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Ftc Vs. American Tobacco Co.

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Court : US Supreme Court

Decided On : Mar-17-1924

Appeal No. : 264 U.S. 298

Appellant : Ftc

Respondent : American Tobacco Co.

Judgement :

FTC v. American Tobacco Co. - 264 U.S. 298 (1924)
U.S. Supreme Court FTC v. American Tobacco Co., 264 U.S. 298 (1924)

Federal Trade Commission v. American Tobacco Company

Nos. 206 and 207

Argued March 7, 1924

Decided March 17, 1924

264 U.S. 298

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

1. The clause of the Federal Trade Commission Act, 6(d), empowering the commission to investigate and report facts as to alleged violation of the Anti-Trust Acts when directed by either house of Congress will not support its demand for disclosure of the records of a corporation in an investigation directed by the Senate not based on such an alleged violation. P. 264 U. S. 305 .

2. The mere facts of carrying on commerce not confined within state lines and of being organized as a corporation do not make men's affairs public. *Id.*

3. A governmental fishing expedition into the papers of a private corporation, on the possibility that they may disclose evidence of crime, is so contrary to first principles of justice, if not defiant of

the Fourth Amendment, that an intention to grant the power to a subordinate agency will not be attributed to Congress unless expressed in most explicit language. P. 264 U. S. 306 .

4. The above act (9) provides that the Commission shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any corporation being investigated or proceeded against, and that, to enforce compliance, writs of mandamus may issue upon application of the Attorney General. *Held,* that access is confined to such documents as are relevant as evidence to the inquiry or complaint before the Commission, and that their disclosure cannot be compelled without some evidence of their relevancy and upon a reasonable demand. *Id.*

283 F. 999 affirmed.

Error to judgments of the district court denying petitions for writs of mandamus brought by the Attorney General to compel disclosure of their records, by the defendants, to the Federal Trade Commission.

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are two petitions for writs of mandamus to the respective corporations respondent, manufacturers and sellers of tobacco, brought by the Federal Trade Commission under the Act of September 26, 1914, c. 311, 9, 38 Stat. 717, 722, and in alleged pursuance of a resolution of the Senate passed on August 9, 1921. The purpose of the petitions is to require production of records, contracts, memoranda, and correspondence for inspection and making copies. They were denied by the district court. 283 F. 999. The resolution directs the Commission to investigate the tobacco situation as to domestic and export trade, with particular reference to market price to producers, etc. The act directs the Commission to prevent the use of unfair methods of competition in commerce, and provides for a complaint by the Commission, a hearing and a report, with an order to desist if it deems the use of a prohibited method proved. The Commission and the party concerned are both given a resort to the circuit

court of appeals. 5 . By 6, the Commission shall have power (a) to gather information concerning, and to investigate the business, conduct, practices, and management of any corporation engaged in commerce, except banks and common carriers, and its relation to other corporations and individuals; (b) to require reports and answers under oath to specific questions furnishing the Commission such information as it may require on the above subjects; (d) upon the direction of the President or either House of Congress, to investigate and report the facts as to alleged violation of the Anti-Trust Acts. By 9, for the purposes of this act, the Commission shall, at all reasonable times, have access to, for the purposes of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against, and shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. In case of disobedience, an order may be obtained from a district court. Upon application of the Attorney General, the district courts are given jurisdiction to issue writs of mandamus to require compliance with the act or any

order of the Commission made in pursuance thereof. The petitions are filed under this clause, and the question is whether orders of the Commission to allow inspection and copies of the documents and correspondence referred to were authorized by the act.

