Binderup Vs. PaThe Exchange, Inc.

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Appeal No. : 263 U.S. 291

Appellant : Binderup

Respondent : PaThe Exchange, Inc.

Judgement :

Binderup v. Pathe Exchange, Inc. - 263 U.S. 291 (1923)
U.S. Supreme Court Binderup v. Pathe Exchange, Inc., 263 U.S. 291 (1923)

Binderup v. Pathe Exchange, Incorporated

No. 77

Argued October 16, 1923

Decided November 19, 1923

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ERROR TO THE CIRCUIT COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

SYLLABUS

1. Where jurisdiction of the district court depends on the action arising under a law of the United States, and the court sustains a motion by the defense for a directed verdict based on the ground that the plaintiff's petition and opening statement fail to state facts sufficient to constitute a cause of action within the federal statute which the plaintiff relies on, the case is not reviewable directly by this Court under Jud.Code 238 as one in which the jurisdiction of the district court was in issue. P. 263 U. S. 304 .

2. So *held* where the trial judge, in a memorandum accompanying the ruling, indicated his opinion that the motion went to the jurisdiction, erroneously assuming that failure to allege facts sufficient to constitute a cause of action under a federal statute is a jurisdictional defect. P. 263 U. S. 305 .

3. A complaint setting forth a substantial, as distinguished from a frivolous, claim under a federal statute presents a case within the jurisdiction of the district court as a federal court, and this jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged, any more than upon the way it may decide as to the legal,sufficiency of the facts proven. P. 263 U. S. 305 .

4. New York manufacturers and distributors of motion picture films, in the regular course of their business, shipped films from that state to Nebraska and delivered them there to a Nebraska resident, as lessee under agreements which, by their terms, were to be deemed and construed as New York contracts, and which licensed and obliged the lessee to exhibit the pictures for specified periods in moving picture theaters, reserved rentals to the lessors and provided for ultimate reshipment by the lessee on advices to be given by them. *Held* that the business of the lessors, and their transactions with the lessee, were interstate commerce notwithstanding that, in accordance with the contracts, the films were delivered to him through agencies of the lessors in Nebraska to which they were first consigned and transported. P. 263 U. S. 309 .

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5. It does not follow that, because a thing is subject to state taxation, it is also immune to federal regulation under the commerce clause. P. 263 U. S. 311 .

6. A combination and conspiracy of concerns controlling the distribution of motion picture films to put out of business an exhibitor of motion pictures who has been procuring his films through agreements made in interstate commerce with members of the combination and can procure them in no other way, and to accomplish this end by illegally cancelling his existing contracts and by refusing to deal with him in the future, is a restraint on interstate commerce in violation of the Anti-Trust Act. P. 263 U. S. 311 .

280 F. 301 reversed.

Error to a judgment of the circuit court of appeals affirming, for want of jurisdiction in the district court, a judgment of the latter which dismissed, upon a directed verdict, an action for damages under 7 of the Sherman Act.

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MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This action was brought under the provisions of 7 of the Act of Congress of July 2, 1890, commonly called the Anti-Trust Act, c. 647, 26 Stat. 210. The complaint is long, but the allegations necessary to be considered here may be summarized as follows:

Plaintiff in error, a resident of the State of Nebraska, hereafter called the "exhibitor," owned a moving picture theater at Minden in that state, and operated as lessee theaters in other places, to all of which, including his own, he supplied moving picture films and advertising

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matter connected therewith. In addition, he was in the business of selecting and distributing to a circuit of moving picture theaters films and advertising matter accompanying them under agreements with the various operators, some 20 or more in number, in various parts of the state.

The corporations named as defendants in error, hereafter called the "distributors," were located in the State of New York and were there engaged in manufacturing motion picture films and distributing them throughout the United States. The method of distribution was to make public announcement from time to time that films which had been manufactured and approved would be released, and thereupon send them from New York by express or parcel post to agencies in numerous cities for delivery to exhibitors who hired and paid for their use.

