proved the minority holding of Judge Hook that the roads were competitors and it was just as much a violation of the law for one road to buy the controlling stock of a competitor as it was for a holding company, as in the Northern Securities case, to buy the controlling stock of two competing companies. As the Northern Securities plan failed nearly ten years ago, so the Harriman plan fell to-day.

May Retain Central Pacific.

The Union Pacific, if the Circuit Court sees proper, may retain control of the old Central Pacific line from Ogden to San Francisco.

The decision of the lower court that there was no violation of the law in the attempt to acquire the Northern Pacific stock and the stock of the Atchison, Topeka & Santa Fe Railway Company, afterward abandoned, and a certain interest in the San Pedro, Los Angeles & Salt Lake Railroad Company, was allowed to stand.

Department of Justice officials, however, were not prepared to-night to discuss the full effect of the decision upon other railroads. Attorney General Wickersham, elated over the outcome, issued a statement in which he simply declared that the case extended the principles of the Northern Securities case and reaffirmed those of the Standard Oil and St. Louis Terminal Association cases.

Justice Day in his opinion first dealt with the law in the case. He spoke of the Standard Oil and tobacco cases of last year as the final authority on the interpretation of the Sherman anti-trust act. He pointed to the decisions before the Standard Oil and tobacco cases as being approved in those cases, and then proceeded to apply to this merger the principles discussed in all these decisions.

Within Act's Condemnation.

"We take it, therefore," he said in this connection, "that it may be regarded as settled that a combination which places railroads engaged in interstate commerce in such relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act. While the law may not be able to enforce competition, it can reach combinations which rendered competition impracticable.

"Nor do we think it can make any difference that instead of resorting to a holding company, as was done in the Northern Securities case, the controlling interest in the stock of one corporation is transferred to the other. The domination and control and the power to suppress competition are acquired in the one case no less than in the other, and the resulting mischief, at which the statute was aimed, is equally effective whichever form is adopted."

He added that a more effectual form of combination to secure the control of a competing railroad than for one road to acquire a dominating stock interest in the other could hardly be conceived.

"Not Competitors, but Partners."

One by one Justice Day took up the arguments on which the railways hoped to defeat the government's suit. He first considered the argument that the systems were not competitors, but partners. "To compete," said the justice, "is to strive for something which another is actively seeking and wishes to gain." He quoted the testimony of railroad men that this was what the Union Pacific and Southern Pacific were doing by the purchase.

"Competition as to rates was not the only aim of the law," he explained, but there was competition as to the character of service rendered, and the accommodations afforded. He said that it made no difference that rates were not raised for the time being, after the combination was effected.

"It is the scope of such combinations and their power to suppress and stifle competition or create monopoly which determines the applicability of the act," Justice Day declared. The argument that the competitive traffic was infinitesimal he dismissed with the statement that it amounted to many millions of dollars.

Next he took up the argument that the Union Pacific was only a connecting road and really had no line to San Francisco, but was dependent on the Southern Pacific for such terms as it could make over the old Central Pacific line from Ogden to San Francisco. He said that was going too far; that the Union Pacific's Portland route was available, and it would have been detrimental to the Southern Pacific to have declined an arrangement to carry the Union Pacific's business from Ogden to San Francisco.

"But this case is not to be decided upon the theory," he continued, "that only so much of the Southern Pacific system as operates between Ogden and San Francisco has been acquired. The purchase may be judged by what it in fact accomplished and the natural and probable consequences of that which was done. Because it would have been lawful to gain, by purchase or otherwise, an entrance into California over the old Central Pacific, does not render it legal to acquire the entire system, largely engaged in interstate commerce in competition with the purchasing road."

Justice Day replied to the argument that a majority of the stock had not been purchased, and therefore no control had been acquired. He quoted Mr. Harriman as saying that a compact, united ownership of 46 per cent of a big corporation was sufficient to control it.

Justice Day said further:

This court reaches the decision that the Union Pacific and Southern Pacific systems, prior to the stock purchase, were competitors engaged in interstate commerce, acting independently as to a large amount of such carrying trade, and that since the acquisition of the stock in question the dominating power of the Union Pacific has suppressed competition between the systems and effected a combination in restraint of interstate commerce within the prohibitions of the act.

