Dr. Miles Medical Co. v. John D. Park & Sons Co.

220 U.S. 373 (Apr. 3, 1911)[*]

Mr. Justice Hughes, after making the above statement, delivered the opinion of the court:

The complainant, a manufacturer of proprietary medicines which are prepared in accordance with secret formulas, presents by its bill a system, carefully devised, by which it seeks to maintain certain prices fixed by it for all the sales of its products, both at wholesale and retail. . . . Its plan is thus to govern directly the entire trade in the medicines it manufactures. . . . To accomplish this result it has adopted two forms of restrictive agreements limiting trade in the articles to those who become parties to one or the other. The one sort of contract, known as 'Consignment Contract-Wholesale,' has been made with over four hundred jobbers and wholesale dealers, and the other described as 'Retail Agency Contract,' with twenty-five thousand retail dealers in the United States.

The defendant is a wholesale drug concern which has refused to enter into the required contract, and is charged with procuring medicines for sale at 'cut prices' by inducing those who have made the contracts to violate the restrictions. . . . The principal question is as to the validity of the restrictive agreements. . . .

The bill charges that the defendant has unlawfully and fraudulently procured the proprietary medicines from the complainant's 'wholesale and retail agents' in violation of their contracts. . . .

[Dr. Miles claims that it has the] 'right to maintain and preserve the aforesaid system and method of contracts and sales adopted and established by it.' It is, as we have seen, a system of interlocking restrictions by which the complainant seeks to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail, whether purchasers or sub-purchasers, and thus to fix the amount which the consumer shall pay, eliminating all competition. . . .

[Under Dr. Miles' distribution system], all room for competition between retailers, who supply the public, is made impossible. If these contracts leave any room at any point of the line for the usual play of competition between the dealers in the product marketed by complainant, it is not discoverable. Thus, a combination between the manufacturer, the wholesalers, and the retailers, to maintain prices and stifle competition, has been brought about.'

That these agreements restrain trade is obvious. . . . [T]heir purpose [is] the control of the entire trade, they relate directly to interstate as well as intrastate trade, and [they] operate to restrain trade or commerce among the several states, is also clear. . . .

But it is insisted that the restrictions are not invalid either at common law or under the [Sherman Act], upon the following grounds, which may be taken to embrace the fundamental contentions for the complainant: (1) That the restrictions are valid because they relate to proprietary medicines manufactured under a secret process; and (2) that, apart from this, a manufacturer is entitled

[*] [On May 15, 1911, a few weeks after handing down *Dr. Miles,* the Supreme Court issued its landmark *Standard Oil* decision].

to control the prices on all sales of his own products.

The complainant has no statutory grant [of the kind that patent holders have]. So far as appears, there are no letters patent relating to the remedies in question. . . . [This] case lies outside the policies of the patent law.

. . . [The] so-called proprietary medicines [of Dr. Miles are] unpatented. . . . The fact that the article is represented to be curative in its properties does not justify a restriction of trade which would be unlawful as to compositions designed for other purposes. . . .

To sustain [a restraint of trade], it must be found to be reasonable both with respect to the public and to the parties, and that it is limited to what is fairly necessary, in the circumstances of the particular case, for the protection of the covenantee. Otherwise restraints of trade are void as against public policy. . . .

. . . The public have an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case.

[Here, the] agreements are designed to maintain prices after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them.

The bill asserts the importance of a standard retail price, and alleges generally that confusion and damage have resulted from sales at less than the prices fixed. But the advantage of established retail prices primarily concerns the dealers. The enlarged profits which would result from adherence to the established rates would go to them, and not to the complainant.[*] . . . If there be an advantage to the manufacturer in the maintenance of fixed retail prices, the question remains whether it is one which he is entitled to secure by agreements restricting the freedom of trade on the part of dealers who own what they sell. As to this, the complainant can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other. . . .

But agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void. They are not saved by the advantages which the participants expect to derive from the enhanced price to the consumer. . . .

The complainant's plan falls within the principle which condemns contracts of this class. . . . The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic.

We think that the court was right. . . . Judgment affirmed.

[*] [In actuality, an upstream firm can extract profit from downstream firms].

Mr. Justice Holmes, dissenting:

This is a bill to restrain the defendant from inducing, by corruption and fraud, agents of the plaintiff and purchasers from it to break their contracts not to sell its goods below a certain price. . . .

What, then, is the ground upon which we interfere in the present case? . . . Perhaps it may be assumed to be the interest of the consumers and the public. On that point I confess that I am in a minority as to larger issues than are concerned here. I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article (here it is only distribution) as fixing a fair price. What really fixes that is the competition of conflicting desires. We, none of us, can have as much as we want of all the things that we want. Therefore, we have to choose.

As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to buy it and buy something else. Of course, I am speaking of things that we can get along without. There may be necessaries that sooner or later must be dealt with like short rations in a shipwreck, but they are not Dr. Miles's medicines. With regard to things like the latter, it seems to me that the point of most profitable returns marks the equilibrium of social desires, and determines the fair price in the only sense in which I can find meaning in those words. The Dr. Miles Medical Company knows better than we do what will enable it to do the best business. We must assume its retail price to be reasonable, . . .; so I see nothing to warrant my assuming that the public will not be served best by the company being allowed to carry out its plan.

