# CASES ON RESTRAINT OF TRADE. PART II; PP.125-216

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649416271

Cases on Restraint of Trade. Part II; pp.125-216 by Bruce Wyman



Edited by Trieste Publishing Pty Ltd.
Cover @ 2017



www.triestepublishing.com

BRUCE WYMAN

# CASES ON RESTRAINT OF TRADE. PART II; PP.125-216

Trieste

# CASES ON RESTRAINT OF TRADE

BY

BRUCE WYMAN

PART II



CAMBRIDGE
HARVARD LAW REVIEW PUBLISHING ASSOCIATION
1902

The Riverside Press:
ELECTROTYPED AND PRINTED BY H. O. HOUGHTON AND CO
CAMBRIDGE, MASS., U. S. A.

# CHAPTER II. — COMBINATION.

## SECTION I. — RESTRICTION OF COMPETITION.

### A. Restraint of Trade.

#### (1) *Principal.*

### ANONYMOUS.

In the Common Pleas, 1415.

[*Reported Y. B. 2 Hen. V. fo. 5, pl. 26.*]

Writ of debt was brought on an obligation of one John Dier, in which the defendant declared upon a certain indenture which he set forth, on condition that if the defendant did not use his art of dier's craft within the town where the plaintiff, etc., for a certain time, to wit, half a year, the obligation should lose all force, etc., and said that he did not use his art of dier's craft in the time limited, which he averred and prayed judgment, etc.

Hull. In my opinion you might have demurred upon him, that the obligation is void, for that the obligation is against the common law, and by God, if the plaintiff were here, he should go to prison until he paid a fine to the king.

*Strange.* We aver that the defendant has used his art for a time, to wit vii days, within the time limited by the condition, and the others to the contrary.

---

### CLAYGATE *v.* BATCHELOR.

In the Common Pleas, 1601.

[*Reported Owen*, 143.]

In debt upon a Bond of thirty pound, the Condition was, that if Robert Batchelor, son to the Defendant, did use the Trade of Haberdasher as Journeyman servant, or Apprentice, or as a Master, within the County of Kent, within the Cities of Canterbury and Rochester, within four years after the date, that then, if he pay twenty pound upon request, the Obligation to be voyd. And all the Justices agreed that the condition was against Law, and then all is voyd, for it is against the liberty of a Free-man, and against the Statute of Magna Carta cap. 20, and is against the Commonwealth. 2 H. 5 & 5. And Anderson said, that he might as well bind himself, that he would not go to Church. And Judgment was given against the Plaintiff.

## CHAPIN *v.* BROWN BROS.

IN THE SUPREME COURT OF IOWA, 1891.

[*Reported* 83 *Ia.* 156.[1]]

ACTION at law to recover one hundred and fifty dollars damages, and for an injunction to restrain the defendants from pursuing the business of buying butter at Storm Lake, in Buena Vista county. Application for a temporary injunction was made to the judge in vacation. The defendants appeared and filed objections to the granting of the writ. The objections were sustained, and the plaintiffs appeal.

ROTHROCK, J. It appears to us that the decision of the district court is manifestly right upon the question that the agreement is against public policy. It plainly tends to monopolize the butter trade at Storm Lake, and destroy competition in that business. It is not necessary that the enforcement of the agreement would actually create a monopoly in order to render it invalid, and surely where all the dealers in a commodity in a certain locality agree to quit the business, and the plaintiffs are installed as the only dealers in that line, the tendency is, for a time at least, to destroy competition, and leave the plaintiffs as the only dealers in that species of property in that locality. Such contracts cannot be enforced. *Affirmed.*

---

## TOBY AND ANOTHER *v.* MAJOR.

IN THE CHANCERY DIVISION, 1899.

[*Reported* 43 *Sol. Jour.* 778.]

MOTION for injunction.

DARLING, J., said: An Englishman set up business at Notting Hill. That did not suit a number of German bakers. What they in substance did was to find a man with £75, and they paid the defendant that sum and another £25 to give up his business. It was said on behalf of the plaintiffs that what the association did was to buy the business of the defendant for £100 and resell it for £75. He did not think that was so; and thought that what they did was against public policy. It was said that notwithstanding that the plaintiffs were entitled to an injunction; he thought that question might better be decided at the trial. The injunction must be refused with costs.

[1] Only one point is printed. — ED.

## MURRAY *v.* VANDERBILT.

IN THE SUPREME COURT OF NEW YORK, 1863.

[*Reported* 39 *Barb.* 140.][1]

THIS was an action for an accounting by the defendant. The facts appear in the opinion of the court.

INGRAHAM, J. The plaintiff, as receiver, claims to recover against the defendant for moneys received by him from the Pacific Mail Steamship Company for a subsidy agreed to be paid by that company for laying up the steamers belonging to the Transit Company. As to the terms of the contract or agreement there is but little if any difference between the parties. It was a verbal agreement made between Mr. Vanderbilt on the one side and Mr. Aspinwall on the other. They at the time were presidents of the two companies. Mr. Aspinwall says he proposed to pay either to Mr. Vanderbilt or to his company a certain sum per trip for each trip that the boats of the Pacific Mail Steamship Company ran without opposition, which was agreed to by the defendant. The amount to be paid was $10,000 per trip. This is the substance of the agreement, as stated by Mr. Chauncey, who was present. Mr. Vanderbilt states the terms of the contract to be in substance the same, except that the Pacific Mail Steamship Company was to pay $40,000 per month, on condition that they should have no opposition; making the payment per month instead of per trip. The point of difference between the plaintiff's witnesses and the defendant is, as to the party who was to receive this payment.

