# STRUGGLE FOR CONTROL OF THE NORTHERN PACIFIC IS ON

Continued From First Page.

nounce the order in which the attorneys for the Securities company would be heard later, and it was agreed that each side would have not to exceed an hour and a quarter in closing, the preliminary arguments to occupy about an hour each.

### MR. EVARTS OPENS ARGUMENT.

The preliminaries having been completed Maxwell Evarts was the first to address the court in behalf of the petitioners. Mr. Evarts discussed the historical features of the case at some length. He interpreted the ruling of the United States supreme court to mean that the Northern Securities company must distribute its stock to its original owners; the court said the Securities company had gained no title in the stocks and was simply a holder, the title being in the original owners. Harriman was bound by the decree as though he had been party to it.

When the time came for the distribution of the stocks held by the Securities company the Harriman interests, he said, discovered that the plan of distribution was hostile to them and would give the common control of two competing railroads to a group of men even more strongly than under the old order in which the Securities company

He contended for the right, as trustees for stock put into the Securities company, to recover what they had put in and the difference between what they had paid in and what the Securities company offered them. The difference amounts to more than a million

dollars annually in interest. To give his clients the right to intervene, he contended nothing is needed but a mere statement of the case, the powers conferred by the Sherman anti-trust legislation being designed to give the court all the powers of equity.

To wholly suppress the effect of a combination of railroads, he contended, it was necessary to distribute the stock to the parties from whom it had originally come, and declared his clients would not be forced into a combination which he believed illegal in the face of an act of congress.

The speaker cited a supposititious case and argued that the same principle applied to the procedure being attempted by the Northern Securities company, the only difference being that one case governed individuals and the other corporations. While only a bailee of the stock, the Securities company was seeking to distribute it as though it had title, and theory of ownership could not be sustained in view of the decision of the supreme court declaring the company unlawful. The court was virtually in control of the properties of the company, and constructively of all the assets of the company, as much as though a receiver had been appointed. The only way in which the stock could be touched except by the act of the court, was being avoided by the Securities company. The principle that a decree of a court, where property was involved, could be invoked to secure a just distribution, was doubtless true. This court, therefore, had jurisdiction, and had a right to hear and determine the petition for

# KNOX NOTICE IS ANNOUNCED.

Just as Mr. Evarts had closed his argument, Judge Sanborn interrupted the proceedings to ask the attorney if he had knowledge of a notice from the United States government that it stood squarely on the decree of the supreme court and would insist on the carrying out of its mandates. District Attorney Haupt read the notice from Attorney General Knox and when he had concluded, Attorney Guthrie said: "In view of the fact that the attorney general has made us parties to the litigation, the ends of justice require that we be heard. It does does not lie with the attorney general to say that we shall not be heard. We are entitled to a day in court."

The notice of the government's position was the event of the day's proceedings, and created a decided sensation in the court room. It was taken to mean that the Securities company would have the strong arm of the federal government in its effort to ratably distribute the stock of its company among its shareholders.

Elihu Root, counsel for the Northern Securities company, followed Mr. Evarts, and spoke for nearly an hour and a half. His argument covered almost every conceivable phase of the case. He attacked Harriman for sharing in the formation of the company as a director and then attempting to gain a preference over the other shareholders in the profits. The decree is limited to the jurisdiction of the court and the necessities of the case. The court, he said, was not exercising general equity jurisdiction, Harriman had opposed the suit of the attorney general and now asks to modify the decree on the very questions on which it was de-

He insisted that the distribution of the shares on the ratable plan would not create a control of the Northern Pacific but the Harriman plan would create a combination of two parallel and competing roads-the Northern Pacific and the Union Pacific-and argued against the theory advanced by the petition of constructive control. The court could not become the administrator of the property in controversy, and in conclusion, he charged Harriman with being particeps criminis and trying to wrest the million dollars his attorneys spoke of from the shareholders of the Securities corpora-

Mr. Root was most effective in his argument, resorting to none of the arts of the orator, but his discussion of the issues involved in the great case was clear, lucid and convincing to many in the audience. He was freely congratulated by his fellow counselors at the conclusion of his argument.