Some of these distributors entered into contracts with the exhibitor by the terms of which they leased motion pictures to him with the right and license to display them publicly at the theater or theaters named. The individual defendants named were managers of branch offices or agencies for the various distributors at Omaha, Nebraska, through which films were distributed to exhibitors in the States of Iowa, Nebraska, South Dakota, and Minnesota. These contracts, by their terms, were deemed made in New York, were to be construed according to the laws of that state, and provided that deliveries should be made to the exhibitor through the Omaha branch offices. The exhibitor, upon his part, agreed to accept and publicly exhibit the motion pictures for the periods of time fixed, for which right he was to pay specified sums. When the use of the pictures was completed according to the contract, they were to be reshipped on advices given by the distributors.

The complaint further alleged that these distributors control the distribution of all films in the United States,

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and that the films cannot be procured from others. The Omaha Film Board of Trade is a Nebraska corporation, organized for the purpose of promoting goodwill among those engaged in the motion picture business and for other purposes, its

membership being limited to one representative from each company or person engaged in the film business. It is alleged that the exhibitor's business was successful and profitable, and that, the cupidity of the distributors being thereby aroused, some of them requested a share of his patronage, and, upon his refusal, made threats to put him out of business by underbidding and supplying the various theaters constituting his circuit; that the Omaha Film Board of Trade was organized for the purpose of enabling these distributors to control prices and dictate terms to their patrons in Nebraska and other states. It is further alleged that the business of the exhibitor had grown to large proportions; that he was procuring films from some of the members of the Omaha Film Board of Trade, but had refused to buy from others, and that thereby a spirit of hostility was aroused against him on the part of the latter, who thereupon brought great pressure to induce those with whom he was dealing to cease doing business with him; that all the defendants in error thereupon unlawfully combined and conspired in restraint of trade and commerce among the states, with the purpose and intent of preventing him from carrying on his said business and with the intent to ruin him; that they caused false charges to be made against him before the Film Board of Trade, and, without his knowledge or an opportunity to be heard, placed him upon its blacklist, of which notice was given to distributors, who thereupon refused to transact further business with him; that those distributors who were not members of the Film Board of Trade cooperated with and approved the action of the board and conspired with the others to ruin the business, credit, and reputation of the exhibitor;

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that, in furtherance of the combination and conspiracy, the distributors have ever since refused to deal with him or furnish him with film service, and have caused the unexpired contracts which he held with some of the distributors to be illegally and unlawfully cancelled, and that he has ever since been and still is deprived of such service. As a result of the foregoing, the exhibitor asked judgment for three times the amount of damages which he had suffered as alleged.

Upon this complaint and an answer, the case went to trial before a jury. After counsel for the exhibitor had made his opening statement to the jury, the defendants in error moved the court for a directed verdict in their favor upon the ground "that the petition and opening fail to state facts sufficient to constitute a cause of action arising under the Sherman Act or any act amendatory thereof." The court sustained the motion and instructed the jury to return a verdict for the defendants, which was done. Thereupon judgment was entered upon the verdict dismissing the cause. In a memorandum opinion, the trial judge states that he had reached the conclusion that the motion should be sustained upon the grounds: (1) that the petition does not show with sufficient clearness that the complaint is one over which the court has jurisdiction; (2) that it fails to show with sufficient clearness any combination or conspiracy sufficient to justify the court in proceeding further with the trial.

The case was taken by writ of error to the circuit court of appeals, where the judgment was affirmed for want of jurisdiction in the district court. 280 F. 301.

First. Defendants in error have submitted a motion to dismiss the writ of error here. The statement of the ground is somewhat ambiguous, but it is, in substance, that the motion in the trial court attacked the complaint for a failure to state a cause of action under the Sherman Act; that this constituted a challenge to the jurisdiction,

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and, consequently, the writ of error should have been taken directly to this Court. But the motion below, in terms, was put upon the ground that the complaint and the opening statement failed to state facts sufficient to constitute a cause of action -- not that the court was without jurisdiction -- and it is this motion that was sustained. The memorandum, it is true, indicates that the trial judge was of opinion that the motion for a directed verdict went to the jurisdiction; but it is apparent that, as to this, he assumed that an unsuccessful attempt to allege facts sufficient to constitute a cause of action under a federal statute constitutes a jurisdictional defect.

