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COMMENT

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In his recent article on "Some Constitutional Questions under the Federal Anti-Trust Law," 7 YALE LAW JOURNAL, 289, Mr. Edward B. Whitney doubts very much whether the Anti-Trust Law will be held applicable where the contract in restraint of trade is merely ancillary to a sale of lease of a business. *Ebel* v. *Brett*—a case recently decided by the New York Supreme Court, Appellate Division, bears out Mr. Whitney's conclusions and may be an indicator of the result the United States Supreme Court will reach when it comes to decide the same point. For Mr. Justice Peckham in his opinion in *U. S.* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 329, admits that "A contract, which is the mere accompaniment of the sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which, in effect, is collateral to such sale, and when the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute." In *Ebel* v. *Brett* one ship broker sold to another all his interest and good will in the business of freighting vessels for Port au Prince, agreeing for a specified time not to solicit freights for that place and the Court held that the Anti-Trust Law did not apply. From the joining of the word "contract" with the words "combination" and "conspiracy" in the Statute, it is clear that it was aimed at trusts and monopolies, and contracts which are directly in restraint of trade. As Judge Barrett says: "It certainly was not intended to prohibit a man from selling his business in the ordinary way, and from thereupon obtaining the full value thereof through the instrumentality of an incidental covenant not to compete with the purchaser within some limited area." *U. S.* v. *Addyston Pipe and Steel Co.*, 85 Fed. 271, is another recent case analogous but not deciding the same point.

In the attempts which are constantly being made to raise the standard of physical health, and to so restrict the practice of medicine as to best conduce to this end, an important advance has been made in *Hawker* v. *People of the State of New York*, 12 U. S. Supreme Court. Advance Sheets, 609, which arose under a statute making it a misdemeanor for any one to attempt to practice medicine after a conviction of a felony. The plaintiff in error had been so convicted several years before, and had served out his sentence thereunder. It was here held that this statute was not an *ex-post facto* law, increasing the punishment, but simply a valid exercise of the police power; under which the State could require moral qualifications for the prac-

tice of medicine, and could make a conviction of felony conclusive proof of a lack of such morals.

This case is a very good example of the disinclination of the courts to restrict the exercise of the police power of a State, especially when it is directed toward the preservation of the public health. As the population increases, it is one of the most important and difficult functions which the State must perform, and since the right to practice medicine is entirely dependent upon legislative permission the State may require a good character as a necessary qualification as well as mere knowledge of the theory of medicine. If by so doing the number of unworthy practitioners can be decreased the benefit accruing to the public in general will be sufficient to more than offset the injustice done by such a law in some cases.