# Mr. Root Discusses Issues.

Former Secretary Root said in part:
The counsel for the Oregon Short Line company, which is asking leave to file a petition as intervenor, has now put himself squarely upon the ground of a perhonor's decree. Let me ask your attention first to the main and salient proposition of the proposed intervenors. That is, that it is necessary to the due execution of this decree that a further order or judgment shall be made directing the return to the Oregon Short Line or to thrust company, which is the holder under a deed of trust of the stock which they own in the Northern Securities company, originally conveyed to the Northern Securities company by Messrs, Harriman and Pierce.

The most marked characteristic of the said in part:

Mr. Harriman, the petitioner here, was a director of the Northern Securities company, it appears before you and upon the records in the cause, was first organized by the filling of a certificate of organization in the state of New Jersey on the 13th of November, 1901, and on the 14th of November, 1901, and on the 14th of November the organization of the board of directors of the company as it continued in the transaction of its business was made, and upon that day—upon the first day of the corporate life of the corporation—Mr. Harriman became a director of the board of which this present day of the corporate life of the corporation—Mr. Harriman became a director of the board of which this petitioner which you, refused to the attorney general. Former Secretary Root said in part: Former Secretary Root said in part:
The counsel for the Oregon Short Line company, which is asking leave to file a petition as intervenor, has now put himself squarely upon the ground of a person seeking for the execution of your thonor's decree. Let me ask your attention first to the main and salient proposition of the proposed intervenors. That is, that it is necessary to the due execution of this decree that a further order or judgment shall be made directing the return to the Oregon Short Line or to

action which this court took was the purely negative character of the relief awarded. The decree finds two matters of fact, one that the defendants entered into applications of the combination of the com of fact, one that the defendants entered into a combination or conspiracy in restraint of trade and commerce, the other that the stock of the Great Northern and the Northern Pacific companies claimed to be held and owned by the defendant, the Northern Securities company, was acquired and is held by virtue of that illegal combination, and then proceeds to five negative provisions:

First, that the Northern Securities company, its officers, agents and servants, are enjoined from acquiring or attempting to acquire further stock of either of these railroads.

Second, that the Northern Securities company be enjoined from voting the

company be enjoined from voting the stock they have already acquired.

Third, that the Great Northern and the Northern Pacific be enjoined from permitting that stock to be voted.

Fourth, that these railroad companies be opicited from proving our dividends.

be enjoined from paying any dividends



Elihu Root Explains Origin of the Northern Securities Company.

ipon the stock that has been acquired, Fifth, that the railway companies, their officers, directors, servants and agents be enjoined from permitting or suffering the Northern Securities company or any of its officers or agents to exercise any control over their corporate acts." And there ends the operative provisions of the

Decree Limited to Thou Shalt Not.

What is the execution of that decree which is limited to 'Thou shalt not?' which directs nothing to be done by anyone whomsoever? What can be the execution of that decree but obedience, but refraining on the part of the defendants and all their agents and servants from doing the things which are prohibited? And so long as the defendants, their servants and agents refrain from doing the things which your honors have commanded them not to do, what further execution of the decree is possible?

Your honors were proceeding under a peculiar statute. You were not exercising general equity jurisdiction. You were proceeding under the fourth section of the Act of 1890, which was in its terms prohibitive, which said, "Thou shalt not," and only "Thou shalt not."

Having invoked that authority on your honors, next, and honing the the exercise. Decree Limited to Thou Shalt Not.

Having invoked that authority on your honors' part and having by the exercise of that power brought before you here a corporation of the state of New Jersey, the attorney general in his bill prayed not only the prohibitory relief which was expressly authorized by the statute but prayed also that your honors should direct that the stock of the Northern Pacific and Great Northern companies, which had been vested in this Northern Securities company pursuant to what he alleged and what the court has now found to have been an illegal combination, should be returned to the persons from whom it originally come. Having invoked that authority on your

inally come.

The attorney general in that prayer, going beyond the express authorization of the statute, when your honors came to draft your decree you refused the relief that he asked—for the return of the stock of the Northern Pacific and the Great Northern to the persons from whom it came—and made your decree square precisely with the limitations of the statute.