Section 238 of the Judicial Code provides that appeals and writs of error may be taken from the district court direct to this Court "in any case in which the jurisdiction of the [District] Court is in issue." As it has been many times decided, the jurisdiction meant by the statute is that of the court as a federal court only, and not its jurisdiction upon general grounds of law or procedure. *See, for example, Louisville Trust Co. v. Knott,* 191 U. S. 225 . The contention here seems to be broadly that, where the cause of action is based upon an act of Congress, unless the complaint states a case within the terms of the act, the federal court is without jurisdiction.

Jurisdiction is the power to decide a justiciable controversy, and includes questions of law, as well as of fact. A complaint setting forth a substantial claim under a federal statute presents a case within the jurisdiction of the court as a federal court, and this jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged, any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it. Jurisdiction,

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as distinguished from merits, is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous, or, in other words, is plainly without color of merit. *Weiland v. Pioneer Irrigation Co.,* 259 U. S. 498 , 259 U. S. 501 ; *Newburyport Water Co. v. Newburyport,* 193 U. S. 561 , 193 U. S. 576 ; *Matters v. Ryan,* 249 U. S. 375 , 249 U. S. 377 ; *Flanders v. Coleman,* 250 U. S. 223 , 250 U. S. 227 ; *L. & N. R. Co. v. Rice,* 247 U. S. 201 , 247 U. S. 203 ; *Lovell v. Newman,* 227 U. S. 412 , 227 U. S. 421 ; *Denver First National Bank v. Klug,* 186 U. S. 202 , 186 U. S. 204 ; *Louie v. United States,* 254 U. S. 548 ; *Hart v. Keith Exchange,* 262 U. S. 271 , 262 U. S. 273 ; *The Fair v. Kohler Die Co.,* 228 U. S. 22 , 228 U. S. 25 . In that event, the claim of federal right under the statute is a mere pretense, and, in effect, is no claim at all. Plainly there is no such want of substance asserted here. In the case last cited, this Court said (p. 228 U. S. 25):

"We are speaking of a case where jurisdiction is incident to a federal statutory cause of action. Jurisdiction is authority to decide the case either way. Unsuccessful as well as successful suits may be brought upon the act, and a decision that a patent is bad, whether on the facts or the law, is as binding as one that it is good. *See Fauntleroy v. Lum,* 210 U. S. 230 , 210 U. S. 235 . No doubt if it should appear that the plaintiff was not really relying upon the patent law for his alleged rights, or if the claim of right were frivolous, the case might be dismissed. In the former instance, the suit would not really and substantially involve a controversy within the jurisdiction of the court, *Excelsior Wooden Pipe Co. v. Pacific Bridge Co.,* 185 U. S. 282 , 185 U. S. 287 -288, and in the latter, the jurisdiction would not be denied, except possibly in form. *Deming v. Carlisle Packing Co.,* 226 U. S. 102 , 226 U. S. 109 . But if the plaintiff really makes a substantial claim under an act of Congress, there is jurisdiction whether the claim ultimately be held good or bad."

In *Lamar v. United States,* 240 U. S. 60 , this Court dealt with the question whether the failure of an indictment

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to charge a crime against the United States presented a question of jurisdiction within the meaning of 238 of the Judicial Code. The Court held in the negative, saying (p. 240 U. S. 64):

"Jurisdiction is a matter of power, and covers wrong as well as right decisions. *Fauntleroy v. Lum,* 210 U. S. 230 , 210 U. S. 234 -235; *Burnet v. Desmornes,* 226 U. S. 145 , 226 U. S. 147 . There may be instances in which it is hard to say whether a law goes to the power or only to the duty of the court, but the argument is pressed too far. A decision that a patent is bad, either on the facts or on the law, is as binding as one that it is good. *The Fair v. Kohler Die Co.,* 228 U. S. 22 , 228 U. S. 25 . And nothing can be clearer than that the district court, which has jurisdiction of all crimes cognizable under the authority of the United States (Judicial Code March 3, 1911, c. 231, 24, second), acts equally within its jurisdiction whether it decides a man to be guilty or innocent under the criminal

law, and whether its decision is right or wrong. The objection that the indictment does not charge a crime against the United States goes only to the merits of the case."