I cannot believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own, and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get.

The conduct of the defendant . . . is fraudulent, and has no merits of its own to recommend it to the favor of the court. . . . I think also that the importance of the question and the popularity of what I deem mistaken notions makes it my duty to express my view in this dissent.

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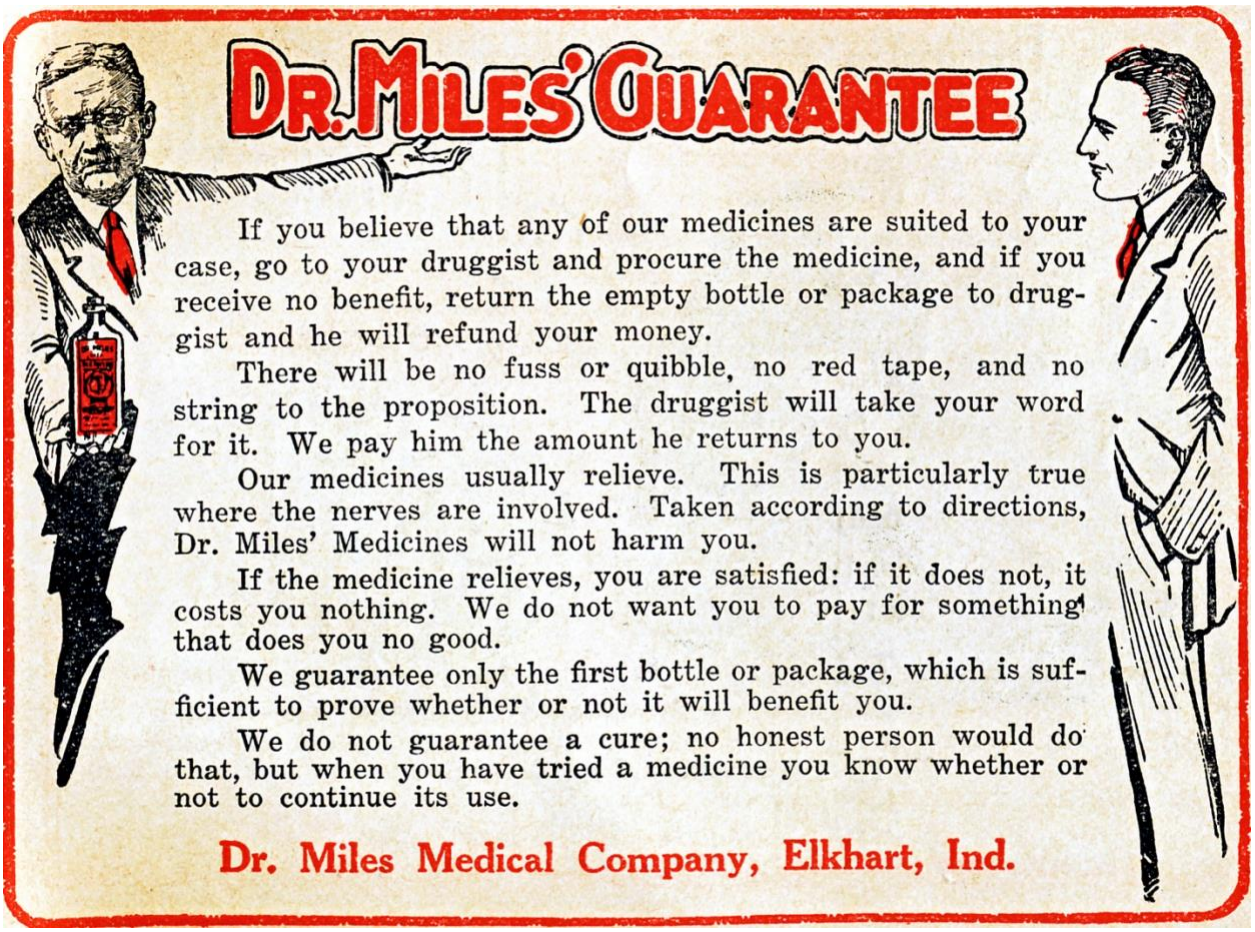

DR. MILES' GUARANTEE

If you believe that any of our medicines are suited to your case, go to your druggist and procure the medicine, and if you receive no benefit, return the empty bottle or package to druggist and he will refund your money.

There will be no fuss or quibble, no red tape, and no string to the proposition. The druggist will take your word for it. We pay him the amount he returns to you.

Our medicines usually relieve. This is particularly true where the nerves are involved. Taken according to directions, Dr. Miles' Medicines will not harm you.

If the medicine relieves, you are satisfied: if it does not, it costs you nothing. We do not want you to pay for something that does you no good.

We guarantee only the first bottle or package, which is sufficient to prove whether or not it will benefit you.

We do not guarantee a cure; no honest person would do that, but when you have tried a medicine you know whether or not to continue its use.

Dr. Miles Medical Company, Elkhart, Ind.