# No Interference Necessary.

And it stands, therefore, in this court and in this case upon your honors' decree—now affirmed by the judgment of the supreme court of the United States—that no interference with the conduct of the affairs of his corporation was necessary to the full exercise of your honors' jurisdiction except "Thou shalt not do thus and so." The five things which your honors said shall not be done, stand upon your decree, and upon the judgment of the supreme court affirming it, as all that it was necessary for your honors to do to prevent the violations of the law complained of by the government in this cause. And it stands, therefore, in this court

Your honors were not, however, silent upon the subject of the attorney general's prayer for a direction that this stock be returned. Refusing a decree that it be returned, the opinion upon which the decree was based, after describing the relief that would be given, proceeded to say, "And finally, permitting the securities company to return and transfer to the stockholders of the Northern Pacific and Great Northern companies any and all shares of stock of those companies which it may have received from such shareholders in exchange for their own stock." That is to say, your honors said, "We will not, and it is not necessary, for the purpose of vindicating this law, to make any direction about what this corporation shall do with its stock. We will prevent their exercising the illegal control which restrains competition, and we will do it by injunction, and it is not necessary to go beyond that and give any direction about what they shall do with the stock they have received, but while we will not order it, we will permit it."

Refused to Order Return of Stock. Your honors were not, however, silent

# Refused to Order Return of Stock.

Then when you came to the decree I observe that so careful were you to refrain from interfering with the affairs of this corporation beyond the prohibitions necessary to vindicate the law that instead of using the word "permit." which was used in the opinion, the language is changed and you say, "but nothing herein contained shall be construed as prohibiting." So that your honors did not herein contained shall be construed as prohibiting." So that your honors did not make yourselves the source of authority for the return of the stock; you not only refused to order its return, but you refrained from making yourselves the source of authority for its return and consequently disposed of that branch of the attorney general's prayer by saying that nothing which you did do should be held to prohibit the corporation making such a disposition.

Now, our friends come into court and

such a disposition.

Now, our friends come into court and they ask that you make a decree; they ask that they be allowed to file a petition in intervention, to the end that they may ask your honors to make the decree which you refused to the attorney general.

your decree ought to be reversed because of the want of proper parties in the original cause.

Nevertheless, if it appeared to the court in any way that something was about to be done affirmatively which would amount to a violation of the negative provisions of the decree, of course your honors have jurisdiction, in the execution of the decree, to make such appropriate order or issue such appropriate process as may be necessary to prevent it. My learned friend says that a plan of distribution of the assets of the Northern Securities company will be in effect a violation of the decree. Why? The distribution of the assets of the Northern Securities company cannot be a violation of your decree, for it is putting out of the hands of the corporation, whose holding of those assets you have declared to be illegal, the assets themselves. It cannot be a violation of your decree which condemns the holding of stock by the Northern Securities company to part with it.

But he says the return of this stock in the way in which it is proposed, that is, by equal distribution among the stockholders, will put into the hands of the persons who were originally concerned in getting up the Northern Securities company to the Northern Securities company to the Northern Securities company to part with it.

the company for the Northern Securities

But he says the return of this stock in the way in which it is proposed, that is, by equal distribution among the stock-holders, will put into the hands of the persons who were originally concerned in getting up the Northern Securities company the stocks of these two relirond corporations.

The first consideration that arises on that proposition is that that would seem to be the concern of the complainant in this cause. It would seem that if a proceeding open and public in its nature, as is this, appearing upon the petition to be the concern of the complainant in this cause. It would seem that if a proceeding open and public in its nature, as is this, appearing upon the petition to be the Northern Securities company, published in the newspapers, known all over the world—if a proceeding of that kind were demed to be in violation direct or indirect of the prohibitions of your honors' decree, that the complainant in this bill, the distribution stopy of the same particular to the proceeding of the kind were demed to be in violation direct or indirect of the prohibitions of your honors' decree, it at the complainant in this bill, the distribution stopy of the same particular to the proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the same particular to the world—if a proceeding of the same particular to the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the kind were demed to prove the world—if a proceeding of the world—if a proceeding of the kind were demed to p

make the distribution with a reduction of the capital by 99 per cent, leaving but 1 per cent, and the distribution of the 99 per cent of all its assets equally among all the corporators.

Now, my learned friend, Mr. Guthrie, says that is not fair. Why not? Isn't it in accordance with the contract that he made? What are the rights upon the certificates of stock he holds as compared with all the others who became parties to the contract of incorporation, but the right to an equal share in the property of the corporation upon its dissolution, or upon any event which calls for the distribution of assets?