Our attention is directed to certain decisions of this Court which are said to support the contention of defendants in error. We think their effect is misapprehended. In *The Steamship Jefferson,* 215 U. S. 130 , the case had been dismissed below expressly for want of jurisdiction. It was asserted in support of a motion to dismiss the appeal that, while in form of expression the suit was so dismissed, the action of the lower court was

"in substance alone based on the conclusion that the facts alleged were insufficient to authorize recovery, even though the cause was within the jurisdiction of the court."

It was held, however, that the conclusion of the district court was one which went to the jurisdiction, not to the sufficiency of the allegations of the bill, and there is no suggestion in the opinion that the two propositions

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are equivalent. In *The Ira M. Hedges,* 218 U. S. 264 , where the same condition was presented, this Court, after pointing out the difficulty of sometimes distinguishing between matters going to the jurisdiction and those determining the merits and suggesting that it might be said that there the two considerations coalesced, rested its decision upon the form of the decree, saying (p. 218 U. S. 270):

"At all events, the form of the decree must be taken to express the meaning of the judge. If the decree was founded, as it purports to be, on a denial of jurisdiction in the court, this Court has jurisdiction of the appeal. For all admiralty jurisdiction belongs to courts of the United States as such, and therefore the denial of jurisdiction brings the appeal within the established rule. *See The Steamship Jefferson,* 215 U. S. 130 , 215 U. S. 138 ."

In *Blumenstock Brothers v. Curtis Publishing Co.,* 252 U. S. 436 , 252 U. S. 441 , it is said:

"In any case alleged to come within the federal jurisdiction, it is not enough to allege that questions of a federal character arise in the case; it must plainly appear that the averments attempting to bring the case within federal jurisdiction are real and substantial."

The only authority cited in support of this statement is *Newburyport Water Co. v. Newburyport, supra,* where, at p. 193 U. S. 576 , the rule is stated thus:

". . . It is settled that jurisdiction does not arise simply because an averment is made as to the existence of a constitutional question, if it plainly appears that such averment is not real and substantial, but is without color of merit."

While the *Blumenstock* case seems to put the emphasis of the test in the opposite way, it cannot be supposed that it was meant to modify the doctrine of the *Newburyport* case, since its citation as authority is made without qualification.

It follows that the motion to dismiss the writ of error must be denied.

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Second. We come, then, to consider whether the averments of the complaint are sufficient to constitute a cause of action under the Anti-Trust Act, and this inquiry involves two questions: (1) are the alleged transactions in which the exhibitor was engaged matters of interstate commerce?, and (2) do the alleged acts of the defendants in error constitute a combination or conspiracy in restraint thereof?

1. The film contracts were between residents of different states, and contemplated the leasing by one to the other of a commodity manufactured in one state and transported and to be transported to and used in another. The business of the distributors of which the arrangement with the exhibitor here was an instance was clearly interstate. It consisted of manufacturing the commodity in one state, finding customers for it in other states, making contracts of lease with them, and

transporting the commodity leased from the state of manufacture into the states of the lessees. If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstance that, in the course of the process, the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessee in the same state, put an end to the interstate character of the transaction and transform it into one purely intrastate? We think not. The intermediate delivery to the agency did not end, and was not intended to end the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination. The general rule is that, where transportation has acquired an interstate character, "it continues at least until the load reaches the point where the parties originally intended that the movement should finally end." *Ill. Cent. R. Co. v. Louisiana R. Co. Com.,* 236 U. S. 157 , 236 U. S. 163 . *And see Western Union Tel. Co. v. Foster,* 247 U. S. 105 ,

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247 U. S. 113 ; *Western Oil Refining Co. v. Lipscomb,* 244 U. S. 346 , 244 U. S. 349 .

