United States v. Trans-Missouri Freight Association

166 U.S. 290 (1897)

[In March 1889, fifteen railroad companies operating west of the Mississippi River entered into an agreement, establishing the Trans-Missouri Freight Association for "the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic," as well as "rules for meeting the competition of outside lines." The agreement also established a governance system to detect and punish unapproved rate cuts. Three additional railroad companies joined the association later.

In January 1892, the federal government filed a lawsuit against the association and its eighteen members, alleging that the arrangement violated the Sherman Act. The district court dismissed the complaint. The Eight Circuit affirmed. The association dissolved before the case reached the Supreme Court.].

Mr. Justice PECKHAM, after stating the facts in the foregoing language, delivered the opinion of the court.

. . . [The dissolution of the association] does not prevent this court from taking cognizance of the appeal and deciding the case upon its merits. [The government] asks, not only for the dissolution of the association, but, among other things, that the defendants should be restrained from continuing in a like combination, and that they should be enjoined from further conspiring, agreeing, or combining and acting together to maintain rules and regulations and rates for carrying freight upon their several lines, etc. . . .

The defendants . . . do not admit the illegality of the agreement, nor do they allege their purpose not to enter into a similar one in the immediate future. On the contrary, . . . the defendants claim that the agreement is a perfectly proper, legitimate, and salutary one, and . . . is necessary to the prosperity of the companies. . . . [Further, after the dissolution of the association, the defendants] immediately entered into a substantially similar agreement, which was to remain in force. . . .

The companies, while denying the illegality of the agreement or its purpose to be other than to maintain reasonable rates, . . . allege that without some such agreement the competition between them for traffic would be so severe at to cause great losses to each defendant, and possibly ruin the companies represented in the agreement. Such a result, it is claimed, is avoided by reason of the agreement. [Therefore], the prosperity, if not the life, of each company [depends on the existence of such an arrangement]. . . .

[Section 1 of the Sherman Act bans] every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce. . . . A contract, therefore, that is in restraint of trade or commerce is, by the strict language of the Act, prohibited, even though such contract is entered into between competing common carriers. . . . We see no

escape from the conclusion that [the Sherman Act condemns every agreement in restraint of trade].

Looking simply at the history of the bill [that became the Sherman Act] from the time it was introduced in the senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each house in relation to the meaning of the act. . . . All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts. from the language used therein. . . .

[When Congress debated the Sherman Act]: . . . combinations, in the form of trusts and conspiracies in restraint of trade were to be found throughout the country; and that it was impossible for the state governments to successfully cope with them, because of their commercial character, and of their business extension through the different states of the Union. Among these trusts, [there] were the Beef Trust, the Standard Oil Trust, the Steel Trust, the Barbed Fence Wire Trust, the Sugar Trust, the Cordage Trust, the Cotton-Seed Oil Trust, the Whisky Trust, and many others. . . . [These trusts] had acquired a power which were dangerous to the whole country, and that their existence was directly antagonistic to its peace and prosperity. [The defendants argue that the Sherman Act intended to address such combinations and conspiracies, not] the combinations of competing railroads [seeking] to keep up their prices to a reasonable sum for the transportation of persons and property.

It is true that many and various trusts were in existence at the time of the passage of the Act, and it was probably sought to cover them by the provisions of the Act. Many of them had rendered themselves offensive by the manner in which they exercised the great power that combined capital gave them. . . . [T]hose trusts were not the only associations controlling a great combination of capital which had caused complaint at the manner in which their business was conducted. There were many and loud complaints from some portions of the public regarding the railroads, and the prices they were charging for the service they rendered, and it was alleged that the prices for the transportation of persons and articles of commerce were unduly and improperly enhanced by combinations among the different railroads. . . . A reference to this history of the times does not, as we think, furnish us with any strong reason for believing that it was only trusts that were in the minds of the members of Congress, and that railroads and their manner of doing business were wholly excluded therefrom. . . .

[Businesses sometimes reduce prices]. Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all-powerful combination of capital. In any great and extended change in the manner or method of doing business it seems to be

an inevitable necessity that distress, and, perhaps, ruin, shall be its accompaniment, in regard to some of those who were engaged in the old methods.

A change from stagecoaches and canal boats to railroads threw at once a large number of men out of employment. Changes from hand labor to that of machinery, and from operating machinery by hand to the application of steam for such purpose, leave behind them, for the time, a number of men who must seek other avenues of livelihood. These are misfortunes which seem to be the necessary accompaniment of all great industrial changes. It takes time to effect a readjustment of industrial life so that those who are thrown out of their old employment by reason of such changes as we have spoken of may find opportunities for labor in other departments than those to which they have been accustomed. It is a misfortune, but yet in such cases it seems to be the inevitable accompaniment of change and improvement.

It is wholly different, however, when such changes are effected by combinations of capital whose purpose in combining is to control the production or manufacture of any particular article in the market, and by such control dictate the price at which the article shall be sold; the effect being to drive out of business all the small dealers in the commodity, and to render the public subject to the decision of the combination as to what price shall be paid for the article.