Now, it is true that he may prefer a

a distribution in kind. But is that a question affecting the execution of your honors' decree? That is the question for the stockholders of this company to discuss and thresh out among themselves in the tribunal which has the proper jurisdiction of the winding up of the corporation of the state of New Jersey. Under the laws to which my learned friend's client, equally with all the other stockholders of the Northern Securities company, have submitted themselves by their holders of the Northern Securities company, have submitted themselves by their contract. The proposed action of the corporation is in accordance with that equality which is equity, and at present what the corporation is doing is to call a meeting of all the stockholders in order that they may pass upon the fairness and justice of that method of distribution.

It would be a violation of your honors' injunction restraining this corporation from voting this stock or exercising any influence over these corporations, in a suit which charged the formation of the corporation as an illegal combination—that it would be a violation of your injunction for the stock to be put in the hands of a number of individuals who, my friend says, would combine as individuals—that is, would make another combination as individuals for the purpose of

### tion as individuals for the purpose of controlling these roads. Judge Sanborn Interrupts.

The Court (by Judge Sanborn): Let me ask you a question right there. Suppose that this stock was about to be transferred to another holding corporation just created in the state of New Jersey and that fact was brought to the attention of the court would it not be proper for the

created in the state of New Jersey and that fact was brought to the attention of the court, would it not be proper for the court to take some action to prevent that?

Mr. Root: I have no question that it would be proper. Whether it should be by the intervention of an outsider at the foot of this decree or by independent bill for the restraint of a new and separate combination is another question. But there is no question but that it would be within the authority of the court to do that.

The Court (by Judge Sanborn): Now, what is the difference, in your mind, between that proposition and the proposition made by the intervenors?

Mr. Root: The difference in my mind between that proposition and the proposition made by the intervenors are alleging an entirely new and different combination, in the future; not a simple continuance under another form of the same violation of law which your honors have dealt with, as would be another holding company. But they are setting up the fact that the vesting of title in a number of individuals will lead to a combination in violation of law. How can your honors accept a settlement of that kind regarding these in dividuals? Has there been corruption of blood? Have these individuals lost their rights as citizens? Are they proscribed? Have they been deprived of the right to hold stock? Is there any presumption that Mr. Hill, Mr. Morgan, Mr. Kennedy, Mr. James, are violators or are to be violators of the law? Your honors have held that the formation of a corporation of the purpose of holding this stock is in itself acquiring the power to control except through some future constrincy or combination between them.

Mr. Pierce cannot plant the contract, and to come to his aid and make a decree that he get back what he as parted with. What is the rule? That a court of equity. What no contract as that, such a court of equity. What no contract as that, such an agreement as that, no right arises; that in such a situation the right of the defendant is the better, the right of the ossessor i

This applicant did not merely stand is see the attorney general ask for this real see the attorney general ask for this real lief and your honors refuse it, but by the presence of one of the petitioners in the board of direction of the defendant the Securities company, they opposed the securities company to proposed the securities company to the defendant the Securities company to the defendant the Securities company to prove the securities company to part with it.

The careful limitations which was in issue and was determined in the original cause.

Satisfied Attorney General.

The careful limitations which was in issue and was determined in the original cause.

Satisfied Attorney General.

The careful limitations which your honors placed upon your judgment were an answer to my friends, represented through the board of directors of the Sec of the want of proper parties in the original cause.

Nevertheless, if it appeared to the couring any way that something was about to be done affirmatively which would not the learned and cause.

Nevertheless, if it appeared to the couring any way that something was about to be done affirmatively which was of the want of proper parties in the original cause.

Nevertheless, if it appeared to the couring any way that something was about to be done affirmatively which would not the securities of the want of proper parties in the original cause.

Nevertheless, if it appeared to the couring any way that something was about to be done affirmatively which would not the securities of the Northern Securities company for the

# Give Control to Union Pacific.

unprofitable.