In *Swift & Co. v. United States,* 196 U. S. 375 , 196 U. S. 398 , it was held that, where cattle were sent for sale from a place in one state, with the expectation that the transit would end after purchase in another state, the only interruption being that necessary to find a purchaser at the stockyards, and this was a typical, constantly recurring course, the whole transaction was one in interstate commerce, and the purchase a part and incident of it. It further appeared in that case that Swift & Co. were also engaged in shipping fresh meats to their respective agents at the principal markets in other cities for sale by such agents in those markets to dealers and consumers, and these sales were held to be part of the interstate transaction upon the ground

"that the same things which are sent to agents are sold by them, and . . . some at least of the sales are of the original packages. Moreover, the sales are by persons in one state to persons in another."

In the same case in the court below, 122 F. 529, 533, upon this branch of the case, it is said:

"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."

The most recent expression of this Court is in *Stafford v. Wallace,* 258 U. S. 495 , 258 U. S. 516 , where, after describing the process by which livestock are transported to the stockyards and thence to the purchasers, it is said:

"Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be

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obstructed, and this whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity."

The transactions here are essentially the same as those involved in the foregoing cases, substituting the word "film" for the word "livestock," or "cattle," or "meat." Whatever difference exists is of degree and not in character.

The cases cited by defendants in error, upholding state taxation as not constituting an interference with interstate commerce, are of little value to the inquiry here. It does not follow that, because a thing is subject to state taxation, it is also immune from federal regulation under the Commerce Clause. *Stafford v. Wallace, supra,* 258 U. S. 525 -527; *Addyston Pipe Line Co. v. United States,* 175 U. S. 211 ,

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2. The distributors, according to the allegations of the complaint, controlled the distribution of all films in the United States, and the exhibitor could not procure them from others. The direct result of the alleged conspiracy and combination not to sell to the exhibitor therefore was to put an end to his participation in that business. Interstate commerce includes the interstate purchase, sale, lease, and exchange of commodities, and any combination or conspiracy which unreasonably restrains such purchase, sale, lease or exchange is within the terms of the Anti-Trust Act, denouncing as illegal every contract, combination, or conspiracy "in restraint of trade or commerce among the several states." The allegation of the complaint is that the exhibitor had been procuring films from some of the distributors, but had refused to buy from

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others, who thereupon induced the former to cease dealing with him, and that all then combined and conspired, in restraint of interstate trade and commerce, to prevent him from carrying on his said business; that they have ever since refused to furnish him with film service, and have caused unexpired contracts which he held with some of them to be illegally cancelled. It is difficult to imagine how interstate trade could be more effectively restrained than by suppressing it, and that, in effect, so far as the exhibitor is concerned, is what the distributors in combination are charged with doing and intending to do. It is doubtless true that each of the distributors, acting separately, could have refused to furnish films to the exhibitor without becoming amenable to the provisions of the act, but here it is alleged that they combined and conspired together to prevent him from leasing from any of them. The illegality consists not in the separate action of each, but in the conspiracy and combination of all to prevent any of them from dealing with the exhibitor. *See United States v. Schrader's Son, Inc.,* 252 U. S. 85 , 252 U. S. 99 ; *Bobbs-Merrill Co. v. Straus,* 139 F. 155, 191. The contracts with these distributors contemplated and provided for transactions in interstate commerce. The business which was done under them leasing, transportation, and delivery of films was interstate commerce. The alleged purpose and direct effect of the

combination and conspiracy was to put an end to these contracts and future business of the same character, and "restricts, in that regard, the liberty of a trader to engage in business" (*Loewe v.Lawlor,* 208 U. S. 274 , 208 U. S. 293), and, as a necessary corollary, to restrain interstate trade and commerce, in violation of the Anti-Trust Act.

The judgments of the courts below are reversed, and the case remanded to the district court for further proceedings in conformity with this opinion.

Reversed.