In order to enforce the statute the court is required to forbid the doing in the future of acts like those which are found to have been done in violation thereof, and to enter a decree which will effectually dissolve the combination found to exist in violation of the statute.

Decree Should Provide Injunction.

The decree should provide an injunction against the right to vote this stock while in the ownership or control of the Union Pacific company, or any corporation owned by it, or while held by any corporation or person for the Union Pacific company, and forbid any transfer or disposition thereof in such wise as to continue its control, and should provide an injunction against the payment of dividends upon such stock while thus held, except to a receiver to be appointed by the court, who shall collect and hold such dividends until disposed of by the decree of the court.

As the court below dismissed the government's bill it was unnecessary there to consider the disposition of the shares of stock acquired by the Union Pacific company, which acquisition, we hold, constituted an unlawful combination in violation of the anti-trust act. In order to effectually conclude the operating force of the combination such disposition should be made subject to the approval and decree of the court, and any plan for the disposition of this stock must be such as to effectually dissolve the unlawful combination thus created. The court shall proceed upon the presentation of any plan to hear the government and defendants and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein expressed.

As to the suggestion made at the oral argument by the Attorney General as to the nature of the decree, that one must be entered which, while destroying the unlawful combination, in so far as the Union Pacific secured control of the competing line of road extending from New Orleans and Galveston to San Francisco and Portland, would permit the Union Pacific to retain the Central Pacific connection from Ogden to San Francisco and thereby to control that line to the Coast, thus effecting such a continuity of the Union Pacific and Central Pacific from the Missouri River to San Francisco as was contemplated by the acts of Congress under which they were constructed, it should be said that nothing herein shall be considered as preventing the government or any party in interest, if so desiring, from presenting to the court a plan for accomplishing this result or as preventing the court from adopting and giving effect of any such plan so presented.

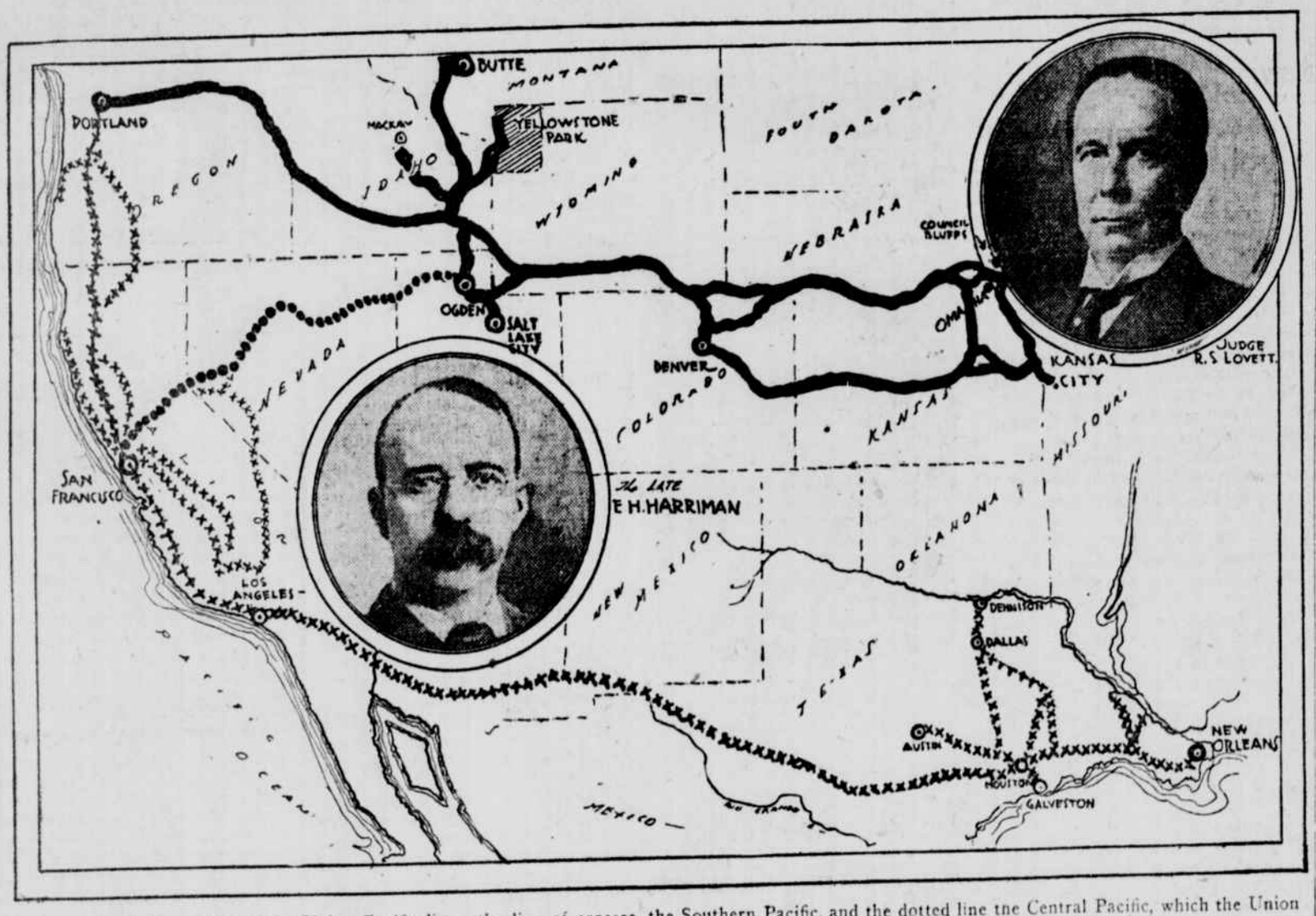
Provision for Stock Disposal.

