ANTI-TRUST LAW FINDS DEFENDER IN WICKERSHAM

Attorney General Opposed to Proposed Amendment Particularizing Unlawful Practices.

Washington, Dec. 5.—The Sherman anti-trust law is proving its adequacy as a civil statute and there is no necessity for the much-discussed proposed amendment particularizing unlawful practices in restraint of trade, according to George W. Wickersham, attorney general of the United States, in his annual report submitted to congress today.

On the other hand, however, the attorney general does not pass judgment upon the efficacy of the anti-trust act as a criminal statute. He merely says:

"The experience of the last year in endeavoring to enforce criminal liability under the Sherman law has not been encouraking." The attorney general defends the commerce court, the abolition of which was attempted at the last session of congress. A return to the old method of distributing litigation arising from the orders of the interstate commerce commission to the district courts would be injurious to the interests of the public and delay the administration of justice, says Mr. Wickersham.

Drawing conclusions from the decrees of dissolution and injunction which already have been entered under the Sherman law, Mr. Wickersham maintains that the federal courts are exercising in equity suits a power to restrain which is co-extensive with the evils against which the Sherman law was enacted. The courts have found no difficulty, he adds, in applying the terms of the law to meet and enjoin the continuance of any form of unfair competition, which has resulted in imposing an undue restraint upon interstate commerce or which makes for monopoly.

These decrees, the attorney general continues, demonstrate that no amendment of the law in the direction of declaring the illegality of particular practices is necessary to clothe the courts with full power to prevent any and all acts which may be employed to accomplish the illegal purposes denounced by the statute.

Seeking an Evasion.

"I am strongly of the opinion," says Mr. Wickersham, "that the advocacy of amendments of the law which shall particularize different acts as constituting unlawful restraints or attempts at monopoly has its origin, not so much with those who desire the enforcement of the law, as with those who are anxious to secure a safe means of its evasion. An enumeration by statute of the different practices which, in and of themselves, without regard to the circumstances of particular cases, should be declared illegal will either go too far or not far enough."

The attorney general takes issue with the decision of James Colt, Putnam and Brown at Boston, authorizing the hearing in private before an examiner of the civil anti-trust suit against the United Shoe Machinery company, and asks for legislation admitting the public and representatives of the press to such hearings.

"The decision, it appears to me," continued Mr. Wickersham, "is based upon a manifest misconception of the nature of the proceedings and the character of the parties. When the government of the United States is a party to a suit, and particularly to a suit brought under the Sherman anti-trust law, to prevent unlawful restraints upon interstate commerce or foreign commerce—essentially a matter affecting the public—all the people have a legitimate interest in the proceeding and are entitled to know just what evidence is being given and when it is given. The public are the real parties to the suit."

The suit against the "Coffee Trust" or the Brazilian valorization scheme, the operations of which, the attorney general says, has resulted in more than doubling the retail price of coffee to the American consumer and thereby laying a heavy tax upon him, has developed what the attorney general regards as a defect in the still operative section of the Wilson tariff law dealing with combinations. Pointing to the fact that the government was unable to secure a temporary injunction restraining the exportation of 920,000 bags of coffee, said to be stored in New York City under the valorization scheme, the attorney general recommends the enactment of an amendment to the Wilson law, authorizing the seizure by the government in the state of entry of merchandise imported for the purposes of unlawful combination. At present such commodities must be in the course of interstate transportation to justify seizure.

National Packing Company.

The voluntary dissolution of the National Packing company, following the acquittal at Chicago of the beef packers of criminal violation of the Sherman law, has accomplished, in the belief of the attorney general "a substantial restoration of competitive conditions in a very large industry which have not for a long time heretofore existed."

Objections to the commerce court in the judgment of Mr. Wickersham, would be met by legislation requiring the interstate commerce commission to state in its report, as a basis for its order, the findings of fact and the reasons on which the order is based; providing that all finding of fact and conclusions of policy appearing in the report shall be final and conclusive; and limiting court review exclusively to questions of law arising upon the commission's report.

