

Saxlehner himself would not be permitted to do. The interposition of a court of equity is frequently invoked and always successfully to restrain unlawful competition in trade. All practices between rivals in business which tend to engender unfair competition are odious and will be suppressed by injunction. *Croft v. Day*, 7 Beav. 84; *Harper v. Pearson*, 3 Law T. (N. S.) 547; *Stevens v. Paine*, 18 Law T. (N. S.) 600; *Glenny v. Smith*, 11 Jur. (N. S.) 964; *Muck v. Petter*, 41 Law J. Ch. 781; *Burgess v. Burgess*, 3 De Gex, M. & G. 896; *Glen & H. Manuf'g Co. v. Hall*, 61 N. Y. 226; *Goodyear Rubber Co. v. Goodyear's Manuf'g Co.*, 21 Fed. Rep. 276; *Genin v. Chadsey*, 2 Brewst. 330; *Avery v. Meikle*, 17 West. Jur. 292; *Bell v. Locke*, 8 Paige, 75. But the adjudications which illustrate the principle rest upon the ground that a merchant or trader is entitled to protection only against dishonest or perfidious rivalry in his business. He will be protected against the fraudulent or deceitful simulations by a competitor of tokens which tend to confuse the identity or business of the one with the other, and against the false representation of facts which tend to mislead the public and divert custom from the one to the other. Anything short of this, however, is lawful competition. Accordingly the courts will not attempt to prevent the sending of circulars or advertisements by one to the customers of a competitor in business although designed to alienate patronage, if they contain no deceitful or misleading statements.

The law does not deal with motives which are not accompanied by a wrongful overt act. If the defendant is legally justified in buying where he can and selling as he chooses, it is not material whether he is actuated by a desire to annoy the complainant or to promote his own pecuniary interests.

The complainant is without remedy and the motion for an injunction must be denied.

ESTES and others v. LESLIE and others.

(*Circuit Court, S. D. New York. April 8, 1886.*)

TRADE NAME—CHATTERBOX—INFRINGEMENT.

The use of the word "Chatterbox," in connection with the same method of selection and illustration of stories, form of binding, and vignette, by defendants, held, an infringement of complainants' right in the name.

In Equity.

John L. S. Roberts, for orators.

Charles E. Rushmore, for defendants.

WHEELER, J. This case is similar to *Estes v. Williams*, 21 Fed. Rep. 189, in respect to the right of the orators to the exclusive use

of the name "Chatterbox" upon their series of juvenile publications in this country. No occasion appears for repeating what was there said. The question of laches is more relied upon here as a defense than it was there. There is a question as to the effect of a decree in favor of the defendants against the orators, entered by consent in the court of common pleas of New York in 1881; and a question whether the use of that name by the defendants upon their publication amounts to any misrepresentation as to their source.

Mr. Johnston, from whom the orators derive their right, appears to have had the exclusive use of this name for his series of publications, both in England and this country, without interference, from 1866 to 1876, and his works to have become well known by that name in both countries. By that means he had acquired a clear right to that name for the admittance of his works among customers. So far as is shown, he vindicated this right as often as it was invaded to his knowledge until the time when he conveyed it to the orators in 1880. Since then they have not, for any length of time, abandoned it, but have continually asserted it in one way or another, although not against all trespassers at once. No right as against these defendants appears to have been lost in this manner. *Collins Co. v. Ames*, 20 Blatchf. 542; S. C. 18 Fed. Rep. 561.

The operative part of the decree of the court of common pleas restrained the orators from selling any publication called the "Chatterbox" or "Frank Leslie's Chatterbox," with the name "Frank Leslie," or the address "Frank Leslie's Publishing House, 53, 55, and 57 Park place, New York," thereon. This did not extend to the name "Chatterbox," and no right to its use was decreed to either party, or affected by the decree in any manner.

Whether the use which the defendants make of the name is calculated to put their publications in the place which those of the orators would otherwise take is principally a question of fact, and is the most important one open in this case. The publications of Johnston were composed of selections of stories, sketches, and poems, with pictorial illustrations intended for, and interesting to, the young; printed with a head-line, "Chatterbox," on each page; bound in square form, in illuminated boards, with vignette slightly varying in style from one number to another, and the name "Chatterbox" prominently on the front, and with a plain cloth back. The selections had been made with such care and skill, and the illustrations and style of binding made so attractive, that they had acquired great popularity, and found large sales, as well in this country as elsewhere. The same method of selection and illustration, square form, style of binding, and of vignette, as well as name on the cover, have been taken by the defendants. The name is the only thing in question in this case, but the adoption of so many other features tends to show the intent with which the name is used. All these things together lead plainly to the conclusion that the name has been appro-