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U.S. Supreme Court

**AMERICAN BANANA CO. v. UNITED FRUIT CO., 213
U.S. 347 (1909)**

213 U.S. 347

**AMERICAN BANANA COMPANY, Plff. in Err.,
v.
UNITED FRUIT COMPANY.
No. 686.**

**Argued April 12, 1909.
Decided April 26, 1909.**

[213 U.S. 347, 348] Messrs. Everett P. Wheeler and Horace E. Deming for plaintiff in error.

[213 U.S. 347, 352] Messrs. Henry W. Taft, Moorfield Storey, Walker B. Spencer, and J. L. Thorndike for defendant in error.

[213 U.S. 347, 353]

Mr. Justice Holmes delivered the opinion of the court:

This is an action brought to recover threefold damages under the act to protect trade against monopolies. July 2, 1890, chap. 647, 7. 26 Stat. at L. 209, 210, U. S. Comp. Stat. 1901, pp. 3200, 3202. The circuit court dismissed the complaint upon motion, as not setting forth a cause of action. 160 Fed. 184. This judgment was affirmed by the circuit court of appeals, 166 Fed. 261, and the case then was brought to this court by writ of error. [213 U.S. 347, 354] The allegations of the complaint may be summed up as follows: The plaintiff is an Alabama corporation, organized in 1904. The defendant is a New Jersey corporation, organized in 1899. Long before the plaintiff was formed, the defendant, with intent to prevent competition and to control and monopolize the banana trade, bought the property and business of several of its previous competitors, with provision against their resuming the trade, made contracts with others, including a majority of the most important, regulating the quantity to be purchased and the price to be paid, and acquired a controlling amount of stock in still others. For the same purpose it organized a selling company, of which it held the stock, that by agreement sold at fixed prices all the bananas of the combining parties. By this and other means it did monopolize and restrain the trade and maintained unreasonable prices. The defendant being in this ominous attitude, one McConnell, in 1903, started a banana plantation in Panama, then part of the United States of Columbia, and began to build a railway (which would afford his only means of export), both in accordance with the laws of the United States of Columbia. He was notified by the defendant that he must either combine or stop. Two months later, it is believed at the defendant's instigation, the governor of Panama recommended to his national government that Costa Rica be allowed to administer the territory through which the railroad was to run, and this although that territory had been awarded to Colombia under an arbitration agreed to by treaty. The defendant, and afterwards, in September, the government of Costa Rica, it is believed by the inducement of the defendant, interfered with McConnell. In November, 1903, Panama revolted and became an independent republic, declaring its boundary to be that settled by the award. In June, 1904, the plaintiff bought out McConnell and went on with the work, as it had a right to do under the laws of Panama. But in July, Costa Rican soldiers and officials, instigated by the defendant, seized a part of the plantation and a cargo of supplies and have held them ever since, and stopped the construction and operation [213 U.S. 347, 355] of the plantation and railway. In August one Astua, by ex parte proceedings, got a judgment from a Costa Rican court, declaring the plantation to be his, although, it is alleged, the proceedings were not within the jurisdiction of Costa Rica, and were contrary to its laws and void. Agents of the defendant then bought the lands from Astua. The plaintiff has tried to induce the government of Costa Rica to withdraw its soldiers, and also has tried to persuade the United States to interfere, but has been thwarted in both by the defendant and has failed. The government of Costa Rica remained in possession down to the bringing of the suit.

As a result of the defendant's acts the plaintiff has been deprived of the use of the plantation, and the railway, the plantation, and supplies have

been injured. The defendant also, by outbidding, has driven purchasers out of the market and has compelled producers to come to its terms, and it has prevented the plaintiff from buying for export and sale. This is the substantial damage alleged. There is thrown in a further allegation that the defendant has 'sought to injure' the plaintiff's business by offering positions to its employees, and by discharging and threatening to discharge persons in its own employ who were stockholders of the plaintiff. But no particular point is made of this. It is contended, however, that, even if the main argument fails and the defendant is held not to be answerable for acts depending on the co-operation of the government of Costa Rica for their effect, a wrongful conspiracy resulting in driving the plaintiff out of business is to be gathered from the complaint, and that it was entitled to go to trial upon that.

It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place, the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States, and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress.

No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as [213 U.S. 347, 356] adequate, such countries may treat some relations between their citizens as governed by their own law, and keep, to some extent, the old notion of personal sovereignty alive. See *The Hamilton* (Old Dominion S. S. Co. v. Gilmore) 207 U.S. 398, 403, 52 S. L. ed. 264, 269, 28 Sup. Ct. Rep. 133; *Hart v. Gumpach*, L. R. 4 P. C. 439, 463, 464; *British South Africa Co. v. Companhia de Mocambique*, [213 U.S. 347, 1893] A. C. 602. They go further, at times, and declare that they will punish anyone, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately affecting national interests they may go further still and may make, and, if they get the chance, execute, similar threats as to acts done within another recognized jurisdiction. An illustration from our statutes is found with regard to criminal correspondence with foreign governments. Rev. Stat. 5335, U. S. Comp. Stat. 1901, p. 3624. See further, *Com. v. Macloon*, 101 Mass. 1, 100 Am. Dec. 89; *Sussex Peerage Case*, 11 Clark & F. 85, 146. And the notion that English statutes bind British subjects everywhere has found expression in modern times and has had some startling applications. *R. v. Sawyer*, 2 Car. & K. 101; *The Zollverein*, Swabey, 96, 98. But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. *Slater v. Mexican Nat. R. Co.* 194 U.S. 120, 126, 48 S. L. ed. 900, 902, 24 Sup. Ct. Rep. 581. This principle was carried to an extreme in *Milliken v. Pratt*, 125 Mass. 374, 28 Am. Rep. 241. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent.