Without specially recapitulating the testimony in reference to this part of the case, I think the whole of the evidence, taken together, shows the intent of the parties making the agreement at that time was, that the subsidy should go to the benefit of the Transit Company. The testimony of Mr. Aspinwall shows that such was his understanding of the agreement. This is confirmed by Mr. Chauncey, who was present.

An objection is taken to this claim on the ground that the contract was immoral and could not be enforced; that being in restraint of trade and commerce, the court should not sustain it, but should leave the parties as the law found them, both being *in pari delicto*. That this rule would apply if the action was brought by the plaintiff or by Vanderbilt against the Pacific Mail Steamship Company, I have no doubt. The law would not enforce such a contract against the delinquent party; or if the money had been paid, the law would not enable the party paying to recover it back, but would leave them as they placed themselves in carrying out the agreement; viz., to act upon it as a mere honorary arrangement among themselves with which the law could have nothing to do. But does such a rule apply to a prin-

[1] Only one item is printed. — ED.

8 Mass. 223

cipal and his agent who has received money for his principal on such an agreement? The money has been paid to an agent for his principal by a party who could not have been compelled to make such payment. But having been paid voluntarily, it becomes the property of the principal in the agent's hands for which he should account; he has no right to refuse payment to his principal because his principal had not a legal claim for the money on the agreement.

For the purpose of taking such account a reference is ordered, and all further directions are reserved until the coming in of the report.

---

## TUSCALOOSA ICE CO. v. WILLIAMS.

IN THE SUPREME COURT OF ALABAMA, 1900.

[*Reported* 127 *Ala.* 110.[1]]

[THE complaint recited that by the terms of an agreement between the Ice Company and Williams the first party was to pay $875, and the second party was to shut down his ice machine for five years. The plea averred that the same was void as in restraint of trade. Demurrer.]

MCCLELLAN, J. This contract is clearly bad. It tends to injure the public by stifling competition and creating a monopoly. Its manifest purposes even upon its face, and certainly when taken in connection with the facts averred in the plea, was to secure to the covenantee a monopoly in the production and sale of ice in the town of Tuscaloosa and vicinity, and such is its operation and effect. Indeed, on the allegations of the plea it was even worse than this, for one of its results was to reduce the available supply of ice below the needs of the locality affected by it. It thus operated not only to put it in the power of the covenantee to arbitrarily fix prices, but directly and necessarily to create a partial ice famine upon which the defendant company could batten and fatten at its own sweet will. But aside from this, the monopoly itself, the putting in the power of the covenantee to control the production and to fix its own prices whatever the production, is quite sufficient for the utter condemnation of the contract as being against public policy. The purpose to create a monopoly is obvious; it is well-nigh expressed in the writing itself. That a monopoly was created is clear beyond all dispute. That ends the case against the validity of the covenant. Nothing more need be said. All that has been said for the appellee against that conclusion is vain and useless. Given the purpose and effect of this contract, its condemnation would follow even had the plaintiff as a part of the transaction sold his ice plant to the defendant; and the limitation of the covenant as to time and place, though reasonable in itself, is of no redeeming importance or efficacy whatever. So

[1] This case is abridged. — ED.

of the suggestion that no monopoly was created because the contract itself evidences a contemplation that "unknown parties" might come to Tuscaloosa, establish an ice factory and enter upon the production and sale of ice in competition with the covenantee. There was no other such plant there at the time the contract was entered into (it would not have been entered into at all had there been) and it is of no sort of consequence that another might be established, or even that another was in fact established soon after its execution, as soon probably as one could be established after defendant's monopoly had begun to grind. Nor is there the least merit in the suggestion that ice could be brought to Tuscaloosa from other places, and hence that defendant had no monopoly. Even with ordinary commodities a covenant tending to create a monopoly in a given city or to unduly control prices is not relieved by the consideration that its baneful effects may be counteracted in greater or less degree by importations; and the position is exceedingly nude and bald when taken in respect of a commodity like ice or water, the chief cost of which, apart from the plant for its manufacture or collection, is in the transportation to the consumer; and it may be safely said that an ice factory in a town beyond the ordinary reach of delivery wagons from another town has a monopoly of the ice business in that town. And so of the argument that public policy has to do in this connection only with the necessaries of life and that ice is not a commodity of that class. Both the propositions thus asserted, the one of law, the other of fact, are unsound. To say the least it is against public policy to monopolize in this way any commodity of common utility, or of common consumption or use among the people, or even of considerable utility or consumption, whether it be one of the necessaries of life or not; and in the second place, we feel entirely assured of conservatism in declaring that in this latitude, and especially in towns as populous as Tuscaloosa, ice is one of the common necessaries of life. All of the foregoing propositions, sustaining the conclusion that the contract sued on is violative of public policy as stifling competition and promoting monopoly to the manifest injury of the public, are fully supported.

*Remanded.*

79 Illinois 346
161 Penna State 473