The petitions allege that complaints have been filed with the Commission charging the respondents severally with unfair competition by regulating the prices at which their commodities should be resold, set forth the Senate resolution, and the resolutions of the Commission to conduct an investigation under the authority of 5 and 6(a), and in pursuance of the Senate resolution, and for the further purpose of gathering and compiling information concerning the business, conduct and practices, etc., of

each of the respondent companies. There are the necessary formal allegations and a prayer that, unless the accounts, books, records, documents, memoranda, contracts, papers, and correspondence of the respondents are immediately submitted for inspection and examination and for the purpose of making copies thereof, a mandamus issue requiring, in the case of the American Tobacco Company, the exhibition during business hours when the Commission's agent requests it, of all letters and telegrams received by the Company from, or sent by it to all of its jobber customers between January 1, 1921 to December 31, 1921, inclusive. In the case of the P. Lorillard Company, the same requirement is made, and also all letters, telegrams, or reports from or to its salesmen, or from or to all tobacco jobbers' or wholesale grocers' associations, all contracts or arrangements with such associations, and correspondence and agreements with a list of corporations named.

The Senate resolution may be laid on one side, as it is not based on any alleged violation of the Anti-Trust acts within the requirement of 6(d) of the act. *United States v. Louisville & Nashville R. Co.,* 236 U. S. 318 , 236 U. S. 329 . The complaints, as to which the Commission refused definite information to the respondents, and one at least of which, we understand, has been dismissed, also

may be disregarded for the moment, since the Commission claims an unlimited right of access to the respondents' papers with reference to the possible existence of practices in violation of 5.

The mere facts of carrying on a commerce not confined within state lines and of being organized as a corporation do not make men's affairs public, as those of a railroad company now may be. *Smith v. Interstate Commerce Commission,* 245 U. S. 33 , 245 U. S. 43 . Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize

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one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission v. Brimson,* 154 U. S. 447 , 154 U. S. 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the Commission's wholesale demand would cause are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. The unwillingness of this Court to sustain such a claim is shown in *Harriman v. Interstate Commerce Commission,* 211 U. S. 407 , and as to correspondence, even in the case of a common carrier, in *United States v. Louisville & Nashville R. Co.,* 236 U. S. 318 , 236 U. S. 335 . The question is a different one where the state granting the charter gives its Commission power to inspect.

The right of access given by the statute is to documentary evidence -- not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly, in equity, the ground must be found in

admissions in the answer. Wigram, Discovery (2d ed.) 293. We assume that the rule to be applied here is more liberal, but still a ground must be laid, and the ground and the demand must be reasonable. *Essgee Co. v. United States,* 262 U. S. 151 , 262 U. S. 156 -157. A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced. *Hale v. Henkel,* 201 U. S. 43 , 201 U. S. 77 . In the

state case relied on by the government, the requirement was only to produce books and papers that were relevant to the inquiry. *Consolidated Rendering Co. v. Vermont,* 207 U. S. 541 . The form of the subpoena was not the question in *Wheeler v. United States,* 226 U. S. 478 , 226 U. S. 488 .

The demand was not only general, but extended to the records and correspondence concerning business done wholly within the state. This is made a distinct ground of objection. We assume for present purposes that even some part of the presumably large mass of papers relating only to intrastate business may be so connected with charges of unfair competition in interstate matters as to be relevant, *Stafford v. Wallace,* 258 U. S. 495 , 258 U. S. 520 -521, but that possibility does not warrant a demand for the whole. For all that appears, the corporations would have been willing to produce such papers as they conceived to be relevant to the matter in hand. *See Terminal Taxicab Co. v. District of Columbia,* 241 U. S. 252 , 241 U. S. 256 . If their judgment upon that matter was not final, at least some evidence must be offered to show that it was wrong. No such evidence is shown.

We have considered this case on the general claim of authority put forward by the Commission. The argument for the government attaches some force to the investigations and proceedings upon which the Commission had entered. The investigations and complaints seem to have been only on hearsay or suspicion, but even if they were induced by substantial evidence under oath, the rudimentary principles of justice that we have laid down would apply. We cannot attribute to Congress an intent to defy the Fourth Amendment, or even to come so near to

doing so as to raise a serious question of constitutional law. *United States v. Delaware & Hudson Co.,* 213 U. S. 366 , 213 U. S. 408 . *United States v. Jin Fuey Moy,* 241 U. S. 394 .

Judgment affirmed.

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