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TRADE RESTRAINTS--VIOLATION OF ROBINSON-PATMAN ACT AS A DEFENSE TO SUIT FOR PURCHASE PRICE OF GOODS

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TRADE RESTRAINTS—VIOLATION OF ROBINSON-PATMAN ACT AS A DEFENSE TO SUIT FOR PURCHASE PRICE OF GOODS—Plaintiff brought suit against defendant on renewal notes aggregating about $114,000, the notes representing an accumulated debt on defendant's purchases of cans over a six-year period. Defendant alleged discriminatory quantity discounts in violation of the Robinson-Patman Act.[1] This violation was urged as a defense on two theories: (1) that it denied any recovery of the purchase price, or (2) that it denied, at the least, the recovery of the amount of discrimination which, it was alleged, substantially represented the amount of the notes. The Supreme Court of Florida rejected the defense. *Held,* affirmed. Four justices dissented. *Bruce's Juices, Inc. v. American Can Company,* (U.S. 1947) 67 S. Ct. 1015.

The illegality of plaintiff's conduct was asserted as a defense in actions to enforce contracts at common law where a distinction was made between illegalities "inherent in the contract" and those merely "collateral" to it.[2] This distinction was carried over to cases in which violation of the anti-trust laws was asserted as a defense.[3] The possibility of asserting the defense in this area was further limited by the "exclusive remedies" doctrine, which denied other than the statutory remedies in order to prevent frustration of public enforcement and windfalls to the defending party.[4] For a period of twenty years prior to 1942 the defense fared poorly in the federal courts. Since that time it has been permitted to deny recovery on royalty contracts where the royalty provisions were "inseparable" from price-fixing provisions made illegal by the invalidity of a patent,[5] and to deny recovery for patent, trademark, and copyright infringement.[6] In holding that a violation of the Robinson-Patman Act is not a complete defense to an action for the purchase price, the Court is substantially in agreement; but, as to denying a pro tanto defense in the amount of the discrimination, the opinions differ as to plaintiff's ability to show the fair value of the cans on a quantum meruit basis, since the notes in question could not be tied to any particular sales. The majority relies on the "exclusive remedies"

the absence of a continuity of interest. However, it did not overrule the Watts case where the transferor receives both stock and bonds, the stock giving the necessary continuity of interest. It would seem that obligations will be deemed securities only if they are considered not to be the equivalent of cash. In the companion to the principal case, Adams v. Commissioner, twenty-year debentures were issued. Although the court said the case was governed by its treatment of the Bazley case, it is submitted that the court meant only in that here was no legitimate corporate purpose in the recapitalization and not in the respect that the twenty-year debentures were not securities. In view of its decision in the Watts case, if the court meant to say twenty-year debentures were not securities it would probably have expressly said so.

[1] 49 Stat. L. 1526 (1936), 15 U. S. C. (1940) § 13.

[2] McMullen v. Hoffman, 174 U. S. 639, 19 S. Ct. 839 (1899); 5 WILLISTON, CONTRACTS, § 1661 (1937).

[3] Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431 (1902); Cincinnati Packet Co. v. Bay, 200 U. S. 179, 26 S. Ct. 208 (1906); Continental Wall Paper Co. v. Voight & Sons Co., 212 U. S. 227, 29 S. Ct. 280 (1909).

[4] Wilder Mfg. Co. v. Corn Products Co., 236 U. S. 165, 35 S. Ct. 398 (1915); also see note in 38 COL. L. REV. 192 (1938).

[5] Sola Electric Co. v. Jefferson Co., 317 U. S. 173, 63 S. Ct. 172 (1942); Katzinger Co. v. Chicago Metallic Mfg. Co., (U.S. 1947) 67 S. Ct. 416; McGregor v. Westinghouse Elec. & Mfg. Co., (U.S. 1947) 67 S. Ct. 421.

[6] Morton Salt Co. v. Suppiger Co., 314 U. S. 488, 62 S. Ct. 402 (1942); Mercoid Corp. v. Mid-Continent Co., 320 U. S. 661, 64 S. Ct. 268 (1944); Mercoid Corp. v. Minneapolis-Honeywell Co., 320 U. S. 680, 64 S. Ct. 278 (1944); Hartford-Empire Co. v. United States, 323 U. S. 386, 65 S. Ct. 373 (1945).

doctrine,[7] but seems to indicate that that theory will not be applied mechanically. Even though Congress did not specifically provide for the defense,[8] it might be allowed if the "policy of the statute" would be effectuated thereby. The opinions again differ as to how closely the illegality must be associated with the contract sued on, the dissenting justices showing a greater willingness to go outside the immediate transaction.[9] They also state that the Court should not be unwilling to consider such a complex problem as the economic effect of quantity discounts on competition, even in the absence of prior action by the Federal Trade Commission, which the majority intimates is desirable. While the Court is still concerned with the distinctions laid down in previous cases, this case indicates that the "exclusive remedies" doctrine will not be employed dogmatically and that repercussions of the defense on business relations will be considered.[10]

Richard L. Eckhart

[7] The Robinson-Patman Act provides a number of diverse remedies: private suit for injunction in a federal court, 38 Stat. L. 730 at 737 (1914), 15 U.S.C. (1940) § 26; private suit for treble damages in a federal court, 38 Stat. L. 730 at 731 (1914), 15 U. S. C. (1940) § 15; public enforcement by Federal Trade Commission action with power to issue cease-and-desist orders, 38 Stat. L. 730 at 734-5 (1914), 15 U.S.C (1940) § 21; or suits by a federal district attorney in a federal court for an injunction restraining discrimination, 38 Stat. L. 730 at 736-7 (1914), 15 U.S.C. (1940) § 25.

[8] The Trademark Act of 1946, 60 Stat. L. 427, 15 U. S. C. A. (1946) § 1051-1127, seems to provide for such a defense in § 1115 (§ 33): " . . . (b) If the right to use the registered mark has become incontestible under section 1065 of this title, the certificate shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate subject to any conditions or limitations stated therein except when one of the following defenses or defects is established: . . . (7) That the mark has been or is being used to violate the anti-trust laws of the United States."

[9] See the patent cases cited supra, note 5.

[10] It has been said that if the decision in Samuel H. Moss, Inc. v. Federal Trade Commission, (C.C.A. 2d, 1945) 148 F. (2d) 378, cert. den., 326 U. S. 734, 66 S. Ct. 44 (1945), rehearing den., 326 U. S. 809, 66 S. Ct. 165 (1945), modification of decree den., (C.C.A. 2d, 1945) 155 F. (2d) 1016, is settled law to the effect