

2-1942

# General Motors Acceptance Corporation and the Sherman Act

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## Recommended Citation

(1942) "General Motors Acceptance Corporation and the Sherman Act," *Indiana Law Journal*: Vol. 17 : Iss. 3 , Article 8.  
Available at: <http://www.repository.law.indiana.edu/ilj/vol17/iss3/8>

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# TRADE REGULATION

## GENERAL MOTORS ACCEPTANCE CORPORATION AND THE SHERMAN ACT

Four affiliated General Motors Corporations and seventeen individuals were prosecuted, under Section 1 of the Sherman Anti-Trust Act, for conspiring to restrain interstate trade and commerce in General Motors automobiles. The alleged purpose of the conspiracy was to compel General Motors dealers to use General Motors Acceptance Corporation financing in their purchases and sales of automobiles. The purpose was stated to have been accomplished by cancelling the franchises of dealers who refused to use the financing, by favoring dealers who used the finance service, in the matter of deliveries of automobiles and other appropriate means. A jury in the District Court acquitted the individual defendants and found the four corporate defendants guilty. Judgment entered upon verdict fining each corporate defendant \$5000. Held, affirmed on appeal.<sup>1</sup>

The defendants contended that, since they were affiliated non-competing corporations, any restraint by them of the interstate commerce in their own automobiles was not prohibited by the Sherman Act.<sup>2</sup> The title to the automobiles usually passes to the dealers before shipment and the commerce which was restrained was the commerce

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<sup>18</sup> Notes (1938) 22 MINN. L. REV. 410, (1930) 66 A.L.R. 1121, 1135, (1930) 30 COL. L. REV. 268.

<sup>19</sup> Dillon v. Twin State Gas & Electric Co., 85 N.H. 449, 216 Atl. 111 (1932); See Peaslee, *Multiple Causation & Damage* (1934) 47 HARV. L. REV. 1127. See also, Felter v. Delaware & Hudson R.R., 19 F. Supp. 825 (1937), *aff'd* 98 F. (2d) 863 (C.C.A. 3d, 1938) (damage for only portion of total value), (1937) 12 TEMPLE L.Q. 132.

<sup>20</sup> Kummer Motor Bus & Taxi Co. v. Mech. Lumber Co., 175 Ark. 750, 300 S.W. 399; May Dept Stores Co. v. Bell, 61 F. (2d) 83 (C.C.A. 8th, 1932) (issues of retrial limited to damages).

<sup>1</sup> United States v. General Motors Corp., 121 F. (2d) 376 (C.C.A. 7th, 1941), *cert. denied*, 10 U.S.L. WEEK 3113.

<sup>2</sup> 26 STAT. 209 (1890), 15 U.S.C. §1 (1934).

of the dealers.<sup>3</sup> A manufacturer may refuse to sell his goods and not violate the Sherman Act.<sup>4</sup> However, he can not do so by combination or conspiracy with his agents and customers.<sup>5</sup> Thus a conspiracy between distributors of copyrighted films, not to lease films to a certain dealer was within the prohibitions of the Sherman Act.<sup>6</sup> This is true though each of the individuals concerned might have refused to lease, without liability, if not done in concert with others.<sup>7</sup>

The purpose of the restraint in the instant case was to coerce the dealers into using General Motors Acceptance Corporation financing. Financing is not a commerce.<sup>8</sup> Transactions not interstate commerce but which burden and obstruct such commerce are subject to Federal regulation.<sup>9</sup> And local sales occurring in the course of the flow of interstate commerce are subject to Federal control.<sup>10</sup>

The Government drew an apt analogy between the facts in the principal case and those in the tying clause cases.<sup>11</sup> In the tying clause cases one who had a monopoly, by patent or otherwise, in one article would refuse to sell it unless the purchaser would also buy other goods at the same time. In several cases enforcement of tying clauses

<sup>3</sup> *Dr. Miles Medical Co. v. Park Sons Co.*, 220 U.S. 373, 404 (1911) (manufacturer need not sell, but having sold, he can not place restrictions upon the purchaser).

<sup>4</sup> *Arthur v. Kraft Phenix Cheese Corp.*, 26 F. Supp. 824, (D. Md. 1938). Trader can withhold his goods from one who will not sell them at prices which trader fixes for resale. *United States v. Colgate & Co.*, 250 U.S. 300 (1919); *Hill Bros. v. F.T.C.*, 9 F. (2d) 481 (C.C.A. 9th, 1926). Manufacturer may refuse to sell to persons who continue to handle competitor's product. *Whitwell v. Continental Tobacco Co.*, 125 Fed. 454 (C.C.A. 8th, 1903).

