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Constitutional Law, Attempts to Monopolize a Method of Doing Business

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CONSTITUTIONAL LAW ATTEMPTS TO MONOPOLIZE A METHOD OF DOING BUSINESS

Western Auto stopped selling its goods to some of its independently owned "associate" stores because they sold goods in competition with Western Auto's products. The only agreement made between the two parties was the associate's right to use Western Auto's name in exchange for an agreement to purchase a stipulated amount of Western Auto's merchandise for an opening stock only. In a suit by the independent owners, under § 3 of the Clayton Act[1] and § 2 of the Sherman Act,[2] defendant's motion to dismiss on grounds of failure to allege a cause of action was granted in the lower court because there was no allegation of a "condition, agreement, or understanding" as required by the Clayton Act, and no allegation of an attempt to monopolize commerce of a particular product as required by the Sherman Act. Plaintiff failed to amend and appealed. *Held*, affirmed, and remanded to the District Court with leave to amend. Attempting to monopolize a method of doing business, as contended by plaintiff, is not a violation of the Sherman Act.[3]

The point of major interest in this case is the plaintiff's argument with respect to the Sherman Act violation. Section 2 of the Sherman Act provides that "every person who shall monopolize, or attempt to monopolize . . . any part of the trade or commerce among the several states, or with foreign nations, shall be guilty of a misdemeanor . . ." Plaintiff claimed that Western Auto attempted to monopolize a "method of doing business," since the plaintiff's stores were the only ones in the localities handling *all* the particular lines of merchandise. Each article of merchandise in question was available in another store, but all of them were not available in the same store, except plaintiff's. The court pointed out that no attempt to monopolize could exist where the same merchandise was available in other stores in the locality, and a method of doing business was not interstate commerce within the meaning of the act.

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[1] 38 Stat. 731 (1914), 15 U.S.C. § 14 (1958).

[2] 26 Stat. 209 (1890), 15 U.S.C. § 2 (1958).

[3] McElhenney Co. v. Western Auto Supply Co., 269 F. 2d 332 (4th Cir. 1959).

An analysis of previous Sherman Act cases bears out the logic and the legal reasoning of the decision. The meaning of the phrase "any part of interstate commerce" is, according to the *Standard Oil Co.* case[4] of 1910, inclusive of any one of the classes of things forming a part of interstate or foreign commerce, and, as determined by the *Patterson* case[5] of 1915, is not extended to interstate trade or commerce of any one particular purchaser, but is directed against monopoly of commerce of all propsective purchasers of a particular product. "Attempt to monopolize" may include an attempt to monopolize an industry,[6] but nowhere is mention made of a method of doing business.

At first glance, the case may seem to do an injustice to the little man of the business world. The overall purpose of the Sherman Act is to provide equality of opportunity, protection against the evils of monopoly, and a remedy for wrongs incident to monopoly. But as early as 1924, the act was held not to inhibit the intelligent conduct of business, but to encourage great freedom of business action in the absence of a purpose to monopolize.[7] Does Western Auto's course of action in this case constitute an abuse of this right to freedom of action? Many cases, of which the *Colgate* case[8] and the *ABC Distributing Co.* case[9] are the leading ones, have indicated that it would not. These cases have established the principle that a seller may absolutely refuse to sell to a particular business, for good reason or for no reason at all, as long as the action does not tend to restrain trade or set up a monopoly. Western Auto's actions clearly were within this principle, since products similar to each of Western Auto's lines were available in every locality in question.

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[4] Standard Oil Co. v. U.S., 221 U.S. 1, 31 Sup. Ct. 502, 55 L.Ed. 619, (1910).

[5] Patterson v. U.S., 222 Fed. 599, (6th Cir. 1915).

[6] U.S. v. Klearflax Linen Looms, 63 F. Supp. 32 (D.D.C. Minn. 1945).

[7] Maple Flooring Mfrs. Ass'n. v. U.S., 268 U.S. 563, 45 Sup.Ct. 578, 169 L.Ed. 1093, (1924).

[8] U.S. v. Colgate & Co., 250 U.S. 300, 39 Sup. Ct. 465, 63 L.Ed. 992, (1919).

[9] ABC Distributing Co. v. Distillers Distributing Corp., 154 Cal. App. 2d 175, 316 P. 2d, 71 (1957).

Even from a moral standpoint, Western Auto's acts could hardly be condemned. It was merely trying to protect the goodwill and standard of quality associated with its brand name—a source of considerable value to any large corporation.

Therefore, while the point raised concerning a method of doing business is interesting, the rule as laid down by the court is a fair and just one, in accordance with existing legal principles. In fact, a contrary ruling would tend to discourage the establishment of standards of goodwill and quality.

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