chiefly relied on. *Mogul Steamship Co.* v. *McGregor,* [1892] A. C. 25; *Allen* v. *Flood,* [1898] A. C. 1. The opinions, however, do not agree how the present case should be distinguished from one in which a somewhat similar conspiracy was held actionable. See *Quinn* v. *Leathem,* [1901] A. C. 495. Various grounds are taken: that the defendants in the principal case acted without malevolence or spite; that the real purpose of the combination was to promote the defendants' trade and therefore justifiable; that there was no actionable conspiracy, *i.e.,* no combination for the sole purpose of inflicting injury. This disagreement demonstrates that very few rules or principles have yet crystallized in this branch of the law. On the facts of each case a judgment must be passed, whether, in view of the end sought to be attained by the defendant, the means he employs should be considered as improper. That judgment will reflect the social and economic policy of the community as understood by the court. For a full discussion of the principles involved, see 2 HARV. L. REV. 19; 15 *ibid.* 427; 16 *ibid.* 237; 20 *ibid.* 253, 345, 429; 37 *ibid.* 143; 38 *ibid.* 121.

UNFAIR COMPETITION — NECESSITY OF TRADING ON PLAINTIFF'S GOOD WILL — MISREPRESENTATIONS USED TO DECEIVE THE PUBLIC. — The plaintiff, by virtue of a patent, alone could sell safes containing an explosion chamber. The defendant falsely represented that his safes contained an explosion chamber, thereby diverting customers from the plaintiff. The public were not led to believe that the plaintiff manufactured the safes. From a decree dismissing the complaint the plaintiff appealed. *Held,* that the defendant's misrepresentations entitled the plaintiff to an injunction. Decree reversed. *Ely-Morris Safe Co.* v. *Mosler Safe Co.,* 7 F. (2d) 603 (2nd Circ.).

Though unfair competition is an elastic term, it has usually been confined to cases where the defendant is trading on the reputation and good will of the plaintiff. See 38 HARV. L. REV. 370. No such situation is here presented. Relief is given although the defendant's misrepresentation concerned merely his own goods, and did not in any way relate to the plaintiff. *Contra, American Washboard Co.* v. *Saginaw Mfg. Co.,* 103 Fed. 281 (6th Circ.). The court concerns itself with the defendant's wrong and not the plaintiff's right. *Cf. International News Service* v. *Associated Press,* 248 U. S. 215. See Bruce Wyman, "Competition and the Law," 15 HARV. L. REV. 427. If the competition is unfair, the plaintiff seems clearly entitled to relief if he can show loss of customers. This can be done in the present case, since the plaintiff had a patent on the article in question. In the absence of this circumstance it is doubtful whether the plaintiff could show sufficient injury. What competitive methods are unfair, depends on views of public policy, trade morality and economic soundness. See *Howe Scale*