

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree.”⁸⁷⁹

Soon thereafter, however, the Court did find a legitimate application for the Sherman Act in *Addyston Pipe and Steel Co. v. United States*,⁸⁸⁰ in which the act was successfully applied to an industrial combination for the first time. The agreements in the case, the parties to which were manufacturing concerns, effected a division of territory among them, and so involved, it was held, a “direct” restraint on the distribution and hence of the transportation of the products of the contracting firms. The holding, however, did not question the doctrine of the earlier case, which in fact continued substantially undisturbed until 1905, when *Swift & Co. v. United States*⁸⁸¹ was decided.

⁸⁷⁹ 156 U.S. at 17. The doctrine of the case boiled down to the proposition that commerce was transportation only, a doctrine Justice Harlan undertook to refute in his notable dissenting opinion. “Interstate commerce does not, therefore, consist in transportation simply. It includes the purchase and sale of articles that are intended to be transported from one State to another—every species of commercial intercourse among the States and with foreign nations.” 156 U.S. at 22. “Any combination, therefore, that disturbs or unreasonably obstructs freedom in buying and selling articles manufactured to be sold to persons in other States or to be carried to other States—a freedom that cannot exist if the right to buy and sell is fettered by unlawful restraints that crush out competition—affects, not incidentally, but directly, the people of all the States; and the remedy for such an evil is found only in the exercise of powers confided to a government which, this court has said, was the government of all, exercising powers delegated by all, representing all, acting for all. *McCulloch v. Maryland*, 4 Wheat. 316, 405.” 156 U.S. at 33.

⁸⁸⁰ 175 U.S. 211 (1899).

⁸⁸¹ 196 U.S. 375 (1905). The Sherman Act was applied to break up combinations of interstate carriers in *United States v. Trans-Missouri Freight Ass’n*, 166 U.S. 290 (1897); *United States v. Joint-Traffic Ass’n*, 171 U.S. 505 (1898); and *Northern Securities Co. v. United States*, 193 U.S. 197 (1904).

In *Mandeville Island Farms v. American Crystal Sugar Co.*, 334 U.S. 219, 229–39 (1948), Justice Rutledge, for the Court, critically reviewed the jurisprudence of the limitations on the act and the deconstruction of the judicial constraints. In recent years, the Court’s decisions have permitted the reach of the Sherman Act to expand along with the expanding notions of congressional power. *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186 (1974); *Hospital Building Co. v. Rex Hospital Trustees*, 425 U.S. 738 (1976); *McLain v. Real Estate Bd. of New Orleans*, 444 U.S. 232 (1980); *Summit Health, Ltd. v. Pinhas*, 500 U.S. 322 (1991). The Court, however, does insist that plaintiffs alleging that an intrastate activity violates the act prove the relationship to interstate commerce set forth in the act. *Gulf Oil Corp.*, 419 U.S. at 194–99.