I ask your honors whether you have decided that it was not necessary to the exercise of the jurisdiction under this statute—decided it in the face of the prayer of the attorney general's bill, and after your judgment has been affirmed by the supreme court of the United States—whether you whether you are prepared to extend the jurisdiction under that statute to turning this into an administration suit and undertake to wind up the affairs of this this into an administration suit and undertake to wind up the affairs of this New Jersey corporation in this court in Minnesota. By your decision it is unnecessary to the exercise of the jurisdiction. By your decision it is unnecessary for the vindication of the statute, for the purposes—and the sole purposes—of which you have been enabled to bring this corporation here; and it will be a great and startling extension of the claim to federal jurisdiction over state corporations.

Foreign to the Purpose.

Foreign to the Purpose.

It is quite apparent the kind of right which they wish to assert is one which should be asserted by independent bill; involves the assertion of new issues; it involves the assertion of new issues; it involves the introduction of new defendants. It is foreign to the purpose and foreign to the decree in this suit.

They are not claiming rights as shareholders. They propose to repudiate any right as a shareholder of the Northern Securities company. They say to your honors the effect of this transaction into which we entered with Messrs. Hill and Morgan and Kennedy and James in the making of this corporation have now been held to be such that we are entitled to get back the property which we put in, and we offer to hand back the certificate of stock that we got. They repudiate the relation of shareholders. They are not here as members of a class. They are here asserting a separate and independent right of action against this corporation, never represented by any class here. And upon what do they base it? My learned friend does not put it out in his petition; he does not state it in his brief. But it is that he has entered into an illegal, what right has he to get back the stock that he sold?

So he comes into court asking your honors to relieve him, a party to an illegal contract, and to come to his aid and make a decree that he get back what he has parted with. What is the rule? That

in itself acquiring the power to control and therefore is illegal. But the holding by these individuals is acquiring no power to control except through some future conspiracy or combination between them which will be in violation of law. And you are not to assume that they are not competent to hold securities and to deal with them lawfully. And you cannot take any such a ground as that. But whenever the courts do andertake to give any relief upon such a ground of exception, they also do it in order to avoid gross injustice, and they always consider the equities of all parties to the transaction, and you would find in the first place that these gentlemen will do in the future as the basis for making a new decree against them.

No Foundation in Fact.

But, to go beyond that, the papers which have been filed here show that there is absolutely no foundation in fact for the statement that this distribution will vest in this class of persons the control of either of these companies.

This distribution will result in scatter-

### Lovett for Petitioners.

Upon the reassembling of court after the noon hour, R. S. Lovett opened for the petitioners. He said:

We take it that in determining the

the petitioners. He said:

We take it that in determining the question—the question now before the court—the court will not look beyond the petition and its own records in the suit in which it is sought to file the intervention; that the court, upon application for leave to intervene, will not go into any question of fact that may be raised by affidavit, but will decide whether, assuming the application to be true, the petitioners make a prima facie case entitling them to the relief sought. If such prima facie case is made, then we take it that the defense that may be interposed, the reasons that may exist, if there are any, why the relief should not be granted, especially the reasons that arise upon facts not before the court, will be determined only after the parties have an opportunity to examine the witnesses and take the testimony in the regular way.

When the court comes to take the proof (if we are granted leave to intervene), we shall have an opportunity to examine Mr. Nichols, the secretary of the company, and also the holders of this stock, the stock of the Northern Securities company, and we can then determine—especially upon an examination of the persons or some of the persons in whose name the stock is registered—we can then determine whether or not it is true, as Mr. Nichols states, simply from the record as secretary, that those interested in the formation of the Northern Securities company, those individuals who were defendants in this suit, will own only 23 per cent of the stock of the Great Northern; because I take it that Mr. Nichols' affidavit is limited to what his records as secretary show with respect to these facts. So the question as to whether there will be the injury resulting to those who bought the stock that was sold for cash, which the learned counsel predicted, if the course that he asked the court to follow is adopted, the court will have an opportunity to inquire into these facts and determine what other assets the Northern Securities company has and whether any injury will res

# Questions of Fact.

So with reference to the relations of the So with reference to the relations of the Union Pacific to the Oregon Short Line and the location of the lines of the Union Pacific and the Oregon Short Line and the Northern Pacific, those are questions of fact, and that is a question which we make it not only may be but must be deferred until we come to the proof in support of this petition, because, we take it, that the court will not go into a trial of that question by affidavit or otherwise upon a mere application for leave to intervene.

