petition is the essence of trade, and that it is vain and inexpedient for the judges to attempt to decide what may be "reasonable" and what "unreasonable" competition. That all the Courts can look to is whether the particular acts complained of by *A* who suffers from the competition of *X*, *Y*, and *Z*, are in themselves wrongful, as, for example, fraudulent, and whether the motive with which the acts are done is the carrying on of trade, or the gratification of spite. It is not, in his opinion (and in this view Fry, L.J., coincides), the province of the judges "to mould and stretch the law of conspiracy in order to keep pace with the calculations of political economy," or, as we infer, with considerations of public expediency.

It is, however, of consequence to note the considerations which may make a critic, whatever his own views, desire that the Mogul case, and the principles on which it rests, should be considered by the House of Lords. The dissenting judgment of Lord Esher deserves the most careful attention. Partly from that judgment, and partly from the judgments of the majority of the Court, it is easy to perceive several points which may be urged against the decision of the Court of Appeal.

1. It admits of the gravest doubt whether that judgment be really supported by authority. It is difficult to reconcile with it such cases as *Hilton* v. *Eckersley*, 6 E. & B. 47, or Sir William Erle's admittedly powerful statement of the law contained in his work on the Law of Trades Unions.

2. The notion that acts, e.g. of competition, which would be lawful if done for the sake of defeating *A* as a trader, become unlawful if done from ill-will to *A*, a notion which appears to be countenanced by Lord Justice Bowen, introduces into the law a subtle, and possibly perilous, refinement. No doubt "express malice" is already known to the law. But it is known as something which is very troublesome to deal with.

3. It is difficult to see why, if the judges can determine that an agreement is unreasonable when called upon to enforce it, they cannot pronounce upon its reasonableness when called upon to say whether it be an agreement which ought not to have been made.

4. The admission that "certain kinds of conduct not criminal in any one individual may become criminal if done by combination among several" (see judgment of Bowen, L.J., p. 616), shakes the force of a great deal of the argument in favour of the defendants in the Mogul case. For that argument really consists in showing that each of the acts done or contemplated by the defendants would have been innocent or lawful if done by a single person, and, it may be suggested, overlooks the distinction between the "coincident" and the "concerted" action of several persons.

5. It is difficult to see on what ground the agreement should be held unenforceable by law, and yet not held unlawful.

We are far from asserting that the decision is wrong. But it is of such wide scope and such great moment that criticism seems not only legitimate but desirable, at all events until the House of Lords has spoken.—*Law Quarterly Review.*