

ORGANIZED LABOR WINS IMPORTANT POINT

(Continued from Page 1)

rustic, which lumber was so needed by him in his business and offered to pay defendants in cash the regular prices charged by them for said lumber; but that because of plaintiff's said purchase of lumber at Vancouver, Washington, defendants refused to sell plaintiff said or any lumber upon any terms and continued so to refuse for a period of about six days; that thereafter for a period of about two months defendants refused to sell any lumber to plaintiff unless plaintiff would pay to defendants in addition to the prices charged by them for the lumber which plaintiff wished to purchase from them, the sum of \$250, said sum being the difference between the price so paid by him for said lumber so purchased by him in the City of Vancouver, Washington, and the price then charged by the defendants for the same quantity of lumber, and promise defendants that plaintiff would in future purchase no lumber from said or any manufacturer or dealer in the State of Washington; that plaintiff refused to comply with said demands of the defendants, and during all of said time was unable to procure any lumber from the defendants.

That at all the times herein mentioned defendants have had on hand and for sale to local contractors and builders and other consumers in the City of Portland ample supplies of lumber of the kinds required by plaintiff and plaintiff has applied to purchase the lumber so needed by him from the defendants in the usual course of trade, and has been ready and able and has offered to pay therefor the regular prices of the defendants, and defendants have so refused to sell lumber to plaintiff in pursuance and furtherance of the conspiracy, confederation and plan hereinabove set forth, and for the purposes and with the intent hereinbefore stated, and because plaintiff had purchased lumber from said manufacturers in the City of Vancouver, Washington, and for the purpose and with the intent of preventing plaintiff from purchasing lumber from said manufacturers in the City of Vancouver, and forcing plaintiff to purchase lumber from defendants, and punishing and injuring plaintiff for so purchasing lumber in Vancouver and not for any other reasons.

The particular items of plaintiff's damage by reason of not being able to procure such lumber from the defendants are:

\$7000 damage from being unable to continue his business of constructing houses and selling the same; loss of profit on his said business during the building season of 1903, and loss of custom and good will of his said business.

\$500 damage through delay caused thereby in the construction of two certain buildings and through being compelled to use unseasoned and inferior lumber in their construction.

\$1000 damage caused by delay in the construction of a certain building for the contract price of \$4000, and in its having to lie exposed to the rains, and the plaintiff's having to use unseasoned lumber and inferior lumber, with which to finish said building, and being unable to secure payment therefor on that account, on his contract.

\$25 damage through being compelled by said combination in the month of April, 1903, to purchase rough lumber from them at their own price, which was \$25 in excess of the price which he would have had to pay for said lumber in the City of Vancouver, Washington, and its shipment and delivery to the City of Portland, Oregon.

To the complaint, the defendants interposed demurrers upon the ground that the complaint did not state facts sufficient to constitute a cause of action under the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

The demurrers were argued and Judge Bellinger filed an opinion in the court below sustaining the demurrers upon the ground stated and dismissing the complaint with costs to the defendants.

Specifications of Error.

The errors relied upon by the plaintiff are:

First—Error of the court in sustaining the demurrers filed by the defendants to the complaint.

Second—Error of the court in sustaining the demurrers upon the ground stated and dismissing the complaint herein with costs to the defendants.

Argument.

The sections of the Sherman act under which this action is brought are as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal. * * *

"Section 7. Any person who shall be injured in his business or property by any other person or corporation



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by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court in the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained and the costs of suit including a reasonable attorney's fee."

In order to determine whether or not the combination of the defendants to restrain commerce between Vancouver, Washington, and Portland, Oregon, as set up in the complaint, is a combination prohibited by the act, it will be well to inquire into the object of the statute.

It is said in Noyes on Intercorporate Relations, section 378: "The statute is aimed at all restrictions upon interstate commerce. Its purpose is to permit trade and commerce between the states and with foreign nations, to flow in their natural channels unrestricted by any combinations, contracts, conspiracies or monopolies whatsoever." (U. S. v. Hopkins, 82 Fed. 537.) In U. S. v. Coal Dealers' Association, 85 Fed. 261, Judge Morrow said: "The clear and positive purpose of the statute must be understood that trade and commerce within the jurisdiction of the federal government shall be absolutely free, and no contract or combination will be tolerated that impedes or restricts their natural flow and volume."

Mr. Eddy in his work on combinations, section 813, says: "At the same time it must be constantly borne in mind, in consideration of the scope and application of the act that it was primarily an attempt on the part of Congress to suppress commercial and industrial trusts and combinations, and in so far as the direct object of any such trust or combination is the restriction or control of interstate or foreign commerce, such trust or combination is clearly within the purview of the act."

There have been many cases in the U. S. courts construing the act and it has been definitely settled that when the direct effect of an agreement or combination is to restrain interstate trade or commerce, such agreement or combination is unlawful under the act; that the intention of the parties to the agreement is immaterial; and it matters not whether the restraint is reasonable or unreasonable, partial or complete—and that the only question to be considered in cases arising under the act when interstate trade or commerce has been restrained is whether the restraint is the direct, as distinguished from the indirect or remote, result of the agreement or combination.

U. S. v. Joint Traffic Assn., 171 U. S. 505.

U. S. v. Trans-Missouri Freight Assn., 166 U. S. 290.

U. S. v. Addyston Pipe & Steel Co., 175 U. S. 211.

As to just what restraint the act covers, it is said by Judge Thayer in U. S. v. Northern Securities Co., 120 Fed. 721 (724):

"The act brands as illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations. Learned counsel on both sides have commented on the general language of the act, doing so, of course, for a different purpose, and the generality of the language employed is, in our judgment, of great significance. It indicates, we think, that Congress, being unable to foresee and describe all the plans that might be formed and all the expedients that might be resorted to to place restraints on interstate trade or commerce, deliberately employed words of such general import as, in its opinion, would comprehend every scheme that might be devised to accomplish that end."

To the same effect see U. S. v. Workmen's Council, 54 Fed. 994.

Now let us see what was done: The plaintiff must have both seasoned and rough lumber in order to carry on his business. The defendants were selling both classes. Rough lumber only could be procured in Vancouver, Washington, and seasoned lumber could be procured only from the defendants.

The defendants employed agents to watch the construction of buildings in Portland and as soon as it was discovered that the plaintiff had purchased at Vancouver rough lumber with which to construct a dwelling, he was refused any lumber on any terms until his business was greatly hindered and delayed, and was then only furnished with the lumber he wished on condition that he pay to the defendants, in addition to their prices, \$250 penalty for the lumber purchased in Vancouver—that being the difference between the price paid at Vancouver and what defendants would have charged for the same lumber—and he must promise never to purchase any more lumber at Vancouver. The result is that the plaintiff must cease purchasing lumber at Vancouver, or his business is destroyed, as the defendants are the only persons from whom finished lumber can be procured.

The defendants have thus invested their selling agent, the City Retail Lumber Company, with their aggregate power over consumers of lumber in Portland with the direct and express purpose of using that power to kill the Vancouver trade by ruining

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