Any plan or plans shall be presented to the court within three months from the receipt of the mandate of this court, failing which, or, upon the rejection by the court of plans submitted within such time, the court shall proceed by receivership and sale, if necessary, to dispose of such stock in such wise as to dissolve such unlawful combination.

The government has appealed from the decree, which is a general one, dismissing the bill. So far as concerns the attempt to acquire the Northern Pacific stock and the stock of the Atchison, Topeka & Santa Fe Railway Company, afterward abandoned, and a certain interest in the San Pedro, Los Angeles & Salt Lake Railroad Company, and other features of the case dealt with and disposed of by the decree and opinion of the court below, it is sufficient, without going into these matters in detail, to say as to them that we find no reason to disturb the action of the court below, but for the reasons stated the decree shall be reversed and one entered in conformity to the views herein expressed, so far as concerns the acquisition of the Southern Pacific stock.

The court instructed "the Circuit Court to retain its jurisdiction to see that the decree above outlined is made effectual."

MAP SHOWING THE TWO GREAT RAILROAD SYSTEMS AFFECTED BY THE SUPREME COURT DECISION.



The heavy black line indicates the Union Pacific lines, the line of crosses the Southern Pacific, and the dotted line the Central Pacific, which the Union may continue to control as its outlet to the coast.

WALL STREET TAKES DECISION CALMLY

Pacific Railroad Officials and Bankers Refuse to Discuss It.

STOCK AND BONDS RISE

Other Roads May Be Affected —Harriman's Merger and Government's Fight Against It.

Wall Street has awaited the decision in the Pacific Railroad case with great interest, but no comment was made yesterday by any officials of the roads in this city, nor by any of the banking interests represented by Kuhn, Loeb & Co. Robert S. Lovett, chairman of the board of directors and Mr. Harriman's successor, said he had nothing to say at this time.

The action of Union Pacific stock soon after the decision was announced increased the general belief that little was known as to what the decision would mean to the stockholders. At first there was some heavy selling, but the preferred stock finally showed an advance of more than 6 points on the theory that, in connection with the readjustment of security holdings, the senior issue would be retired or would come in for a share in the distribution of the subsidiary stocks. There was also a sensational rise in the Southern Pacific 4 per cent bonds. They opened at 89, and later sold at 96.

Railroad attorneys were of the opinion that the decision may result in the relinquishment of the control of the Central Railroad of New Jersey by the Reading company. They also expressed the belief that the control by the New York, New Haven & Hartford of the New York, Ontario & Western and the Boston & Maine may be affected. Other questions of vital importance to the railroad world that may be taken up are the control of the Lake Shore and the Michigan Central by the New York Central and the Pennsylvania's holdings of Norfolk & Western.