As a result of the decision of the supreme court holding that the commerce court has no power to review so-called "negative" orders of the interstate commerce commission, the attorney general recommends that the law be amended so that the commerce court will have jurisdiction to revive all errors of law in respect to orders of the commission which deny relief to shippers or others, just as the court now has power to review orders granting relief. The practical result of the present situation, he adds, is that relief against errors of law by the commission is limited to the railroads and denied to the shippers

Lehigh Valley Suit.

In connection with the suit against the Lehigh Valley Railroad company under the commodities clause of the interstate commerce act, because of its alleged ownership and transportation of the coal of the Lehigh Valley Coal company, the attorney general says that the organization by the railroad company of the Lehigh Valley Coal Sales company seems to satisfy the demands of the law as interpreted by the supreme court.

"The situation is," he continues, "that coal which is shipped over the Lehigh Valley railroad is mined by the Lehigh Valley Coal company, all of whose stock is owned by the railroad company, and is sold at the breakers to the Lehigh Valley Coal Sales company, all of whose stock has been originally issued to and distributed among the stockholders of the railroad company, pro rata, but which company has separate offices from the railroad company, and separate directors, and whose stock may be sold by the stockholders without regard to their continued holding of stock in the railroad company. By this arrangement both the railroad company and the coal companies seem to have parted in good faith with title to the coal before transportation begins and, therefore, such transportation would seem to be free from the prohibition of the commodities clause as construed by the supreme court."

The attorney general announces his intention of soon filing suits in equity against the Southern Pacific Railroad company and others for the recovery of vast areas of petroleum-bearing lands in California said to be worth more than $500,000,000. The legislation under which the patents were granted to the railroad company, he says, excepted mineral lands other than iron or coal lands. The railroad company contends, according to the attorney general, that the exceptions in the patents are void.

To investigate and preserve the rights of the government to the sources of water supply for the stupendous reclamation projects constructed or in contemplation, Mr. Wickersham strongly recommends an appropriation to employ an adequate force of lawyers. Pointing out that innumerable claims inevitably will be lodged against the government, contesting its right to selected water sources, he says the welfare of the citizens who have staked their fortunes on the success of these enterprises and the honor of the government demand immediate action.

The department of justice, including the offices of the attorney general and all the United States attorneys, has been on a paying basis during President Taft's term of office, according to figures submitted in the report, a surplus of nearly $2,500,000 over expenses having been turned into the federal treasury. For the four years ended June 30, last, the department collected $11,212,959 through suits and compromises and expended $8,754,565. The collections for the preceding four years amounted to $3,597,442 and expenses $6,366,798. In addition, the government recovered during the past four years 1,623,119 acres of public lands.

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DOG POISONER IS ABROAD IN CITY

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"Every person who wilfully administers any poison to an animal, the property of another, or who maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding $500."—Section 7152 revised codes.

The dog poisoner is again abroad in the land. Several valuable animals and family pets have fallen victims within the last two or three nights. He seems to have operated largely in one neighborhood and to have taken many of the pets of the children in only one section of the city.

Among his victims has been a highly prized and valuable Scotch collie belonging to Bishop Funsten. A pet belonging to William Koelsch and another at the home of the Kottrell family have died from the poison that he has set out for the dogs. Others that have not been reported have also probably met the same fate and the officers will probably be notified to look out for the man who is causing the death of so many of the dogs in this section of the city.

Only valuable animals seem to have been selected by the poisoner. The finest dogs in the neighborhood have been poisoned and several of them have been feed with ground glass. The statutes of this state provide a heavy penalty for the poisoning of animals and fixes a severe jail or penitentiary sentence for the person found guilty of the death of any of them. The statutes also provide a fine in connection with a jail sentence and are written in such a way that there is no discretion left with the court but to add a penalty not exceeding $500 in addition to the penitentiary or jail sentence imposed.

The families in the eastern part of the city are aroused over the wholesale murder of their pets and will probably take drastic measures to prosecute any person whom they may find attempting to kill any more of the animals of the neighborhood.

