United States v. Addyston Pipe & Steel Co.

85 F. 271 (6th Cir. 1898)

Taft, Circuit Judge

[T]he attorney general, on behalf of the United States, [filed a lawsuit] against six corporations engaged in the manufacture of cast-iron pipe, charging them with a combination and conspiracy in unlawful restraint of interstate commerce in such pipe, in violation of the so-called 'Anti-Trust Law,' passed by Congress July 2, 1890. The defendants were the Addyston Pipe & Steel Company [and five other companies].

The defendants . . . admitted the existence of an association between them for the purpose of avoiding the great losses they would otherwise sustain, due to ruinous competition between defendants, but denied that their association was in restraint of trade, state or interstate, or that it was organized to create a monopoly, and denied it was a violation of the anti-trust act of congress. . . .

[In 1894, the defendants formed an association through an agreement that set a formula for the allocation of production capacity and gave each company exclusivity in certain territories. The defendants further agreed that the agreement would] last for two years from the date of the signing of same, until December 31, 1896. [The agreement established a distinction between 'pay' and 'free' territories. In pay territories, sellers had to pay fees to the association that distributed the revenues among the defendants. In contrast, in free territories], defendants were at liberty to make sales without restriction and without paying any bonus.

The by-laws provided for an auditor of the association, whose duty it was to keep account of the business done by each shop both in pay and free territory. [The bylaws further provided that, every month, the auditor would] send to each shop 'a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premiums on shipments, the division of the same, and debit, credit, balance of each company.'

The system of bonuses, as a means of restricting competition and maintaining prices, was not successful. A change was therefore made by which prices were to be fixed for each contract by the association, and, except in reserved cities, the bidder was determined by competitive bidding of the members, the one agreeing to give the highest bonus for division among the others getting the contract.

[To improve the operation of the association, the defendants agreed to establish] a representative board located at some central city, to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold. . . . [The new arrangement resulted in price increases].

The defendants filed the affidavits of their managing officers, in which they stated generally that the object of their association was not to raise prices beyond what was reasonable, but only to prevent ruinous competition between defendants, which would have carried prices far below a reasonable point.

[They further explained that the payments for operating in pay territories] were not exorbitant profits and additions to a reasonable price, but they were deductions from a reasonable price, in the nature of a penalty or burden intended to curb the natural disposition of each member to get all the business possible, and more than his due proportion. [Under this theory,] the prices fixed by the association were always reasonable, and were always fixed, as they must have been, with reference to the very active competition of other pipe manufacturers for every job; that the reason why they sold pipe at so much cheaper rates in the free territory than in the pay territory was because they were willing to sell at a loss to keep their mills going rather than to stop them. . . .

TAFT, Circuit Judge, after stating the case as above, delivered the opinion of the court.

. . . Two questions are presented in this case for our decision: . . . Was the association of the defendants a contract, combination, or conspiracy in restraint of trade, as the terms are to be understood in the Act? Was the trade thus restrained trade between the states?

[The defendants argued] that the association would have been valid at common law, and that the federal anti-trust law was not intended to reach any agreements that were not void and unenforceable at common law.

It might be a sufficient answer to this contention to point to the decision of the supreme court of the *United States in U.S. v. Trans-Missouri Freight Ass'n*, 166 U.S. 290 (1897), in which it was held that contracts in restraint of interstate transportation were within the statute, whether the restraints would be regarded as reasonable at common law or not. . . .

[Under the common law, contracts] that were unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or giving rise to a civil action for damages in favor of one prejudicially affected thereby, but were simply void, and were not enforced by the court. The effect of the [Sherman Act] is to render such contracts unlawful in an affirmative or positive sense, and punishable as a misdemeanor, and to create a right of civil action for damages in favor of those injured thereby, and a civil remedy by injunction in favor of both private persons and the public against the execution of such contracts and the maintenance of such trade restraints.

[The defendants' key arguments were as follows. First,] the contract of association was not, and could not be, a monopoly, because their aggregate tonnage capacity did not exceed 30% of the total tonnage capacity of the country. [Second,] the restraints . . . were justified and upheld at common law . . . [because] were reasonable. [Third, without the restraints] each member would be subjected to ruinous competition by the other. [Fourth,

the restraints] did not exceed in degree of stringency or scope what was necessary to protect the parties in securing prices for their product that were fair and reasonable to themselves and the public. [Fifth,] competition was not stifled by the association because the prices fixed by it had to be fixed with reference to the very active competition of pipe companies which were not members of the association. [Sixth,] the association only modified and restrained the evils of ruinous competition, while the public had all the benefit from competition which public policy demanded.

From early times it was the policy of Englishmen to encourage trade in England, and to discourage those voluntary restraints which tradesmen were often induced to impose on themselves by contract. Courts recognized this public policy by refusing to enforce stipulations of this character. The objections to such restraints were mainly two. One was that by such contracts a man disabled himself from earning a livelihood with the risk of becoming a public charge, and deprived the community of the benefit of his labor. The other was that such restraints tended to give the covenantee, the beneficiary of such restraints, a monopoly of the trade, from which he had thus excluded one competitor, and by the same mean might exclude others. . . .

Much has been said in regard to the relaxing of the original strictness of the common law in declaring contracts in restraint of trade void as conditions of civilization and public policy have changed. . . . [The argument] is that the law now recognizes that competition may be so ruinous as to injure the public, and, therefore, that contracts made with a view to check such ruinous competition and regulate prices, though in restraint of trade, and having no other purpose, will be upheld.

We think this conclusion is unwarranted. . . . It is true that certain rules for determining whether a covenant in restraint of trade ancillary . . . have been somewhat modified by modern authorities. [Cases holding that ancillary restraints are reasonable, however], do not manifest any general disposition on the part of the courts to be more liberal in supporting contracts having for their sole object the restraint of trade than did the courts of an earlier time.

It is true that there are some cases in which the courts [examined] the proper limits of the relaxation of the rules for determining the unreasonableness of restraints of trade, have set sail on a sea of doubt, and have assumed the power to say, in respect to contracts which have no other purpose and no other consideration on either side than the mutual restraint of the parties, how much restraint of competition is in the public interest, and how much is not.

. . . The defendants, being manufacturers and vendors of cast-iron pipe, entered into a combination to raise the prices for pipe [in multiple states]. . . . The defendants were, by their combination, . . . able to deprive the public in a large territory of the advantages [of competition]. . . . The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee. . . . Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition, and it affected only a part of the price. But this

certainly does not take the contract of association out of the annulling effect of the rule against monopolies. . . .

It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold in pay territory were reasonable. . . . We do not think the issue an important one, because . . . we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. . . .