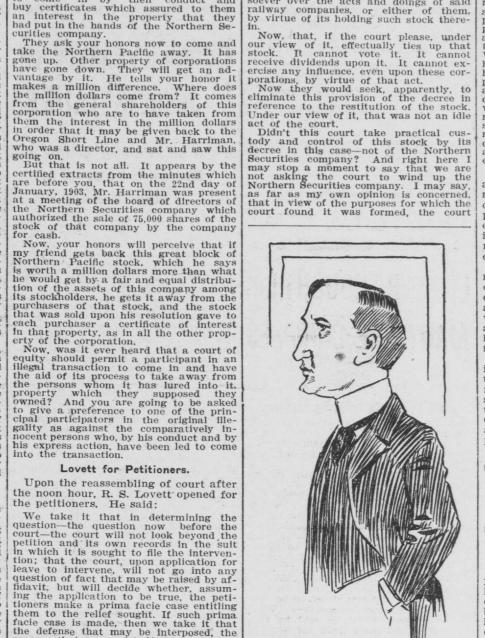
petition in this suit and invoked the jurisdiction of this court, and when this court rendered a decree granting the relief prayed for by the attorney general, certain results followed; certain rights accrued, or were affected, and certain responsibilities developed upon this court which, under our view of it, are not controlled by the attorney general. He set the machinery in motion. By his proceeding, or by his application rather, he had the Securities company declared illegal, and we contend that certain consequences attended his that certain consequences attended his action and resulted from that proceeding that are not under his control; certain rights were affected—our rights as between Northern Securities company and others—and that certain responsibilities,

Now this court took jurisdiction of that controversy thus presented by the peti-tion; took jurisdiction of the controversy between the attorney general on the one hand and the Northern Securities com-pany and its shareholders on the other, as to whether or not the Northern Se-curities company award that stock. as to whether or not the Northern Securities company owned that stock. That involved the question as to whether or not it owned the stock that was deposited by the Oregon Short Line, which stood in the name of Harriman and Pierce as naked trustees. That was an issue necessarily involved in this suit and the issue of which the court took jurisdiction.

Now the court found as a fact (stated not only in the opinion, but in the decree) that the Northern Securities company acquired the stock, "and is now held by it in virtue of such combination or conspiracy in restraint of trade." This court determined, by its decree in this case necessarily, that no title to this stock ever passed to the Northern Securities company because it was legally curities company because it was legally incapable of acquiring the title, because the effort to acquire it was in pursuance of an illegal purpose, was for an illegal purpose, and its holding of it was in fulfillment and in pursuance of that purpose. we maintain that the injunction of

this court went further than the learned counsel for the defendant stated this morning.

But there is another important provision—a very important provision of the decree. The Northern Securities company was also enjoined from exercising or attempting to exercise any control,



Attorney William D. Guthrie Hears Attorney General Knox's Notice Read.

would have that right and that power; but we are not asking that this court wind up the Northern Securities company and dissolve it, nor is any one else, so far as I know. But we are asking the court to dispose of the stock of the two railway companies, or particularly of the Northern Pacific (in which we are interested) in the way and in the only way consistent with the decree of this court as we view it that it can be disposed of.

Now, after the Northern Securities company is divested of the stock of the Great Northern or of the Northern Pacific, it is still a live corporation. The action that they propose to take is not of itself a dissolution, but merely a reduction or an attempted reduction of their capital.

Should Not Vote Stock.

### Should Not Vote Stock.

Now, this court having determined that the Northern Securities company should not vote the stock, should not enjoy dividends upon it, should not exercise any influence or control whatever by virtue of it over the affairs of these railway companies—after this court had decreed that it had no title to it because it decreed that it was acquired for an illegal purpose, it had taken practically the control and the sustedy of this exercise. control and the custody of this What could they do with it? counsel say they might have sold it.

Might have sold stock that this court had decreed that they had never owned?

Might have sold a stock, which according to the opinion of this court and the decree of this court as we understand and the location of the lines of the Union Pacific and the Oregon Short Line and the Northern Pacific, those are questions of fact, and that is a question which we make it not only may be but must be deferred until we come to the proof in support of this petition, because, we take it, that the court will not go into a trial of that question by affidavit or otherwise upon a mere application for leave to intervene.

