

Supreme Court Case: U.S. v. E.C. Knight and Co. 1895

Introduction

The American sugar Refining Company, by buying the stock of four Philadelphia sugar refining companies, had acquired a virtual monopoly of the manufacture of refined sugar in the United States. Attorney-General Richard Olney, who never respected the Sherman Anti-Trust Act, nonetheless brought suit for a court order cancelling the agreements under which the stock had been acquired, on the ground that these agreements created a monopoly. The question before the Court was whether a monopoly in the manufacture of a product, which presumably afforded control of supply and prices, involved interstate commerce to the extent that it could be brought under the provisions of the Anti-Trust Act and controlled under the Constitution's commerce clause.



The government's case was badly presented by Olney, who neglected to establish the close relation between a monopoly in manufacture (which was local) and sales and distribution (which were interstate). Hence the Court ruled that "commerce succeeds to manufacture, and is not a part of it." The resulting decision of the Court, with its powerful blow at enforcement of the Sherman Act, hardly displeased Olney, who wrote to his Secretary: "You will observe that the government has been defeated. . . . I have always supposed it would and have taken the responsibility of not prosecuting [other possible cases] under a law I believed to be no good."

Mr. Chief Justice Fuller delivered the opinion of the court.

The fundamental question is, whether conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the act of Congress in the mode attempted by this bill. .

The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that,



therefore, the general government in the exercise of the power to regulate commerce may repress such monopoly directly and set aside the instruments which have created it. But this argument cannot be confined to necessities of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play it does not control it and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.

It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly directly may be exercised by the general government whenever interstate or international commerce may be ultimately affected. The regulation of commerce applies to the subjects of commerce and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce. .

Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination, or conspiracy.

Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition. Slight reflection will show that if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive industries, whose ultimate result may affect external commerce, comparatively little of business operations and affairs would be left for state control.

It was in the light of well-settled principles that the act of July 2, 1890[*the Sherman Act*] was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. It is true that the bill alleged that the products of these refineries were sold and distributed among the several States, and that all the companies were engaged in trade or commerce with the several States and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfill its function. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree. . .

Justice John Marshall Harlan dissenting

Alone among the justices, Harlan found that a monopoly operating within a single state but trading across state lines must be considered as engaged in interstate commerce; and that the federal power to regulate commerce must be extended to cover it, if the control of monopoly was to be meaningful.

His powerful dissent, and the protest in the country at large against the Court`s decision may have impelled the Court to change its view in later cases, which gave some encouragement to enforcement of the Sherman Act. In *Addystone Pipe and Steel Company v. U.S. (1899)*, for instance, the Court, though it did not specifically

reverse the Knight decision, allowed the Sherman Act to be applied against an industrial combination. The implications of Harlan's dissent were later followed by the Court in *Swift and Co. v. U.S. (1905)*, in which Justice Holmes found that, where a combination to control sales was demonstrated, a monopoly within a single state had an effect that was not "accidental, secondary, remote, or merely probable."

The power of Congress covers and protects the absolute freedom of such intercourse and trade among the States as may or must succeed manufacture and precede transportation from the place of purchase. This would seem to be conceded; for, the court in the present case expressly declare that

"contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purpose of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce."



Here is a direct admission -one which the settled doctrines of this court justify- that contracts to buy and the purchasing of goods to be transported from one State to another, and transportation, with its instrumentalities, are all parts of interstate trade or commerce. Each part of such trade is then under the protection of Congress. And yet, by the opinion and judgment in this case, if I do not misapprehend them, Congress is without power to protect the commercial intercourse that such purchasing necessarily involves against the restraints and burdens arising from the existence of combinations that meet purchasers, from whatever State they come, with the threat-for it is nothing more nor less than a threat-that they shall not purchase what they desire to purchase, except at the prices fixed by such combinations. A citizen of Missouri has the right to go in person, or send orders, to Pennsylvania and New Jersey for the purpose of purchasing refined sugar. But of what value is that right if he is confronted in those States by a vast combination which absolutely controls the price of that article by reason of its having acquired all the sugar refineries in the United States in order that they may fix prices in their own interest exclusively?