<sup>5</sup> *Hill Bros. v. F.T.C.*, 9 F. (2d) 481 (C.C.A. 9th, 1926).

<sup>6</sup> *Binderup v. Pathe Exchange*, 263 U.S. 291 (1923); *accord*, *Eastern States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600 (1914).

<sup>7</sup> See note 6 *supra*.

<sup>8</sup> *Hemphill v. Orloff*, 277 U.S. 537 (1928); *Blumenstock Bros. v. Curtis Pub. Co.*, 252 U.S. 436 (1920); *Nathan v. Louisiana*, 8 How. 73 (U.S. 1850).

<sup>9</sup> *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Local 167 v. United States*, 291 U.S. 293 (1934); *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n*, 274 U.S. 37 (1927); *Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295 (1925); *Wisconsin v. Chicago B. & Q. R.R.*, 257 U.S. 563 (1922); *Houston, E. & W.T. Ry. v. United States (the Shreveport Case)* 234 U.S. 342 (1914), *Loewe v. Lawlor*, 208 U.S. 274 (1908).

<sup>10</sup> *Board of Trade v. Olsen*, 262 U.S. 1 (1923); *Stafford v. Wallace*, 258 U.S. 495 (1922); *Lemke v. Farmer's Grain Co.*, 258 U.S. 50 (1922); *Swift & Co. v. United States*, 196 U.S. 375 (1905).

<sup>11</sup> *International Business Machines Corp. v. United States*, 298 U.S. 131 (1936); *Carbice Corp. v. American Patents Corp.* 283 U.S. 27 (1931); *United Shoe Machinery Corp. v. United States*, 258 U.S. 451 (1922); *F.T.C. v. Gratz*, 253 U.S. 421 (1920); *United States v. United Shoe Machinery Co.*, 247 U.S. 32 (1918); *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502 (1917); *Radio Corp. v. Lord*, 28 F (2d) 257 (C.C.A. 3d, 1928).

in contracts or leases has been enjoined as violating the Clayton Act.<sup>12</sup> Tying clauses which are necessary to protect manufacturer's good will do not violate the Clayton Act.<sup>13</sup> But in the principal case, it is difficult to see how manufacturer's good will could be served by restricting the financing to that furnished by General Motors Acceptance Corporation.

In a suit instituted by the Government, under the Sherman Act, to enjoin restrictive covenants and tying clauses in leases of patented machinery, the injunctive relief was refused.<sup>14</sup> The court held that a patent conferred a complete monopoly, that it could not be made more extensive by a contract of the patentee, and that such a monopoly was not within the prohibition of the Sherman Act.<sup>15</sup> The Government later instituted a suit against the same restrictive covenants and tying clauses under the Clayton Act.<sup>16</sup> This suit was successful on the ground that the Act contained the express words "whether patented or unpatented."<sup>17</sup> That General Motors automobiles are largely covered by patents was a point not raised on the trial. Upon the authority of the *First Shoe Machinery Company Case*,<sup>18</sup> a prosecution of a "tying clause" in connection with a patented article must fail if brought under the Sherman Act. But that case, though never expressly overruled might now be if the point were again squarely presented.<sup>19</sup>

The defendants insisted that their sole purpose in organizing General Motors Acceptance Corporation was to increase the sale of their automobiles and that any restraint which resulted was merely incidental and not unreasonable. Only unreasonable restraints are prohibited by the Sherman Act.<sup>20</sup> The term restraint of trade had a

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<sup>12</sup> *International Business Machines Corp. v. United States*, 298 U.S. 131 (1936); *United Shoe Machinery Corp. v. United States*, 258 U.S. 451 (1922); *Radio Corp. v. Lord*, 28 F. (2d) 257 (C.C.A. 3d, 1928).

<sup>13</sup> *Pick Mfg. Co. v. General Motors Corp.*, 80 F. (2d) 641 (C.C.A. 7th, 1935) (competition not substantially lessened or monopoly created).

<sup>14</sup> *United States v. United Shoe Machinery Co.*, 247 U.S. 32 (1918).

<sup>15</sup> *Ibid.*

<sup>16</sup> *United Shoe Machinery Corp. v. United States*, 258 U.S. 451 (1922).

<sup>17</sup> 38 STAT. 731 (1914), 15 U.S.C. §14 (1934).