As to whether the parties are in participated in an illegal transaction to such an extent as to deprive them of the right to the relief which they seek, is also a question of fact arising, we take it, after the intervention was filed. There are other questions suggested by counsel, that, as it seems to us, are merely questions of fact to be determined after the petition is before the court.

Our contention is that when the attorney general of the United States filed the petition of this court, and when this court as we understand decree of this court as we understand it, and according to the opinion of the scurt as we understand it, and according to the opinion of the surpreme court of the United States, they never owned. We don't think they could have done that. It is suggested that this provision of the decree here with reference to the restitution of it. Was it necessary, if your honors please, for this court found that it did not own? We should think not. No injunction was necessary to prevent it from selling the stock, so far as the government was concerned. But we contend that this court had taken control of that stock to work the court.

Now, why was it necessary for this court had taken control of that stock to it must have been, the court must have deemed it necessary to incorporate in this decree a provision authorizing the Northern Securities company to restore this stock to the point of the total this provision of the decree of this court as we understand the supreme court of the United States, they never owned. We don't think they could have done that. It is suggested that this provision a provision authorizing the Northern Se-curities company to restore this stock to those who deposited it? Didn't the court conceive that it had control of it? Did the court intend that the Northern Se-curities company should be free the day following this decree to organize a new combination of those behind the Northern Securities company and sell this stock? The court did not certainly intend that any such action as that might be taken. But the court realized that it had in its cuscourt realized that it had in its cus-ody—under its practical custody—this stock. Its jurisdiction had been invoked for the purpose of breaking up this com-

action and resulted from that proceeding that are not under his control; certain rights were affected—our rights as between Northern Securities company and others—and that certain responsibilities, as I said a moment ago, devolve upon this court which this court must determine for itself.

We maintain, in the first place, that the very object and purpose of this proceeding was to determine the right of the Northern Securities company to the stock of these railroad companies. That it was necessarily so. If the Northern Securities company rightfully acquired this stock, if it owned this stock, it was entitled to all the property rights ordinarily incident to an ownership of stock. This court determined the very foundation of the petition filed by the attorney general, the proposition that the Northern Securities company did not own this stock and never legally acquired it. That was the foundation of the bill, necessarily so under our view of it. That was the controversy that was presented by the petition of the attorney general to the court: Does the Northern Securities company own this stock? Is it entitled to exercise the rights of ownership? The attorney general said that it was not, because it was acquired for an illegal purpose and was held for an illegal purpose and the disposition that the Northern Securities company to the supreme court determined to wait, or that question might very well be that the court determined to wait, or that question as to the validity of this corporation, and then the further execution of the stock by the Northern Securities company own this stock? Is it entitled to exercise the rights of ownership? The attorney general said that it was not, because it was acquired for an illegal purpose, and therefore it necessarily followed it could not own it.

Issue Is Explained.

No Right to Sell Stock.

# No Right to Sell Stock.

Now, if the court please, we contend that this court has jurisdiction of the whole subject matter of this suit. We submit that the Northern Securities company has no right, under the terms of this decree, to sell this stock, that it cannot pass a title to it. We submit that that stock cannot be disposed of except under the decree of this court and by leave of this court. We submit that by this provision of the decree authorizing the restoration of the stock to those who deposited it, the court indicated unmistakably its opinion that it had this stock within its grasp and its control. We sub-

to come in by their conduct and buy certificates which assured to them an interest in the property that they had put in the hands of the Northern Securities company.

They ask your honors now to come and take the Northern Pacific away. It has gone up. Other property of corporations have gone down. They will get an advantage by it. He tells your honor it makes a million dollars come from? It comes from the general shareholders of this corporation who are to have taken from the million dollars in order that it may be given back to the Oregon Short Line and Mr. Harriman, who was a director, and sat and saw this going on.

But that is not all. It appears by the several of them and manual to them the interest in the million dollars going on.

But that is not all. It appears by the several of them and manual to them the interest in the million dollars going on.

But that is not all. It appears by the several of them and manual to them the interest in the million dollars going on.

But that it not all the property that they intended and trailway companies, or either of them, private of them, by virtue of its holding such stock thereins, by virtue of its not not present our application to this court and sak its brief respecting the distribution of the stock. It cannot expect dividends upon it. It cannot expects any influence, even upon these corporations, by virtue of that act.