In this light, it is not material that the price of an article may be lowered. It is in the power of the combination to raise it, and the result in any event is unfortunate for the country, by depriving it of the services of a large number of small but independent dealers, who were familiar with the business, and who had spent their lives in it, and who supported themselves and their families from the small profits realized therein. Whether they be able to find other avenues to earn their livelihood is not so material, because it is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent of a corporation for selling the commodities which he once manufactured or dealt in; having no voice in shaping the business policy of the company, and bound to obey orders issued by others.

Nor is it for the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination of capital. Congress has, so far as its jurisdiction extends, prohibited all contracts or combinations in the form of trusts entered into for the purpose of restraining trade and commerce.

. . . [The defendants argue that the Sherman Act] does not mean what the language used therein plainly imports, but that it only means to declare illegal any such contract which is in unreasonable restraint of trade, while leaving all others unaffected by the provisions of the Act; that the common-law meaning of the term 'contract in restraint of trade' includes only such contracts as are in unreasonable restraint of trade; and when that term is used in the federal statute it is not intended to include all contracts in restraint of trade, but only those which are in unreasonable restraint thereof.

The term is not of such limited signification. Contracts in restraint of trade have been known and spoken of for hundreds of years, both in England and in this country, and the term includes all kinds of those contracts which in fact restrain or may restrain trade. Some of such contracts have been held void and unenforceable in the courts by reason of their restraint being unreasonable, while others have been held valid because they were not of that nature. A contract may be in restraint of trade and still be valid at common law. Although valid, it is nevertheless a contract in restraint of trade and would be so described either at common law or elsewhere. . . .

[When the statutory language] pronounces as illegal every contract or combination in restraint of trade or commerce . . ., the plain and ordinary meaning of such language is not limited to that kind of contract alone which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by congress.

[Several lower courts took the position that the Sherman Act does not mean what its plain languages says and it intends] to denounce as illegal only those contracts which were in unreasonable restraint of trade. . . . But we cannot see how the statute can be limited, as it has been by the courts below, without reading into its text an exception which alters the natural meaning of the language used, and that, too, upon a most material point, and where no sufficient reason is shown for believing that such alteration would make the statute more in accord with the intent of the lawmaking body that enacted it.

[The defendants argue that a reasonableness exception is necessary]. They again draw attention to the fact of the peculiar nature of railroad property. When a railroad is once built, it is said, it must be kept in operation. It must transport property, when necessary in order to keep its business, at the smallest price, and for the narrowest profit, or even for no profit, provided running expenses can be paid, rather than not to do the work; that railroad property cannot be altered for use for any other purpose, at least without such loss as may fairly be called destructive; that competition, while perhaps right and proper in other business, simply leads in railroad business to financial ruin and insolvency. . . . It is said that, as railroads have a right to charge reasonable rates, it must follow that a contract among themselves to keep up their charges to that extent is valid. Viewed in the light of all these facts, it is broadly and confidently asserted that it is impossible to believe that Congress, or any other intelligent and honest legislative body, could ever have intended to include all contracts or combinations in restraint of trade, and, as a consequence thereof, to prohibit competing railways from agreeing among themselves to keep up prices for transportation to such a rate as should be fair and reasonable.

[Under this theory, courts should examine whether railroad agreements to fix rates are] reasonable and fair. . . . What is a proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return for the whole business done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, what is a fair and reasonable profit? . . . It is quite apparent, therefore, that it is exceedingly difficult to formulate even the term of the rule itself which should

govern in the matter of determining what would be reasonable rates for transporting. [The defendants ask us] to leave the question of reasonableness to the companies themselves.

. . . The general reasons for holding agreements of this nature to be invalid, even at common law, on the part of railroad companies, are quite strong, if not entirely conclusive.

. . . It may be entirely true that, as we proceed in the development of the policy of public control over railway traffic, methods will be devised and put in operation by legislative enactment whereby railway companies and the public may be protected against the evils arising from unrestricted competition, and from rate wars which unsettle the business of the community; but I fail to perceive the force of the argument that because railway companies, through their own action, cause evils to themselves and the public by sudden changes or reductions in tariff rates, they must be permitted to deprive the community of the benefit of competition in securing reasonable rates for the transportation of the products of the country.

Competition, free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life. Evils, as well as benefits, result therefrom. In the fierce heat of competition, the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains as a controlling element in the business world. That free and unrestricted competition in the matter of railroad charges may be productive of evils does not militate against the fact that such is the law now governing the subject. No law can be enacted nor system be devised for the control of human affairs that in its enforcement does not produce some evil results, no matter how beneficial its general purpose may be. There are benefits and there are evils which result from the operation of the law of free competition between railway companies. . . . The claim that the company has the right to charge reasonable rates, and that, therefore, it has the right to enter into a combination with competing roads to maintain such rates, cannot be admitted.

. . . [W]e are asked to read into the [Sherman Act], by way of judicial legislation an exception that is not placed there by the lawmaking branch of the government. . . . This we cannot and ought not to do.

Mr. Justice WHITE, dissenting.

. . . [O]nly such contracts as unreasonably restrain trade are violative of the general law; and . . . the particular contract here under consideration is reasonable, and therefore not unlawful, if the general principles of law are to be applied to it. . . .