

United States Vs. Winslow

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Court : US Supreme Court

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Appeal No. : 227 U.S. 202

Appellant : United States

Respondent : Winslow

Judgement :

United States v. Winslow - 227 U.S. 202 (1913)

U.S. Supreme Court United States v. Winslow, 227 U.S. 202 (1913)

United States v. Winslow

No. 620

Argued January 10, 1913

Decided February 3, 1913

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ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

On appeals under the Criminal Appeals Act of 1907, this Court has no jurisdiction to review the interpretation of the indictment by the lower court, *United States v. Patten*, [226 U. S. 525](#) , and if that court has construed the count as alleging a combination of a particular date to be in violation of the Sherman Law, without regard to subsequent acts, this Court cannot pass upon the validity of those acts.

A combination for greater efficiency does not necessarily violate the Sherman Anti-Trust Act.

Where each of several groups is carrying on a legal business of making patented machines which do not compete with each other, although the machines of all the groups are used by manufacturers of the same article, such as shoes, a combination of the several groups does not violate the Sherman Anti-Trust Act.

Exclusion of competitors from making the patented article is of the very essence of the right conferred by the patent.

Where the share in interstate commerce does not appear in the record, and the machines in question are not alleged to be types of all the machines used in manufacturing the article for which they are made, the government cannot claim that a specified proportion of the business was put into a single hand.

The disintegration aimed at by the Sherman Anti-Trust Act does not extend to reducing all manufacture to isolated units of the lowest degree.

The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, is a special provision and, as it is not mentioned in the repealing section of the Judicial Code of 1911 and is not superseded by any other regulation of the matter, it was not repealed by the Judicial Code. *United States, Petitioner*, [226 U. S. 420](#) .

The district court rightly held that the counts under review of the indictment against various persons for combining their businesses of

manufacturing patented machines for making different parts of shoes, and not competing with each other, did not constitute an offense under the Sherman Anti-Trust Act.

195 F. 578 affirmed.

The facts, which involve the construction of the Sherman Anti-Trust Act and determining whether the combination charged in an indictment thereunder of various manufacturers of patented shoe machinery constituted a violation thereof, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

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This is a writ of error to determine whether two counts in an indictment, as construed by the district court, charge offenses under the Sherman Act of July 2, 1890, c. 647, 26 Stat. 209. They were held bad, on demurrer, by the district court. 195 F. 578. The two counts allege substantially the same facts, the first laying them as a combination in restraint of the trade of the defendants themselves, the second as a conspiracy in restraint of the trade of others, shoe manufacturers.

The facts alleged are as follows: for the last twenty-five years, practically all the shoes worn in the United States have been made by the help of machines, grouped as lasting machines, welt-sewing machines, and outsole-stitching machines, heeling machines, and metallic fastening machines, there being a large variety of machines in each group. (These machines, of course, are not alleged to do all the work of making finished shoes.) There is a great number of shoe factories, and because the machines are expensive and the best of them patented, the manufacturers have had to get them principally from the defendants. Before and up to February 7, 1899, the defendants Winslow, Hurd, and Brown,

through the Consolidated and McKay Lasting Machine Company, under letters patent, made sixty percent of all the lasting machines made in the United States; the defendants Barbour and Howe, through the Goodyear Shoe Machinery Company, in like manner made eighty percent of all the welt-sewing machines and outsole-stitching machines, and ten percent of all the lasting machines, and the defendant Storrow (against whom the indictment has been dismissed), through the McKey Shoe Manufacturing Company, made seventy percent of all the heeling machines and eighty percent of all the metallic fastening machines made in the United States. The defendants all were carrying on commerce among the states with such of the

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shoe manufacturers as are outside Massachusetts, the state where the defendants made their machines.

On February 7, 1899, the three groups of defendants above named, up to that time separate, organized the United Shoe Machinery Company, and turned over to that company the stocks and business of the several corporations that they respectively controlled. The new company now makes all the machines that had been made in different places at a single new factory at Beverly, Massachusetts, and directly, or through subsidiary companies, carries on all the commerce among the states that had been carried on independently by the constituent companies before. The defendants have ceased to sell shoe machinery to the shoe manufacturers. Instead, they only let machines, and on the condition that, unless the shoe manufacturers use only machines of the kinds mentioned, furnished by the defendants, or if they use any such machines furnished by other machinery makers, then all machines let by the defendants shall be taken away. This condition they constantly have enforced. The defendants are alleged to have done the acts recited with intent unreasonably to extend their monopolies, rights, and control over commerce among the states, to enhance the value of the same at the expense of the public, and to discourage others from inventing and manufacturing machines for the work done by those of the defendants. The organization of the new company and the turning over of the stocks and business to it are alleged to

constitute a breach of the Sherman Act.

It is to be observed that the conditions now inserted in the leases are not alleged to have been contemporaneous with the combination, or to have been contemplated when it was made. The district court construed the indictment as confined to the combination of February 7 -- that is, simply to the merger of the companies, without regard to the leases subsequently made, 195 F. 592, 594,

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and we have no jurisdiction to review this interpretation of the indictment. *United States v. Patten*, [226 U. S. 525](#) . Hence, the only question before us is whether that combination, taken by itself, was within the penalties of the Sherman Act. The validity of the leases, or of a combination contemplating them, cannot be passed upon in this case.

Thus limited, the question does not require lengthy discussion, and a large part of the argument addressed to us concerned matters not open here. On the face of it, the combination was simply an effort after greater efficiency. The business of the several groups that combined, as it existed before the combination, is assumed to have been legal. The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, [210 U. S. 405](#) , [210 U. S. 429](#) , and it may be assumed that the success of the several groups was due to their patents having been the best. As, by the interpretation of the indictment below (195 F. 591) and by the admission in argument before us, they did not compete with one another, it is hard to see why the collective business should be any worse than its component parts. It is said that from seventy to eighty percent of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the states does not appear. But taking it as true, we can see no greater objection to one corporation manufacturing seventy percent of three noncompeting groups of patented machines collectively used for making a single product than to

three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree.

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It is as lawful for one corporation to make every part of a steam engine, and to put the machine together, as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt. See *Virtue v. Creamery Package Manufacturing Co. ante*, p. 8; *Swift & Co. v. United States*, [196 U. S. 375](#) , [196 U. S. 396](#) .

It was argued as an afterthought that the Act of March 2, 1907, c. 2564, 34 Stat. 1246, under which the United States took this writ of error was repealed by the Judicial Code of March 3, 1911, c. 231, 36 Stat. 1087, 1168. But it is not mentioned among the statutes expressly repealed by 297 of the latter act, it is not superseded by any other regulations of the matter, it is a special provision, and on principles similar to those discussed in *Ex Parte United States*, [226 U. S. 420](#) , it must be held not to have been repealed. See further *Johnson v. United States*, [225 U. S. 405](#) , [225 U. S. 419](#) ; *Petri v. Creelman Lumber Co.*, [199 U. S. 487](#) , [199 U. S. 497](#) .

Judgment affirmed.