The combined capitalization of the Union and Southern Pacific systems amounts to $1,047,221,096, of which $588,845,305 consists of stock and $458,375,790 of bonds. Union Pacific has outstanding $216,629,300 of common stock and $99,543,600 of preferred stock, and bonds in the hands of the public aggregating $329,232,380. Southern Pacific has only one class of stock which is outstanding to the amount of $272,672,405, and its bonds issued total $129,143,410. At the end of June, 1911, Union Pacific was operating, with its auxiliaries and trackage rights, 3,447 miles of road and the Southern Pacific 3,368 miles, making a total for the two of 6,815 miles.

How Harriman Merged the Roads.

The presence of Edward H. Harriman as a leader in the railroad world was not recognized until 1899, for up to that time he had been working quietly to accomplish the ends he had in mind. At the close of the Spanish war he had bought the Chicago & Alton for his associates in the Union Pacific, of which he was the chairman of the executive committee. The other members of the syndicate were James Stillman, Jacob H. Schiff and George J. Gould. Mr. Harriman had gone into the Union Pacific with the Kuhn-Loeb-Rockefeller interests, who had bought the road from the United States government in 1897. The old road, built first as a national enterprise, the first transcontinental line, had fallen into such a state of decay that it was described as a right of way and two streaks of rust. Dividends had long been a thing of the past.

Mr. Harriman believed it to be a highly valuable property, and it was purchased in bankruptcy for $14,000,000. The road had the bed, grade and equipment of thirty years before, and it was isolated, running from an inland town to a desert village. Its western feeder and original twin, the Southern Pacific, had become a rival, carrying to New Orleans the tonnage that should have gone to the Union Pacific. Mr. Harriman, who had his training under Stuyvesant Fish, whom he later drove from the presidency of the Illinois Central, assumed the task of rebuilding the road. There was a great deal to do, and it took $30,000,000 to do it. After the physical difficulties of the rebuilding had been overcome, the question of getting business arose.

Within a year after the Alton purchase Mr. Harriman tried to buy the Central and the Southern Pacific from Collis P. Huntington, but Mr. Huntington refused to sell, and Harriman threatened the construction of a rival line from Ogden, Utah, to the coast. Mr. Huntington died about this time, and his rival improved the opportunity by purchasing the control of both roads, over 9,000 miles of railroad, and the Morgan Steamship Line, from New Orleans to New York, as well.

In the spring of 1901 J. P. Morgan and James J. Hill undertook to acquire the Chicago, Burlington & Quincy Railroad for the joint interests of the Northern Pacific and the Great Northern. They refused to let Harriman have a share in the deal, and he then started in to buy the Northern Pacific. The Morgan-Hill group gave battle. The market was swept of Northern Pacific stock. On May 9 of that year both sides decided that they had control, and called in whatever stock they had lent. The short interests in Northern Pacific were unable to get stock at any price, and a panic followed.

Two days later Mr. Harriman, sure that he controlled Northern Pacific, had a conference with the Morgan-Hill interests at the Union Pacific offices. It was found that he had $78,000,000 of the $155,000,000 capital of the railroad, but held a little less than half of the common, in which the control lay. He declared that he would fight to the end. The other side did not wish a fight, and the matter was settled by Harriman becoming a director of Burlington.

A little later the Northern Securities Company was formed to hold the Great Northern and the Northern Pacific. The Union Pacific, as a heavy stockholder in Great Northern, went into the deal. Then the United States Supreme Court broke up the merger.

How many millions Harriman made out of Union Pacific will probably never be known. He began buying the stock when it was selling for $6 a share, and apparently dear at that. A few years later the road was paying dividends. The stock has sold above $195 a share.

Fight Against the Merger.

The government's fight against the Union Pacific merger began in 1908, when Attorney General Bonaparte filed in the United States Circuit Court for Utah a petition to split the transcontinental railroads brought together by Edward H. Harriman. This combination was alleged to be in violation of the Sherman anti-trust law.

Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick and William A. Clark were named by the government as the creators and supporters of the combination. The allegations in the petition stretched over the development of the nation and went far into the past. Judges Sanborn, Van Devanter, Hook and Adams were called to pass on the suit.

