

IN THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF ILLINOIS.  
NORTHERN DIVISION.

THE UNITED STATES OF AMERICA

VS.

SWIFT AND COMPANY, ET AL.

The defendants are seven corporations, one co-partnership, and twenty-three other persons, and the petition is fairly summarized as follows:

1st. <sup>at the time of its filing</sup> That they had been and then were engaged in the business of buying livestock at divers points throughout the United States where stockyards existed, and slaughtering the same at such places in different States, and converting the same into fresh meats for human consumption.

2nd. That they had been and then were engaged in the business of selling such fresh meats at the places where prepared to dealers and consumers in divers other States and Territories of the United States and in foreign countries, and shipping the same when so sold, from said places of preparation to such dealers and consumers, pursuant to such sales, and were thus engaged in trade and commerce among the several States and Territories and with foreign nations.

3rd. That they had been and then were engaged in the business of shipping such fresh meats from said points where so prepared, by common carriers to the respective agents of the defendants located at and near the principal markets of such meats in other States and Territories and in foreign countries for sale by those agents in those markets to dealers and consumers, which they there sold through their agents and were thus engaged in trade and commerce among the

several States and Territories and with foreign nations.

4th. "That of the total volume of trade and commerce among the said States and Territories in fresh meats the said defendants together controlled about 60 per cent.

5th. "That as to such trade and commerce among the several States and Territories and foreign nations in fresh meats, the said defendants should, and but for the acts hereinafter complained of would be and remain in competition with each other.

6th. "That said defendants, in violation of the Act of Congress of July 2, 1890, and in order to restrain competition among themselves as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stockyards and markets where they customarily purchase such livestock, which livestock is produced and owned principally in other States and Territories of the United States and shipped by the owners thereof to such stockyards for competitive sale, to refrain from bidding against each other when making purchases of such livestock, and by these means inducing and compelling the owners of such livestock to sell the same at less prices than they would receive if such bidding were competitive; which combination and conspiracy is in restraint of trade and commerce among the several States, etc.

7th. That said defendants, in further violation of said act, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up through their agents the prices of livestock for a few days at said stockyards, thereby

inducing shippers from other States and Territories to make large shipments of such livestock to such stockyards, and then refrain from bidding up such livestock, and thereby obtaining such livestock at prices much less than it would bring in the regular way of trade.

8th. " That said defendants, in further violation of said act, and in order to restrain and destroy competition among themselves as to such trade and commerce and to monopolize the same, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time, lower and fix prices, and maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout said States and Territories and foreign countries. That the arbitrary raising, lowering, fixing, and maintaining of said prices is effected through the action of divers of their agents in secretly holding periodical meetings, and there agreeing upon the prices to be adopted by said defendants respectively in such trade and commerce, which said prices are notified by letters and telegrams, and are adhered to in their sales, which are made directly, and among other ways; and by collusively restricting and curtailing the quantities of such meats shipped by them in pursuance of such combination, and imposing against each other divers penalties for any deviations from such prices, and establishing a uniform rule for the giving of credit to dealers throughout the said States and Territories and foreign countries, and for the conduct of the business of such dealers, with penalties for violations thereof, by notifying each other of the delinquencies of said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell meats to any of such delinquent dealers.

9th. " And the said defendants, in violation of the provisions of the said act, have engaged in and intend to

continue an unlawful combination and conspiracy, to direct and require their respective agents at and near many of the markets for such fresh meats throughout the United States and Territories to arbitrarily make and impose uniform charges for cartage for delivery, upon making such sales to dealers and consumers in those markets of the meats shipped to them through said agents by the said defendants respectively from their several points of preparation, thereby increasing the charges for such meats to said dealers and consumers.

10th. " That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce, have established and published their schedule of rates, fares and charges for the transportation of live stock, and for the transportation of meats, which are the only lawful rates for such transportation, the said defendants intending thereby to monopolize the commerce aforesaid and prevent competition therein, have made and are making agreements and arrangements with divers officers and agents of such common carriers whereby the said defendants were to receive, and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, less than the lawful rates, which rebates they divide, among themselves, and will continue to do so unless restrained by the injunction of this court, which is a scheme to monopolize, and also a combination and conspiracy in restraint of trade and commerce among the several States and Territories and with foreign nations.