Phillips v. Eyre, L. R. 4 Q. B. 225, 239, L. R. 6 Q. B. 1, 28; Dicey, Confl. L. 2d ed. 647. See also Appendix, 724, 726, note 2.

Law is a statement of the circumstances, in which the public force will be brought to bear upon men through the courts. But the word commonly is confined to such prophecies or threats when addressed to persons living within the power of [213 U.S. 347, 357] the courts. A threat that depends upon the choice of the party affected to bring himself within that power hardly would be called law in the ordinary sense. We do not speak of blockade running by neutrals as unlawful. And the usages of speech correspond to the limit of the attempts of the lawmaker, except in extraordinary cases. It is true that domestic corporations remain always within the power of the domestic law; but, in the present case, at least, there is no ground for distinguishing between corporations and men.

The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is prima facie territorial.' Ex parte Blain, L. R. 12 Ch. Div. 522, 528; State v. Carter, 27 N. J. L. 499; People v. Merrill, 2 Park. Crim. Rep. 590, 596. Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute, the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged, but need not be discussed.

For again, not only were the acts of the defendant in Panama or Costa Rica not within the Sherman act, but they were not torts by the law of the place, and therefore were not torts at all, however contrary to the ethical and economic postulates of that statute. The substance of the complaint is that, the plantation being within the de facto jurisdiction of Costa Rica, that state took and keeps possession of it by virtue of its sovereign power. But a seizure by a state is not a thing that can be [213 U.S. 347, 358] complained of elsewhere in the courts. Underhill v. Hernandez, 168 U.S. 250, 42 L. ed. 456, 18 Sup. Ct. Rep. 83. The fact, if it be one, that de jure the estate is in Panama, does not matter in the least; sovereignty is pure fact. The fact has been recognized by the United States, and, by the implications of the bill, is assented to by Panama.

The fundamental reason why persuading a sovereign power to do this or that cannot be a tort is not that the sovereign cannot be joined as a defendant or because it must be assumed to be acting lawfully. The intervention of parties who had a right knowingly to produce the harmful

result between the defendant and the harm has been thought to be a nonconductor and to bar responsibility (*Allen v. Flood* [213 U.S. 347, 1898] A. C. 1. 121, 151 etc.) but it is not clear that this is always true; for instance, in the case of the privileged repetition of a slander (*Elmer v. Fessenden*, 151 Mass. 359, 362, 363, 5 L.R.A. 724, 22 N. E. 635, 24 N. E. 208), or the malicious and unjustified persuasion to discharge from employment (*Moran v. Dunphy*, 177 Mass. 485, 487, 52 L.R.A. 115, 83 Am. St. Rep. 289, 59 N. E. 125). The fundamental reason is that it is a contradiction in terms to say that, within its jurisdiction, it is unlawful to persuade a sovereign power to being about a result that it declares by its conduct to be desirable and proper. It does not, and foreign courts cannot, admit that the influences were improper or the results bad. It makes the persuasion lawful by its own act. The very meaning of sovereignty is that the decree of the sovereign makes law. See *Kawananakoa v. Polyblank*, [205 U.S. 349, 353](#), 51 S. L. ed. 834, 836, 27 Sup. Ct. Rep. 526. In the case of private persons, it consistently may assert the freedom of the immediate parties to an injury and yet declare that certain persuasions addressed to them are wrong. See *Angle v. Chicago, St. P. M. & O. R. Co.* [151 U.S. 1](#), 16-21, 38 L. ed. 55, 63-65, 14 Sup. Ct. Rep. 240; *Fletcher v. Peck*, 6 Cranch, 87, 130, 131, 3 L. ed. 162, 176.

The plaintiff relied a good deal on *Rafael v. Verelst*, 2 W. Bl. 983, 1055. But in that case, although the nabob who imprisoned the plaintiff was called a sovereign for certain purposes, he was found to be the mere tool of the defendant, an English governor. That hardly could be listened to concerning a really independent state. But of course it is not alleged [213 U.S. 347, 359] that Costa Rica stands in that relation to the United Fruit Company.

The acts of the soldiers and officials of Costa Rica are not alleged to have been without the consent of the government, and must be taken to have been done by its order. It ratified them, at all events, and adopted and keeps the possession taken by them. *O'Reilly de Camara v. Brooke*, [209 U.S. 45, 52](#), 52 S. L. ed. 676, 678, 28 Sup. Ct. Rep. 439; *The Paquete Habana* (*United States v. The Paquete Habana*) [189 U.S. 453, 465](#), 47 S. L. ed. 901, 903, 23 Sup. Ct. Rep. 593; *Dempsey v. Chambers*, 154 Mass. 330, 332, 13 L.R. A. 219, 26 Am. St. Rep. 249, 28 N. E. 279. The injuries to the plantation and supplies seem to have been the direct effect of the acts of the Costa Rican government, which is holding them under an adverse claim of right. The claim for them must fall with the claim for being deprived of the use and profits of the place. As to the buying at a high price, etc., it is enough to say that we have no ground for supposing that it was unlawful in the countries where the purchases were made. Giving to this complaint every reasonable latitude of interpretation we are of opinion that it alleges no case under the act of Congress, and discloses nothing that we can suppose to have been a tort where it was done. A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.

Further reasons might be given why this complaint should not be upheld, but we have said enough to dispose of it and to indicate our general point of view.

Judgment affirmed.

Mr. Justice Harlan concurs in the result.

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