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Trade Regulation: The American Medical Ass'n Case

TRADE REGULATION

THE AMERICAN MEDICAL ASS'N CASE

The American Medical Association and the Medical Society of the District of Columbia and certain practicing physicians and officers of these associations were indicted for conspiring to violate Sec. 3 of the Sherman Act[1] by hindering and obstructing the operations of Group Health Association, a nonprofit corporation organized by Government employees to provide medical care and hospitalization on a risk sharing prepayment basis.[2] Held, the associations were guilty of a conspiracy to restrain trade in the Dist. of Col. Amer. Med. Assn. v. United States, 63 Sup. Ct. 326 (1943).[3]

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1. 15 U.S.C. 3.
2. The district court sustained the defendant's demurrer and held that neither the practice of medicine nor the Group Health Association activities was trade within the meaning of the Sherman Act. 28 F. Supp. 752 (1939). The court of appeals reversed, holding that either could be trade. 110 F. (2d) 703 (1940). The district court then convicted the associations but acquitted the individual defendants which was affirmed by the court of appeals. 130 F. (2d) 233 (1942).
3. This case has caused much comment. The Chicago Tribune, April 7, 1941, thought that since the American Medical Association had been held to be a trade that they should have gotten their charter from William Green or John L. Lewis. The Baltimore Sun, April 6, 1941, thought it quite anomalous that carpenters are not in a trade but physicians are. See also, Washington (D.C.) Post, April 6, 1941; New York Times, April 7, 1941; Time, January 25, 1943,

It was the defendant's admitted plan to hinder the successful operation of Group Health Association which they claimed was unethical.[4] By doing this they also interfered with the activities of the physicians hired by Group Health Association.

The courts have consistently held that the Sherman Act took over the common law concept of restraint of trade.[5] At common law the word trade connoted other occupations than mere mercantile business pursuits.[6] Both the English and the American courts have practically unanimously held that the medical profession was a trade within the meaning of this concept.[7] For this reason it appears that the practice of medicine is a trade within the meaning of the Sherman Act.[8]

It also appears that the operation of a nonprofit organization financing medical services and furnishing hospital facilities is a trade within the meaning of the Sherman Act. In order to constitute trade

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Vol. 41, No. 4. For testimony at the trial see 116 Amer. Med. Assoc. Journal, 602, 611, 612, 714, 845; for prayers and motions during the trial pp. 2199; for proceedings in general see pp. 1533, 1704, 2791.

4. 110 F.(2d) 703, 706 (1940). They hindered its operations by the following methods. (a). Publishing a white list consisting only of doctors not on Group Health's staff. (b) Expelling members of Group Health from the American Medical Association. (c) Requesting hospitals to prevent any Group Health doctor from operating in their surgeries which request they enforced by refusing to supply them with internes from medical schools if they refused. (d) Threatening to discharge any member that even consulted with a Group Health doctor.

5. Apex Hosiery Co. v. Leader, 310 U.S. 469 (1939); Eastern States Retail Lumber Dealers' Assoc. v. United States, 234 U.S. 600, 610 (1914); Nash v. United States, 229 U.S. 373, 377 (1913); United States v. American Tobacco Co., 221 U.S. 106 (1910).

6. Smalley v. Greene, 52 Iowa 241 (1879) (practice of law); Bunn v. Guy, 4 East 190, 102 Eng. Rep. 803 (1803) (practice of law); Love v. Kozy Theater Co., 193 Ky. 336, 236 S.W. 243 (1922) (theatres); Jorden v. Tashiro, 278 U.S. 123, 127 (1928) (hospitals); see Asakura v. Seattle, 265 U.S. 332 (1924); see Styles v. Lyons, 87 Conn. 23, 86 Atl. 564 (1913); see Gilman v. Dwight, 13 Gray 356 (Mass.), 74 Am. Dec. 634 (1859).

7. Styles v. Lyon, 87 Conn. 23, 86 Atl. 564 (1913); Cook v. Johnson, 47 Conn. 175, 36 Am. Rep. 64 (1879); Ryan v. Hamilton, 144 Ill. 312, 68 N.E. 781 (1903); Halderman v. Simoton, 55 Iowa 144, 7 N.W. 493 (1880); Gilman v. Dwight, 13 Gray 356 (Mass.), 74 Am. Dec. 634 (1859); McNeel v. Wabash Ry. Co., 210 Mo. App. 161, 231 S.W. 649 (1921); Bowers v. Whittle, 63 N.H. 147, 56 Am. Rep. 499 (1884); Holdbrook v. Waters, 9 How. 335 (N.Y.) (1854); Hulen v. Easel, 73 Pa. 927 (1903); McClung's Appeal, 58 Pa. 51 (1868); Turner v. Abbott, 116 Tenn. 718, 94 S.W. 64 (1906); Pratt v. British Medical Society, 1 K.B. 244 (1919); Alkyns v. Kinner, 154 Eng. Rep. 1429 (1850); Horner v. Graves, 7 Bing. 733, 131 Eng. Rep. 284 (1831). But see: Federal Trade Com. v. Raladam Co., 283 U.S. 643 (1930); The Nymph, 18 Fed. Cas. 506 (1834); Earle v. Commonwealth, 180 Mass. 579, 63 N.E. 10 (1902); Semple v. Schwaz, 130 Mo. App. 65, 109 S.W. 633 (1908).