<sup>18</sup> *United States v. United Shoe Machinery Co.*, 247 U.S. 32 (1918).

<sup>19</sup> In a case decided prior to the *First Shoe Machinery Company Case* the Supreme Court said, "Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained." *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 49 (1912). That case was cited with approval in a recent case, *Carbice Corp. v. American Patents Corp.*, 283 U.S. 27 (1931). The cases can be distinguished on the facts but the language seems clearly *contra* to that used in the *First Shoe Machinery Company Case*. See the excellent dissenting opinion in *United States v. United Shoe Machinery Co.*, 247 U.S. 32 (1918).

<sup>20</sup> *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 498, 499 (1940); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911); *Standard*

common law meaning<sup>21</sup> which Congress probably intended to give to the words in the Act.<sup>22</sup> In one case, the Supreme Court held that where the restriction is not ancillary to a lawful agreement, there can be no question of reasonableness.<sup>23</sup> In another case the Court held that restrictions which are reasonable are not restraints of trade.<sup>24</sup> Thus the Court has given "reasonable" several distinct meanings which are used as occasion arises.<sup>25</sup> Price fixing agreements are prohibited by the Act and it does not matter that the prices agreed upon are reasonable.<sup>26</sup> That the restraint was imposed to accomplish what would have been lawful if done without restraint will not make it a reasonable restriction.<sup>27</sup>

The Sherman Act is criminal in part and remedial in part. Much confusion results from a failure to recognize this distinction. Cases which arose under the remedial sections of the statute are cited as authority in criminal prosecutions and conversely. In the principal case the court said, "Certainly the Government made out a stronger case in this regard than did the party having the burden of proof" in two other cases cited.<sup>28</sup> The Government would certainly need to make out a stronger case to sustain a conviction, since the first case cited was a suit for injunction by the Government, and the sec-

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Oil Co. v. United States, 221 U.S. 1, 54, 55, 58 (1911); United States v. Addyston Pipe and Steel Co., 175 U.S. 211 (1899), *affirming* United States v. Addyston Pipe and Steel Co., 85 Fed. 271 (C.C.A. 6th, 1898), Note (1940) 14 TEMP. L.Q. 541.

<sup>21</sup> United States v. Addyston Pipe and Steel Co., 85 Fed. 271 (C.C.A., 6th, 1898).

<sup>22</sup> Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940); Cavers, *And What of the Apex Case Now?* (1941) 8 U. CHI. L. REV. 516.

<sup>23</sup> United States v. Addyston Pipe and Steel Co., 85 Fed. 271 (C.C.A. 6th, 1898); T.N.E.C. Monograph No. 38 (1941).

<sup>24</sup> United States v. American Tobacco Co., 221 U.S. 106 (1911); Standard Oil Co. v. United States, 221 U.S. 1 (1911).

<sup>25</sup> "We have said that the Sherman Act, as a charter of freedom has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions. Thus in applying its broad prohibitions, each case demands a close scrutiny of its own facts. Questions of reasonableness are necessarily questions of relation and degree." Sugar Institute Inc. v. United States, 297 U.S. 553, 600, (1936); Note (1940) 13 SO. CAL. L. REV. 481, 489 (concerning conflicts between Patent Law and the Sherman Act).

<sup>26</sup> United States v. Socony Vacuum Oil Co., 310 U.S. 150 (1940); United States v. Trenton Potteries Co., 273 U.S. 392 (1927); Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20 (1912); Addyston Pipe and Steel Co. v. United States, 175 U.S. 211 (1899); United States v. Joint Traffic Ass'n, 171 U.S. 505 (1898); *cf.* Appalachian Coals, Inc. v. United States, 288 U.S. 344 (1933) (an agreement to fix prices when there is no power or intent to control the market does not violate the Sherman Act); Note (1941) 16 IND. L. J. 421.

<sup>27</sup> Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n, 274 U.S. 37 (1927).

<sup>28</sup> Interstate Circuit Inc. v. United States, 306 U.S. 208 (1938); Vitagraph, Inc. v. Perelman, 95 F. (2d) 142 (C.C.A. 3d, 1936, *rehearing* 1938).

ond was a suit for injunction by a private party. A preponderance of evidence is sufficient to sustain a verdict in a civil action.<sup>29</sup> This is true in civil actions to recover statutory penalties or actions to recover damages for injury from an act which was also a crime.<sup>30</sup> But to sustain a conviction in a criminal prosecution, there must be substantial evidence of guilt beyond reasonable doubt.<sup>31</sup> In so far as the statute is criminal or penal<sup>32</sup> it must be strictly construed.<sup>33</sup> In so far as it is remedial it should be liberally construed.<sup>34</sup>

There is a general rule that a criminal statute should be sufficiently certain to enable those included in its terms to know in advance whether an act is criminal or not.<sup>35</sup> But since the indefiniteness of the Sherman Act is due to judicial construction which has limited liability, defendants should not be allowed to complain.