The government's case was built largely on the purchase by the Union Pacific Railroad Company in 1901 and 1902 of 46 per cent of the stock of the Southern Pacific. The main line of the Union Pacific extended from Kansas City and Omaha to Ogden. By subsidiary companies it reached Portland, Ore., and thence, by steamers, San Francisco and the Orient. The Southern Pacific had a line by sea and land from New York to San Francisco and Portland by way of New Orleans, and owned the Central Pacific, extending from the terminus of the Union Pacific at Ogden, Utah, to San Francisco.

Two great questions were presented in this phase of the case. The first was a question of law—Does the purchase outright by one railroad company of the controlling interest in another result in a combination in violation of the Sherman anti-trust law? Judge Hook reached the conclusion that since it had been decided in the Northern Securities case that the holding of the stock of two companies by a third was a violation of the law, therefore the holding by one of those two of the stock of the other must also be a violation. But Judges Adams, Van Devanter and Sanborn did not pass on this point, because they decided the case against the government on the second question.

The second question was whether the Union and Southern Pacific were competitors for San Francisco business. The government presented testimony to show that the two companies before the merger maintained rival soliciting agents in the East and were regarded as competitors for transcontinental business. The court reached the conclusion that the question of whether they were competitors was not to be decided entirely as a matter of fact governed by testimony, but was partly a question of law. As a matter of law it was held that the two could not be competitors, because the Union Pacific had to depend on the Southern Pacific to get from Ogden to San Francisco and on independent railroads to bring freight and passengers from the East to it at Kansas City and Omaha. In so finding the court concluded that the Union Pacific's line from Ogden through Portland to San Francisco was impracticable.

The government also complained that the Union and Southern Pacific were competitors for business from Atlantic seaboard and interior points on the one hand, to Portland, Ore., on the other; between the Atlantic seaboard on the one hand and Colorado and Utah common points on the other; between Portland, Ore., on the one hand and Utah, Colorado and Nevada common points on the other; between San Francisco on the one hand and Portland, Ore., on the other; between San Francisco on the one hand and Montana and Idaho common points on the other; between New York and interior common points on the one hand and the Orient on the other.

Government Lost in Lower Court.

In these complaints the majority of the court found that the business of each of the railroads to the areas in question was so small a percentage of the total traffic that it would not be taken as a basis for a substantial restraint on interstate commerce.

The test which the majority applied in the subordinate complaints and in the test determining whether the railroads were competitors was denounced by Judge Hook as probably allowing the Union Pacific to purchase lawfully control of all the great parallel railroad systems of the United States.

Another complaint related to the construction of the San Pedro, Los Angeles & Salt Lake Railroad Company. Mr. Clark and his associates began to build a road to connect Los Angeles and Salt Lake City, and so did the Union Pacific. Because of the alleged impracticability of constructing two lines through the canyon known as Meadow Valley Wash, one road was built, the court found, each group of promoters taking half the stock. The entire court found nothing in violation of the Sherman anti-trust law in the Union Pacific's control of this road.

The government complained of the purchase by the Union Pacific of a controlling interest in the Northern Pacific Company. The court declared it was only necessary to say the Union Pacific had sold that stock.

Still another complaint was the purchase in 1904 by Harriman, Rogers, Stillman, Schiff, Kahn and William Rockefeller of $30,000,000 in face value of the stock of the Atchison, Topeka & Santa Fe Railway Company and the investment in 1906 by the Union Pacific in 5 per cent of that stock. The court found no proof that any control was thus obtained over the Santa Fe.

Thus defeated in the Circuit Court, the government brought the case to the Supreme Court. Attorney General Wickersham, Frank B. Kellogg and Cordenio A. Severance appeared for the government. A long list of attorneys, headed by P. F. Dunne, of San Francisco, and N. H. Loomis, of Omaha, represented the defendants.

CASH REGISTER CO. ALERT

National's Agents Watched Rivals for Patent Suits.

Cincinnati, Dec. 2.—The direct testimony of Henry G. James, the government's first witness in the trial of President John H. Patterson and twenty-nine other officials or former officials of the National Cash Register Company, was completed to-day. The men are charged with violating the criminal section of the Sherman anti-trust act.

The copy of a letter that was written to James while he was an employe of the National company in Detroit was admitted into the record after much controversy.

The letter was an explanation of why the National company wanted its agents to fill out cards whenever a rival machine was put out of any place. The reason assigned was that the data regarding the machine would be valuable for any future suits against the other company for infringing on a patent.