11th. " That the said defendants now are, and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and foreign countries, to that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable and arbitrary regulations for the

conduct of their own and each other's business, effecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer. All to the injury of the people and in defiance of law."

To this petition five of the defendant corporations have filed joint and several demurrers, the grounds of which are as follows:

"The bill of complaint does not allege any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce within the meaning of said act of Congress of July 2, 1890.

"The bill of complaint does not allege any acts of defendants monopolizing, or attempting to monopolize, or combining or conspiring to monopolize any part of such trade or commerce within the meaning of said act.

"If the act of Congress in question should be given a construction which would sustain this bill of complaint, such act would violate the provisions of the constitution of the United States.

"Said bill is multifarious.

"There is a misjoinder of causes of action and of persons in said bill, as alleged in said demurrers.

"The said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite."

The hearing is on these demurrers.

After the foregoing statement of facts, GROSSCUP, Circuit Judge, delivered the opinion:

Commerce, briefly stated, is the sale or exchange of commodities. But that which the law looks upon as the

body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse- all the <sup>24</sup>iniatory and intervening acts, instrumentalities and dealings- that directly bring about the sale or exchange. Thus, though sale or exchange is a commercial act, so also is the solicitation of the drummer, whose occupation it is to bring about the sale or exchange. (Brennan vs. Titusville, 153 U. S. 289). The whole transaction, from <sup>it</sup>iniation to culmination is commerce.

When commerce, thus broadly defined, is between parties dealing from different states- to be effected so far as the immediate act of exchange goes by transportation from state to state- it is "commerce between the states", within the meaning of the constitution, and the statute known as the Sherman Act. But it is not the transportation that makes the transaction interstate commerce. That is an adjunct only, essential to commerce, but not the test. The underlying test is that the transaction, as an entirety, including each part calculated to bring about the result, reaches into two or more states; and that the parties dealing with reference thereto deal from different states. An interstate commercial transaction is, in this sense, an affair rising from different states, and centering in the act of exchange; each essential part of the affair *being* as much commerce as is the center. With this definition in mind, let us see what the transaction made out in the petition is.

For the purpose of clear exposition, the facts set forth in the petition should be separated into two groups: Those that are intended to bring the transaction within the body of interstate commerce; and those that are intended to fix upon such transaction the character of unlawful combination and conspiracy. Shorn of verbiage, and of immaterial accessories, the first group may be stated as follows: The defendants, controlling sixty per cent. of the trade and commerce in fresh meats in the

United States, buy, in the course of their business, livestock shipped from points throughout the United States; which having been converted into fresh meats, is sold again by them at the places where prepared, to dealers and consumers in other states; or is sold through their agents, located in other states, to dealers and consumers in the states where the agents are located. The shipments in the first class of sales is made directly from the places where the meat is prepared to the dealers and consumers in other states, and in the latter class to the agents in the other states who, upon sale, deliver directly to the dealer and consumer.

What may be called the body of these transactions is two-fold. It reaches backward to the purchase of cattle that come to defendants from states other than those in which defendants manufacture; and it reaches forward to the sale of the meats, after conversion, to parties dealing with respect thereto from other states; followed by shipments into the other states. Each of these transactions constitute, in my judgment, interstate commerce. The purchase of cattle shipped habitually from other states to the markets where defendants purchase, in the expectation that the purchase will be made by the slaughter companies, is an act of interstate commerce. Hopkins case, 171 United States, 590. It is none the less so, merely because the local incidents or facilities for such purchase are to be regarded as outside the interstate character of the transaction. Thus the local commission broker, or the men who drive the cattle from the pens to the slaughter house, need not, in any survey of the transaction, be held to be within the interstate status of the transaction. With them, it is essentially the same whether the cattle come from the state in which the purchase is made, or from other states. They are aids or facilities only, and as such are merely local incidents. But the purchase of livestock thus brought

habitually from other states, relates, in its larger bearings, to a transaction that had its beginnings in other states. The original shipments are influenced, and to a large extent brought about, by the character of the purchase. The purchase, the shipments, and the transportation, are commercially interdependent; and in any survey of the transaction, as an entirety, none could be omitted. They each go to make the transaction, and, covering different states, they stamp the transaction- not all its incidents, but its essential body- as a transaction in interstate commerce.