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WILL OF SQUAW MAN TESTED IN SUPREME COURT

Decision Entered by Judge John M. Flynn in Kootenai County District Court Is Reversed.

The validity of the will of Stephen E. Liberty, known on the Coeur d'Alene reservation as a "squaw man," having married one of the Indian women of the Coeur d'Alene tribe, later separating from her and then signing an agreement of separation, was decided by the supreme court yesterday in the case of Melvina L. Head versus Benjamin J. Nixon in which the court reversed judgment entered in the district court for Kootenai county, Judge John M. Flynn presiding. Chief Justice Stewart wrote the opinion. It is concurred in by Justice Sullivan and Justice Ailshie.

The facts in the case are set forth by Chief Justice Stewart as follows:

"In September, 1868, at Rathdrum, Stephen E. Liberty, a white man, and Christina Buschey (Buchey), an Indian woman, were married. Christina Buschey was a member of a tribe of Indians called the Coeur d'Alene tribe, and lived with the tribe. After the marriage Liberty was adopted a member of the tribe by certain ceremonies appropriate to the occasion. Mr. and Mrs. Liberty resided on the reservation a greater part of the time after their marriage, and a family of eight children were reared: Edmund A., Lee and Warren Liberty, and Melvina L. Head, the plaintiff, Mary Nixon, Rosilda Butler and Clara Sampson, and Hector Liberty, deceased.

Conflicting Wills.

"On Jan. 18, 1911, Stephen E. Liberty died in the Sacred Heart hospital at Spokane. He left two alleged wills, one of which will be designated as exhibit '1' and the other exhibit 'A.' On Jan. 20, 1911, exhibit 'A' was filed for probate in the probate court of Kootenai county, Ida., by Melvina L. Head. A few days later exhibit '1' was also filed in the probate court of Kootenai county for probate, and the present contest as to which was the will of Stephen E. Liberty began.

"Stephen E Liberty and Christina Buschey Liberty lived together as husband and wife, after the marriage entered into between them, until the year 1899, and lived for several years on a ranch on the Coeur d'Alene Indian reservation, near Desmet mission. An agreement of separation was made between them during that year, and a settlement was made, under the terms of which Mrs. Liberty was given the ranch, livestock, and all property belonging to the pair, and she released all claim for future support. The land in controversy in this case was acquired by Liberty as an Indian allotment in the year 1906. This allotment was made under the act of congress, after Liberty was adopted a member of the tribe. After this separation it appears that the parties did not live together, except a few days at a time; that about the tenth day of January, 1911, Liberty was taken to the Sacred Heart hospital at Spokane; that Liberty notified his wife of the fact, and offered to take her to Spokane, and she refused, and stated she would not go across the street to see him.

"The evidence shows that exhibit 'A,' and also the codicil attached thereto, were signed by 'Stephen E. L. Liberty' in the presence of Abner E. Bowen and Beth Chambers, and in the presence of Liberty, Miss Chambers, the nurse, was informed by Bowen that Liberty wanted her to witness the will; that both Miss Chambers and Mr. Bowen saw Liberty sign the will and also the codicil, and subscribed their names thereto in the presence of Liberty, and in the presence of each other; and that after the conclusion of the signing the will and codicil thereto were shown to Liberty, who said, "That is all right.'"

Reverses Lower Court.

In conclusion Justice Stewart says:

"We therefore conclude in this case that will exhibit '1' is a revocation of will exhibit 'A.' This later will, exhibit '1' as shown by the evidence, was executed without any undue influence or fraud, and it was executed and signed in compliance with the statutes of the state, and was the completed, matured testamentary intentions of the testator as regards the disposition of his property.

"In view of the foregoing conclusions, the judgment in the case must be reversed. From the evidence, as shown in the record, we are satisfied that a judgment should be rendered in accordance therewith, and that will exhibit '1' should be held to be the genuine and last will of S. E. Liberty, the testator. We do not direct such a judgment, in view of the fact that the parties may possibly have other evidence they would desire to introduce upon a new trial. If such evidence, however, is not available, then such a judgment should be entered."

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