"BONUS FOR BOYS," SLOGAN

Women Who Teach Them Demand Extra Pay.

School teachers from all parts of greater New York, acting as delegates from their respective districts, attended the regular general meeting of the Interborough Association of Women Teachers last night in the auditorium of the Metropolitan Life Building. Miss Lina Gano, vice-president of the Manhattan district, presided, and Miss Lillian I. Powers was secretary.

When the question of the equalization of salaries was broached by Miss Gano she remarked that the men were engaged in the fight and that "it was a good thing to let the men do it." According to reports from the various delgates present, most of the schools can boast 100 per cent of teachers who belong to the association, which now has a membership of 12,000.

The date of the annual dinner was announced as April 26, the anniversary of the birthday of the association. It is to be held, as usual, at the Waldorf-Astoria, and, said Miss Gano, with a smile, "any teacher who has not done much, and thinks that she ought to have a chance to show what she can do, may go to work on any of the committees at once."

Some of the speakers urged a "bonus for boys," which means extra pay for teaching boys. It was voted to present the matter to the president, Miss Strachan, and that it be the first order of business at the next meeting. Miss Strachan, it was announced, is to be the guest of honor at a dinner next Saturday night, at which the speakers will include Mrs. Carrie Chapman Catt, Mrs. Hugh Grant Brown, the president of the Woman's Club, and Mrs. William Sulzer.

REPUBLICANS GAIN A SEAT.

Detroit, Dec. 2.—According to the Secretary of State, Representative J. M. C. Smith, Republican, of the 3d District, was re-elected by a majority of 127 votes over Claude S. Carney, Democrat. Until the returns were compiled it was thought Carney had been elected. It is said Carney will contest Smith's election.

SPECIAL GRAND JURY TO INVESTIGATE WRIGHT

Continued from first page.

the wrecking of the Northern Bank, clearly indicates that many of the methods which he pursued contravene the provisions of the penal law. Throughout these various transactions Robin's plan to shift responsibility upon those mentally less acute is always evident. There is proof, however, that the ultimate disposition of the proceeds of these irregular transactions was to the personal profit of Robin.

In passing, I beg to call your attention to the fact that Mr. Robin, during his presidency of the Washington Savings Bank and in violation of Section 297 of the penal law and Section 142 of the banking law, borrowed $46,000 from that institution, giving as security his residence at Wading River through the agency of a corporation called the Wading River Realty Company, which he controlled. Recently this property was sold under foreclosure proceedings at public auction and was bid in by this department for $42,000, netting to the creditors a deficiency of more than $10,000.

William Temple Emmett, State Superintendent of Insurance, has also written a letter to District Attorney Whitman, protesting against Robin's release from sentence. This letter calls attention to the looting of the Title & Guarantee Company, of Rochester.

The question of Hyde's naturalization has been settled. The records show he was made a citizen on September 28, 1892, before Judge William J. Osborne, in the City Court of Brooklyn. Hyde gave his address as No. 7 Lefferts Place, in that borough, and said he had been in the country five years. His witness was William E. C. Mayer, a brother-in-law of Mayor Gaynor, who testified to Hyde's good character and belief that he would make a good citizen.

DENIES EDISON CREDIT

Court Says He Didn't Invent Moving Picture Film.

Washington, Dec. 2.—Thomas A. Edison was held to-day not to have been the inventor of the moving picture film by the Court of Appeals of the District of Columbia, which reversed a decision of a lower court granting an injunction and damages to Edison's assignees against a film company of Chicago.

The court held that the moving picture film was neither discovered nor produced by Edison, but by a manufacturer of photographic supplies, and that Edison's work in the development of motion pictures was solely in the camera apparatus.

ANTI-MONOPOLY LAW WINS

Supreme Court Upholds South Dakota Act of 1907.

Washington, Dec. 2.—The constitutionality of the South Dakota anti-monopoly, or "unfair discrimination," act of 1907 was upheld to-day by the Supreme Court. The act makes it a crime to sell, with intent to ruin competition, a commodity in general use to a dealer in one place at a lower rate than to another dealer at a different place within the state.

Similar laws have been enacted in several Northwestern states, and are regarded as among the most rigid anti-monopoly statutes ever enacted.