Coming to the other branch of the transaction- the sales by defendants- a like result follows. Unquestionably it is interstate commerce when purchasers from other states buy directly from the defendants, and have the meats shipped to them by the vendors. The situs of such a transaction, both as to xxxxx initiatory intercourse, and as to transportation in furtherance of the exchange, includes a state other than the one from which defendants deal.

I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place, but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business. Indeed such privity exists between the principal and the transaction, that he could, at the instant, as a citizen of another state, sue upon the transaction in the federal courts; nor have I any question that if the conditions of this case were reversed, so that defendants were invoking the shelter, instead of seeking to escape from the obligations of the commerce clause, federal law would be found equal to the protection asked.

I need not dwell on the contention of defendants that the fresh meats in the hands of the agents are subject to ordinary state taxation, or upon the cases cited in this



connection. It is enough to say that because a thing can be taxed by the state, it does not follow that it lies outside the body of interstate commerce; for commerce, interstate as well as domestic, is subject to the police and taxing power of the state, so long as the exercise of such power does not interfere with the national government's exclusive right of regulation. Addelstone Pipe & Steel Company vs. United States, 175 U. S. 25. Austin vs. Tennessee, 179 U. S. 349. Prentice and Egan on the Commerce Clause of the Constitution, page 27. Nor shall I differentiate the Knight case, the Hopkins case, and other cases urged upon me as applicable to the case under consideration. A study of these cases will show that they are not in conflict with the views already expressed.

The next inquiry is this: Do the facts set forth in the second grouping, fix upon the transaction, even though the transactions be within the body of interstate commerce, the character of unlawful combination. The averments of the petition in this respect may be summarized as follows: That the defendants are engaged in an unlawful combination and conspiracy under the Sherman Act in (a) directing and requiring their purchasing agents at the markets where the live stock was customarily purchased, to refrain from bidding against each other when making such purchases; (b) in bidding up through their agents, the prices of live stock for a few days at a time, to induce large shipments, and then ceasing from bids, to obtain the live stock thus shipped at prices much less than it would bring in the regular way; (c) in agreeing at meetings between them, upon prices to be adopted by all, and restriction upon the quantities of meat shipped; (d) in directing and requiring their agents throughout the United States to impose uniform charges for cartage for delivery, thereby increasing to dealers and consumers the charges for such meats; and (e) in making agreements with the transportation companies for rebates and other discriminative rates.

No one can doubt that these averments state a case of combination. Whether the combination be unlawful or not, depends on whether it is in restraint of trade. The general meaning of that term is no longer open to inquiry. It has been passed upon carefully by the Supreme Court in the Freight Association case, 166 United States, 290, and in the Traffic case, 171 United States, 558, where the whole subject was a year later elaborately re-argued. I will not extend into this opinion even a summary of these cases. It is clear from them that restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred; nor is it to be tested by the prices that result from the combination. Indeed, combination that leads directly to lower prices to the consumer may, within the doctrine of these cases, even as against the consumer, be restraint of trade; and combination that leads directly to higher prices, may, as against the producer, be restraint of trade. The statute, thus interpreted, has no concern with prices, but looks solely to competition, and to the giving of competition full play, by making illegal any effort at restriction upon competition. Whatever combination has the direct and necessary effect of restricting competition, is, within the meaning of the Sherman Act as now interpreted, restraint of trade.

Thus defined, there can be no doubt that the agreement of the defendants to refrain from bidding against each other in the purchase of cattle, is combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived. The same result follows when we turn to the combination of defendants to fix prices upon, and restrict the quantities of, meat shipped to their agents or their customers. Such agreements can be nothing less than restriction upon competition, and, therefore, combination in restraint of trade; and thus viewed, the petition, as an entirety, makes out a case under the Sherman Act.

The demurrer challenges the petition for multifariousness and misjoinder of parties; and challenges each paragraph of the petition, standing separately, as insufficient to constitute a case under the Sherman Act. But the paragraphs cannot properly be looked upon as separate causes of action. They relate clearly to each other, thus constituting a whole that is the sum of the parts; and thus regarded, are free from the objections indicated.

It may be true that the way of enforcing any decree under this petition is be-set with difficulties, and that a literal enforcement may result in vexatious interference with defendants affairs. But in the inquiry before me, I am not at liberty to stop before such considerations. The Sherman Act, as interpreted by the Supreme Court, is the law of the land, and to the law as it stands both court and people must yield obedience.

The demurrer is overruled, and the motion for preliminary injunction granted.

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