Now they would seek, apparently, to eliminate this provision of the decree in reference to the restitution of the stock. Now they would seek, apparently, to eliminate this provision of the decree in reference to the restitution of the stock. Now they would seek, apparently, to eliminate this provision of the decree in reference to the restitution of the stock. Now they would seek, apparently, to eliminate this provision of the decree in reference to the restitutio ern Securities company.

At the conclusion of Judge Lovett's able argument, J. Hamilton Lewis, representing the Continental Securities company, entered objections on the part of his clients to the court considering the petition on the grounds that it had no jurisdiction. The petitioners must recover, if at all, in a court of

Since the thing for which the original action had been brought had been disposed of, the action is disposed of on the theory that the object aimed at is at an end. An original action would be necessary to distribute the assets of the company and that must be taken in the courts of the home of the corporation, New Jersey.

The court adjourned until this morn-The court adjourned until this morning at 10 o'clock, as the attorneys for the Securities company insisted on the right to close their case at the same sitting that the attorneys for the petitioner closed. Judge Young and John G. Johnson will speak for the defendants and William D. Guthrie for the petitioners.

### QUARREL OF BREWERS WORSE AND WORSE

Fahrig's Allegations Against the Trust Will Be Repeated in Court.

CHICAGO, April 12. — After four years' effort Frank Fahrig, of Chicago, has won from the appellate court a decision that the story of the alleged brewery trust in Chicago and Milwaukee must be told in court. Judge Baker two years ago dismissed Fahrig's bill against the Milwaukee and Chicago Breweries Company of London, in which Fahrig charged that \$2,500,000 was fraudulently spent in controlling the brewing business of Milwaukee and Chicago. The appellate court holds the brewing business of Milwaukee and Chicago. The appellate court holds that although the English company was not properly served with summons in the case, its alleged American fellow, the United States Brewing company, must respond to Fahrig's accusations. Rudolph Brand, president of the American company, and George W. Kellner and Frederick S. Winston, directors. must also answer Fahrig's directors, must also answer Fahrig's

The appellate court declares that the stock of the American company, al-though held by the English company, is held only in trust for Fahrig and others and that the courts here have jurisdiction because of having jurisdiction over the company's properties. Fahrig, who says he invested in shares of the English company and then found that he was denied access to the books of the breweries operating under the company's control, started suit for accounting. He declared the organiza-tion of the English company fraudu-lent and aserted that by a conspiracy the officers of the United States company had diverted the company's funds until his stockholdings had lost 95 per

### HOBSON MAY CONTEST CHOICE OF BANKHEAD

Manager of the Santiago Hero's Campaign Hints of Fraud.

BIRMINGHAM, Ala., April 12.—Full eturns from Alabama confirm the nomination of B. B. Comer as president of the Alabama railway commission. All of the present Alabama congressmen have been renominated and Thomas H. Flynn, secretary of state, will probably succeed the late Charles E. Thompson as representative from the First district. Early returns indicate that a large number of delegates elected to the state convention will be in favor of an uninstructed delegation to the national Democratic convention.

The closest congressional election was that between Congressman J. P. Bankhead and Richard P. Hobson in the Sixth district. Present returns show that Bankhead will be nominated by a majority of from 400 to 500. L. B. Musgrove, chairman of the Hobson campaign committee, said tonight that he was watching the returns closely with a view to contesting the nomination of Bankhead on the ground of fraud.

### CARDINAL SATOLLI WILL VISIT AMERICA

In One Respect His Trip Will be Without Recent Precedent.

ROME, April 12.-Cardinal Satolli, with the permission of the pope, is going to the United States privately and without a mission, arriving probably in June. As prefect of the congregation of studies the cardinal will visit the Catholic university at Washington. and he will also make a trip to the St. Louis exposition. Several friends of the cardinal who have invited him to their homes expect that his visit will extend over a month.

Cardinal Satolli's visit to the United States is considered most important, there being no record in recent times of a cardinal immediately attached to being accredited an ablegate.

# Devery Is After a "Wad."

NEW YORK, April 12.-Former through his counsel, today filed a formal demand on Police Commissioner McAdoo for \$35,000, which he alleges is due him as damages for breach of contract on the part of the city. sues the commissioner as trustee of the

