UNITED STATES v. ALUMINUM CO. OF AMERICA et al.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

148 F.2d 416 (2d. Cir. 1945)

OPINIONBY: HAND

This appeal comes to us by virtue of a certificate of the Supreme Court, under the amendment of 1944 to § 29 of 15 U.S.C.A. … For convenience we have divided our discussion into four parts … (3) whether 'Limited' and 'Alcoa' were in an unlawful conspiracy; and whether, if not, 'Limited' was guilty of a conspiracy with foreign producers….

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'Limited.'

'Limited' was incorporated in Canada on May 31, 1928, to take over those properties of 'Alcoa' which were outside the United States …. 'Limited' issued all its common shares to 'Alcoa's' common shareholders in the proportion of one for every three; and it thus resulted that the beneficial ownership remained what it had been, except for the interest of 'Alcoa's' preferred shareholders, who were apparently considered amply protected by the properties in the United States. At first there remained some officers common to both companies; but by the middle of 1931, this had ceased, and, formally at any rate, the separation between the two companies was complete. [Common shareholders] At the conclusion of the transfers a majority, though only a bare majority, of the common shares of 'Alcoa' was in the hands of three persons: Andrew W. Mellon, Richard B. Mellon, his brother, and Arthur V. Davis.

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Whether 'Limited' itself violated that section [§ 1 of the Sherman Act] depends upon the character of the 'Alliance.' It was *a Swiss corporation*, created in pursuance of an *agreement entered into on July 3, 1931*, the signatories to which were a French corporation, two German, one Swiss, a British, and 'Limited.' The original agreement, or 'cartel,' provided for the formation of a corporation in Switzerland which should issue shares, to be taken up by the signatories. This corporation was from time to time *to fix a quota of production for each share*, and each shareholder was to be limited to the quantity measured by the number of shares it held, but was free to sell at any price it chose. *The corporation fixed a price every year at which it would take off any shareholder's hands any part of its quota which it did not sell*.

The *agreement of 1936 abandoned the system of unconditional quotas, and substituted a system of royalties.* Each shareholder was to have *a fixed free quota* for every share it held, but as its production exceeded the sum of its quotas, it was *to pay a royalty*, graduated progressively in proportion to the excess; and these royalties the 'Alliance' divided among the shareholders in proportion to their shares.

Did either the agreement of 1931 or that of 1936 violate § 1 of the Act? **The answer does not depend upon whether we shall recognize as a source of liability a liability imposed by another state. On the *contrary we are concerned only with whether Congress chose to attach liability to the conduct outside the United States of persons not in allegiance to it. That being so, the only question open is whether Congress intended to impose the liability, and whether our own Constitution permitted it to do so*: as a court of the United States, we cannot look beyond our own law. Nevertheless, it is quite true that we are not to read general words, such as those in this Act, without regard to the limitations customarily observed by nations upon the exercise of their powers; limitations which generally correspond to those fixed by the 'Conflict of Laws.' We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States. (American Banana Case) On the other hand, it is settled law- as 'Limited' itself agrees- that any state may impose liabilities, even upon persons not within its allegiance, *for conduct outside its borders that has consequences within its borders which the state reprehends;* and these liabilities other states will ordinarily recognize. We shall not choose between these alternatives; but for argument we shall assume that the Act does not cover agreements, even though intended to affect imports or exports, unless its performance is shown actually to have had some effect upon them.**

Both agreements *would clearly have been unlawful*, had they been made within the United States; and it follows from what we have just said that both were unlawful, though made abroad, if they were intended to affect imports and did affect them. Since the shareholders almost at once agreed that the agreement of 1931 should not cover imports, *we may ignore it and confine our discussion to that of 1936*: indeed that we should have to do anyway, since it superseded the earlier agreement

***The judge also found that the 1936 agreement did not 'materially affect the * * * foreign trade or commerce of the United States'; apparently because the imported ingot was greater in 1936 and 1937 than in earlier years. We cannot accept this finding*, based as it was upon the fact that, in 1936, 1937 and the first quarter of 1938, the gross imports of ingot increased. It by no means follows from such an increase that the agreement did not restrict imports.**

There remains only the question whether this assumed restriction had any influence upon prices. … It will be remembered that, when the defendants in that case protested that the prosecution had not proved that the 'distress' gasoline had affected prices, the court answered that that was not necessary, *because an*

***agreement to withdraw any substantial part of the supply from a market would, if carried out, have some effect upon prices, and was as unlawful as an agreement expressly to fix prices*. The underlying doctrine was that all factors which contribute to determine prices, must be kept free to operate unhampered by agreements. For these reasons we think that the agreement of 1936 violated Sec. 1 of the Act.**

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Judgment reversed, and cause remanded for further proceedings not inconsistent with the foregoing.

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§ 1. TRUSTS, ETC., IN RESTRAINT OF TRADE ILLEGAL; PENALTY

Every contract, combination in the form of trust or otherwise, or conspiracy, in *restraint of trade* or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

§ 2. MONOPOLIZATION TRADE IS A FELONY; PENALTY.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.