The alleged violations in the principal case covered some nineteen years and were open and well known. Other automobile manufacturers were engaged in the same sort of activity. A point not raised, but one which seems pertinent, is that popular construction of a statute over a long period of time is significant as to its true meaning.<sup>36</sup> That such a prosecution is unprecedented shows very strongly that the public did not consider such activity illegal.<sup>37</sup>

The intention of the legislature can be determined from the history of the act or by long continued inaction in the face of judicial construction after passage.<sup>38</sup> Since Congress has remained inactive

<sup>29</sup> *Louisville & N. R.R. v. Jones*, 83 Ala. 376, 3 So. 902 (1888); *Stearns v. Field*, 90 N.Y. 640 (1882).

<sup>30</sup> *Brothers v. Horne*, 140 Ga. 617, 79 S.E. 468 (1913); *Thompson v. Cornwell*, 133 Ill. App. 261 (1907); *Johnson Service Co. v. McLernon*, 127 N.Y.S. 431, 142 App. Div. 677 (1911). *Contra*: *McInturff v. Insur. Co. of Amer.*, 248 Ill. 92, 93 N.E. 369 (1910).

<sup>31</sup> *Spalitto v. United States*, 39 F. (2d) 728 (C.C.A. 8th, 1930); *Leavine v. State*, 109 Fla. 447, 147 So. 897 (1933).

<sup>32</sup> A penal statute is one which inflicts punishment and it does not matter whether that punishment be imposed by civil action or criminal prosecution. *United States v. Choteau*, 102 U.S. 603 (1880); *Lagler v. Bye*, 42 Ind. App. 592, 85 N.E. 36 (1908).

<sup>33</sup> *Northern Securities Co. v. United States*, 193 U.S. 197 (1903) (must give effect to the intention of the legislature as disclosed by words used); *Lagler v. Bye*, 42 Ind. App. 592, 85 N.E. 36 (1908) (a strict construction is one included in the words of the statute); *State v. Aetna Banking & Trust Co.*, 34 Mont. 379, 87 Pac. 268 (1906).

<sup>34</sup> A liberal construction is one not excluded by the words of the statute. *Lagler v. Bye*, 42 Ind. App. 592, 85 N.E. 36 (1908).

<sup>35</sup> *McBoyle v. United States*, 283 U.S. 25 (1931); Editorial, *The Need of Certainty in a Criminal Statute to Make it Constitutional* (1915) 80 CENT. L.J. 289. For statutes which have been held not too indefinite see, *Jay Fox v. State*, 236 U.S. 273 (1915); *Waters Pierce Oil Co. v. State*, 212 U.S. 86 (1909).

<sup>36</sup> *United States v. Farrar*, 38 F. (2d) 515 (D. Mass. 1930); *State v. Teahan*, 50 Conn. 92 (1882).

<sup>37</sup> *State v. Rand*, 51 N.H. 361 (1871); Horack, *CASES AND MATERIALS ON LEGISLATION* (1940) 602.

<sup>38</sup> *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940).

for nearly half a century, they must have intended the elastic<sup>39</sup> construction which the courts have given the act. The purpose of the Congress in leaving the definitions of the prohibited activity elastic seems to have been to allow the court wide powers in construing the Act so it could protect the dominant social interest as it appeared in any case.<sup>40</sup> As decisions have multiplied, certain areas of activity within the scope of the prohibitions of the Sherman Act have become determinate. Other areas remain uncertain, because few decisions or no decisions covering those areas have been made. At times a case falls in several different areas and the principal case was one.<sup>41</sup>

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<sup>39</sup> The word elastic is used as opposed to certain. Goble, *Law as a Science* (1933) 9 IND. L.J. 294.

<sup>40</sup> Economic consequences are important in determining whether any given activity is a monopoly prohibited by the Act. Note (1939) 49 YALE L.J. 234.

<sup>41</sup> Each case continues to be governed largely by its own factual situation. Note (1940) 13 SO. CALIF. L. REV. 481, 489.