In my judgment, the citizens of the several States composing the Union are entitled, of right, to buy goods in the State where they are manufactured, or in any other State, without being confronted by an illegal combination whose business extends throughout the whole country, which by the law everywhere is an enemy to the public interests, and which prevents such buying, except at prices arbitrarily fixed by it. I insist that the free course of trade among the States cannot coexist with such combinations. When I speak of trade I mean the buying and selling of articles of every kind that are recognized articles of interstate commerce. Whatever improperly obstructs the free course of interstate intercourse and trade, as involved in the buying and selling of articles to be carried from one State to another, may be reached by Congress, under its authority to regulate commerce among the States. The exercise of that authority so as to make trade among the States, in all recognized articles of commerce, absolutely free from unreasonable or illegal restrictions imposed by combinations, is justified by an express grant of power to Congress and would redound to the welfare of the whole country. I am unable to perceive that any such result would imperil the autonomy of the States, especially as that result cannot be attained through the action of any one State.

Undue restrictions or burdens upon the purchasing of goods, in the market for sale, to be transported to other states, cannot be imposed even by a State without violating the freedom of commercial intercourse guaranteed by the Constitution. But if a State within whose limits the business of refining sugar is exclusively carried on may not constitutionally impose burdens upon purchases of sugar to be transported to other States, how comes it that combinations of corporations or individuals, within the same State, may not be prevented by the national government from putting unlawful restraints upon the purchasing of that article to be carried from the State in which such purchases are made? If the national power is competent to repress State action in restraint of interstate trade as it may be involved in purchases of refined sugar to be transported from one State to another State, surely it ought to be deemed sufficient to prevent unlawful restraints attempted to be imposed by combinations of corporations or individuals upon those identical purchases; otherwise, illegal combinations of corporations or individuals may—so far as national power and interstate commerce are concerned—, with impunity, what no State can do. .

In committing to Congress the control of commerce with foreign nations and among the several States, the Constitution did not define the means that may be employed to protect the freedom of commercial intercourse and traffic established for the benefit of all the people of the Union. It wisely forbore to impose any limitations upon the exercise of that power except those arising from the general nature of the government, or such as are embodied in the



fundamental guarantees of liberty and property. It gives to Congress, in express words, authority to enact all laws necessary and proper for carrying into execution the power to regulate commerce; and whether an act of Congress, passed to accomplish an object to which the general government is competent, is within the power granted, must be determined by the rule announced through Chief Justice Marshall three-quarters of a century ago, and which has been repeatedly affirmed by this court. That rule is:

"The sound construction of the Constitution must allow to the national legislature the discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

McCulloch v. Maryland, 4 Wheat. 316, 421. The end proposed to be accomplished by the act of 1890 is the protection of trade and commerce among the States against unlawful restraints. Who can say that that end is not legitimate or is not within the scope of the Constitution? The means employed are the suppression, by legal proceedings, of combinations, conspiracies, and monopolies, which by their inevitable and admitted tendency, improperly restrain trade and commerce among the States. Who can say that such means are not appropriate to attain the end of freeing commercial intercourse among the States from burdens and exactions imposed upon it by combinations which, under principles long recognized in this country as well as at the common law, are illegal and dangerous to the public welfare? What clause of the Constitution can be referred to which prohibits the means thus prescribed in the act of Congress? .

We have before us the case of a combination which absolutely controls, or may, at its discretion, control the price of all refined sugar in this country. Suppose another combination, organized for private gain and to control prices, should obtain possession of all the large flour mills in the United States; another, of all the grain elevators; another, of all the oil territory; another, of all the saltproducing regions; another, of all the cotton mills; and another, of all the great establishments for slaughtering animals, and the preparation of meats. What power is competent to protect the people of the United States against such dangers except a national power—one that is capable of exerting its sovereign authority throughout every part of the territory and over all the people of the nation?

To the general government has been committed the control of commercial intercourse among the States, to the end that it may be free at all times from any restraints except such as Congress may impose or permit for the benefit of the whole country. The common government of all the people is the only one that can adequately deal with a matter which directly and injuriously affects the entire commerce of the country, which concerns equally all the people of the Union, and which, it must be confessed, cannot be adequately controlled by any one State. Its authority should not be so weakened by construction that it cannot reach and eradicate evils that, beyond all question, tend to defeat an object which that government is entitled, by the Constitution, to accomplish. . .