8. It will be noticed that while the circuit court held that the practice of medicine was a trade and the Supreme Court affirmed this decision yet the Supreme Court did not expressly rule upon this point in its decision.

it is not necessary that the activity be carried on for profit.[9] In fact hospitals are generally held to be engaged in trade or business.[10]

However, the defendants claimed that even admitting these activities to be trade or commerce that they were exempt from the operation of the Sherman Act by the Clayton Act[11] as expanded by the Norris-LaGuardia Act[12] which forbids the issuance of an injunction in a labor dispute. This defense was denied in the Court of Appeals[13] and in the Supreme Court.[14]

The American Medical Association also claimed that this action taken against Group Health Association and its doctors was a mere regulation by the American Medical Association of its members and no one else was concerned or affected by it.[15] In the court below,

9. Non-profit cooperatives have been held to be doing business in many situations. For purpose of qualifying with the corporation laws of a foreign state: State ex rel Griffith v. Knights of Ku Klux Klan, 119 Kan. 564, 572, 232 Pac. 254, 258 (1925); Ku Klux Klan v. Commonwealth, 138 Va. 500, 509, 122 S.E. 122, 125 (1924); For purposes of taxation: Maryland and Virginia Milk Producers Assn. Inc. v. District of Col., 119F. (2d) 787 (1940); Memphis Chamber of Commerce v. City of Memphis, 144 Tenn. 291, 232 S.W. 73 (1921). For complying with political corruption practices: La Belle v. Hennepin Co. Bar Assn., 206 Minn. 290, 288 N.W. 788 (1939). Nor is it necessary to constitute trade or business that it shall be carried on for profit. Hazen v. National Life Assn., 101 F.(2d) 432, 438 (1939).

10. Jorden v. Tashiro, 278 U.S. 123 (1928); Lawrence v. Nissen, 173 N.C. 359, 91 S.E. 1036 (1917); Amendaz v. Hotel Dieu, 145 S.W. 1030 (1912).

11. 15 U.S.C. §17, 29 U.S.C. §52.

12. 29 U.S.C. §§104, 107, 108, 113.

13. 130 F.(2d) 233, 243 (1942).

14. 63 Sup. Ct. 326 (1943). As evidenced by the Congressional committee reports (H.R. Rep. No. 612, 62(nd) Congress, 2d session and Senate Rep. No. 163, 72 (nd) Congress, 1st session) this legislation was enacted in contemplation of disagreements between workingmen or laborers or wage earners with employers. In United States v. Hutcheson, 312 U.S. 219 (1941), the court said, "The Norris La-Guardia Act asserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities." In Columbia River Packers Assoc. Inc. v. Hinton, 315 U.S. 142 (1940), it was held that private fishermen who belonged to the C.I.O. but owned their own boats were private entrpreneurs and their controversy with the packers was not a labor dispute within the meaning of these acts since the stated public purpose of these acts was to aid the individual laborer who was commonly helpless to obtain acceptable terms and conditions of employment. For these reasons the controversy of the Amer. Med. Assoc. with its members and with the Group Health Assoc. did not come within the immunization of the Norris La-Guardia and Clayton Acts. See, (note) 29 Vir. L.Rev. 227 for a discussion on this element of the case in the lower courts.

15. For the limitations upon a profession regulating itself, Fashion Originators' Guild v. Fed. Trade Com., 312 U.S. 457 (1941). It is also true that alleged beneficial ends to a group can not justify illegal ends. Sugar Institute Inc. v. United States, 297 U.S. 553 (1936). The New York Times, April 7, 1941, points out that the American Medical Association has generally discouraged any experimentation with medical cooperatives. It alleges that before

Judge Miller[16] pointed out that professions exist as licensed monopolies at the will of the people and the professions can not justify criminal actions to prevent the development of new methods.[17]

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any legislation is passed concerning medical services on a nationwide scale that experimentation of this type is sorely needed. Evidence of the animosity to any medical cooperative is found in an article written 2 years before the indictment by one of the individual defendants. Jour. Amer. Med. Assn., Oct. 2, 1937, p. 39b. He forecast that physicians who sold their services to Group Health would lose their professional status.

16. Amer. Med. Soc. v. United States, 130 F.(2d) 233, 245 (1942).
17. For the effect of changed circumstances on the legal profession, see: Jackson, "An Organized American Bar," 18 Amer. Bar. Assoc. Journal 383, 1932; Rutlege, "What Changed Conditions Must the Lawyer Face in the Practice of Law," (1936) 9 Am. Law School Review 1174; Llewelyn, "The Bar's Troubles and Poultices and Cures" (1938) 5 Law and Contemp. Problems 107.