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Commerce--Insurance--Anti-Trust Act (United States v. Southeastern Underwriters Association, 322 U.S. 533 (1944))

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In the case under discussion, the plaintiff did not overlook, as a last resort, the possibility of the unconstitutionality of Section 43 of the Civil Rights Law. The plaintiff attacked the constitutionality of the statute as applied to it on the grounds of unequal protection of the laws, capricious and unreasonable classification, deprivation of property without due process, interference with government service and invasion of postal work from which the state is excluded. The court in treating these assertions rather lightly, held it not to be capricious and arbitrary to legislate against discrimination in an association of workers which purports to act in improving working standards. In its conclusion, the court is supported by the decision of the Washington Supreme Court in *State of Washington v. Wiles* [7] which stated that any state statute which provides merely indirect and immaterial interference with a federal instrumentality is not violative of the constitution of the United States; and it concluded that such questions must be governed by the "rule of reason" in order not to hinder the states in the course of their affairs.

In the decision of the principal case, the court, by Chief Justice Lehman, interpreted Section 43 of the Civil Rights Law to mean that "no association of workers, whether in industry or in the Civil Service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard." This interpretation may well be regarded as a stepping stone in furtherance of the public policy of industrial equality.

G. S.

COMMERCE—INSURANCE—ANTI-TRUST ACT.—The appellees, the South-Eastern Underwriters Association (S. E. U. A.), and its membership of nearly two hundred private stock fire insurance companies and twenty-seven individuals, were indicted in the District Court for alleged violations of the Sherman Anti-Trust Act. The indictment alleges two conspiracies. The first, in violation of Section 1 of the Act, was to restrain interstate trade and commerce by fixing and maintaining arbitrary and non-competitive premium rates on fire and specified allied lines of insurance in various southern states; the second, in violation of Section 2, was to monopolize trade and commerce in the same lines of insurance in and among the same states.[1]

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of City of Brooklyn, 148 N. Y. 107, 42 N. E. 413 (1895), the court refused to read two statutes involving condemnation proceedings in *pari materia*, holding that "each is complete in itself and prescribes a system of procedure each for itself, having many points of similarity as also many points of divergence."

[7] 116 Wash. 387, 199 Pac. 749 (1921).

[1] The pertinent provisions of Sections 1 and 2 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. A. §§ 1, 2, are commonly known as the Sherman Act, and are as follows:

The District Court sustained a demurrer to the indictment on the ground that the business of insurance could not constitute "commerce" and that, therefore, an insurance company is not engaged in "commerce among the states" within the Commerce Clause [2] or the Sherman Anti-Trust Act.[3] Held, *reversed.* Insurance transactions which stretch across state lines are "commerce among the several states" and thus are subject to regulation by Congress under the Commerce Clause. Congress, in enacting the Sherman Anti-Trust Act, did not intend to exempt fire insurance companies from its provisions; the Act was intended to prohibit conduct of fire insurance companies which restrains or monopolizes the interstate fire insurance trade.[4] *United States v. Southeastern Underwriters Association,* 322 U. S. 533, 64 Sup. Ct. 1162 (1944).

The District Court relied upon a series of decisions of the United States Supreme Court, the first of which was *Paul v. Virginia.*[5] There the Court in upholding an insurance law of the State of Virginia regulating foreign insurance companies, held that insurance policies are neither transactions of commerce nor interstate transactions.[6] The Supreme Court, in the instant case, pointed out that the decision in *Paul v. Virginia* did not relate to the real point involved in a consideration of the regulation of the insurance business as interstate commerce by the Federal Government. Today, for the first time in the history of the Court, that issue is squarely presented and must be decided, said Mr. Justice Black. A description of that part of commerce which is subject to federal control was given in 1824 by Chief Justice Marshall in *Gibbons v. Ogden:* [7] "Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches . . . ." Commerce is interstate, he said, when it "concerns more states than one." The insurance business as it is

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"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . . Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1–7 of this title to be illegal shall be deemed guilty of a misdemeanor. . . .

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . ."

[2] U. S. CONST. Art. I, § 8.

[3] United States v. South-Eastern Underwriters Ass'n, 51 F. Supp. 712 (1943).

[4] *But see* dissenting opinions of Mr. Justice Stone and Mr. Justice Frankfurter.

[5] 8 Wall. 168, 19 L. Ed. 357 (U. S. 1869).

[6] Other cases which have repeated or relied upon the *Paul v. Virginia* generalization are New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495, 34 Sup. Ct. 167 (1913); Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207 (1895).

[7] 9 Wheat. 1, 6 L. Ed. 23 (U. S. 1824).

conducted today embraces integrated operations in many states and involves the transmission of great quantities of money, documents, and communications across dozens of state lines. The insurance companies contended that Congress did not intend in the Sherman Act to exercise its power over the interstate insurance trade because it knew that the Supreme Court had prior to 1890 said that insurance was not commerce. The Court answered this by pointing out that there was no exemption for insurance companies in the Act and that the Congress of 1890 also knew that railroads were subject to regulation not only by the states but by the Federal Government itself, but this fact has been held insufficient to bring to the railroad companies the interpretative exemption from the Sherman Act they have sought.[8] Congress used language broad enough to include all businesses and therefore the business of insurance is covered by the Act. The final argument of the defendant was that competition in the field of insurance is detrimental to both the insurers and the insured. It was the view of the Court that whether competition was a good thing for the insurance business was not for it to decide; if any exemptions are to be written into the Act, they must come from Congress. In discussing the effect of this decision on the various state laws regulating insurance the Court pointed out that in the absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid. But the question still remains as to how much the Federal Government will regulate and what effect will the regulation have?

H. F. McN.

CONSTITUTIONAL LAW—FULL FAITH AND CREDIT DOCTRINE—EXTRA-TERRITORIAL VALIDITY OF DIVORCES.—The petitioner, Sonia Jordi, was married in 1925 to Homer D. Lindgren, who was then a faculty member of a university in New York City where he continued to serve until his death in 1942. After the birth of the daughter, Gloria, in 1926, the decedent and his wife lived apart under a formal separation agreement. On October 3, 1939, the decedent was granted an absolute divorce by the Circuit Court of Florida upon grounds not recognized in this state. Two days later, he was married to present appellant, Gladys McDermaid Lindgren. Petitioner did not appear in court in the divorce action, but later, upon ground of mistake of counsel, she procured an order which purported to amend the divorce decree to include her appearance and consent to the final decree. Two months later, and before the death of the decedent, she married Paul Jordi. The courts below have granted petitioner letters of administration upon the estate of Homer D. Lindgren, decedent, not as his former wife, but because she is the guardian of the only child of that

[8] United States v. Trans-Missouri Freight Ass'n, 166 U. S. 290, 17 Sup. Ct. 540 (1896).