

ORGANIZED LABOR WINS IMPORTANT POINT

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any contractor who continued in that trade. The power thus given is adequate and has been used effectually. To what is this incidental? To deny that this is a direct restraint of commerce between Vancouver and Portland is to challenge common intelligence.

The lower court held that the restraint of interstate commerce was indirect and incidental to the purpose of the combination, and therefore not within the act, and in order to reach this conclusion, stated that the object of the combination was to advance the price of lumber to Portland consumers and that it had no reference to the Vancouver trade. In the face of the allegations of the complaint which, for the purposes of the demurrer, must be taken as true, this is clearly unwarranted. The complaint (Record, p. 9) charges that one of the principal purposes of the combination was to prevent the shipment of lumber from Vancouver to Portland; to prevent the sale in Portland of lumber manufactured in Washington and to prevent the plaintiff from purchasing lumber from said manufacturers in Washington; and directly charges that with these purposes in view they conspired together to accomplish them "and to adopt such means and prescribe and enforce such burdens and penalties as might be necessary and effectual to prevent contractors and builders and other consumers of lumber in the City of Portland from purchasing any lumber from manufacturers and dealers other than the defendants and particularly from said manufacturers and dealers in the State of Washington."

The complaint (Record, page 13) further charges that the defendants refused to sell lumber to plaintiff in pursuance and furtherance of said conspiracy and because plaintiff had purchased lumber in 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 all his lumber from the defendants and punishing and injuring plaintiff for so purchasing lumber in Vancouver and not for any other reasons.

In the face of these allegations which must be taken as true, how can it be said that the combination had no reference to the Vancouver trade or that the restraint of such trade was not the direct aim and object of the combination? The complaint further alleges that the defendants employed paid agents to watch the construction of buildings in the City of Portland who reported to the combination any contractor who purchased lumber in Vancouver, and that said contractor was at once punished by the combination by being refused any lumber on any terms, and after being damaged by this course of action he would be furnished lumber only if he consented to pay the combination a certain amount of money as damages and would promise never to do it again. If the combination had no reference to Vancouver trade, for what were those men employed?

To even a casual mind it is clear that the defendants could not hope to establish a monopoly of lumber in the Portland market or fix arbitrary prices thereon without shutting off the Vancouver mills from supplying that market. The combination was therefore formed primarily for the purpose of shutting off this trade and then after it had been effectually extinguished, fixing their own prices in Portland. Can it then be said that they had no reference to the Vancouver trade and that their action with reference to that trade was only incidental to their main purpose of making money?

Congress, in passing the Sherman Act against combinations in restraint of interstate commerce, did not anticipate that there would be combinations of business people in the United States who would engage in such commerce for the mere pleasure of carrying it on. It was intended to strike at combinations which restrain such commerce while endeavoring to make money for themselves, and an examination of the "history of the times," using a phrase of the Supreme Court, will show that Congress in passing the act aimed at just such combinations as the one now before the court.

The court was further of the opinion that the rise in the price of rough lumber in the Portland market has a tendency to stimulate trade between the two points. This might be so, if one were free to buy at Vancouver, but it is not reasonable to ask one to believe that the combination would keep up the price of rough lumber if it could be freely shipped into Portland from Vancouver at a less price. Builders must have both rough and finished lumber, and the prices were kept up in Portland by the combination only by keeping out the Vancouver lumber.

Much was said by counsel for defendants in the court below about the right of the trader to choose his customers and use such means as he sees fit in order to attract trade to himself, and the lower court in its opinion herein says: "It is not apparent why the defendants having a particular kind of lumber not obtainable elsewhere may not refuse to sell such lumber to those who patronize outside mills in the purchase of a part of their supplies or why the defendants may not discriminate in prices in favor of those who purchase exclusively from them."

In the first place the framers of the Sherman Act meant that commerce between the several states should be free; that is, competition should be free. Any combination destroying free competition between the states was intended to be denounced. So long as no combination was effected any means one defendant took to attract trade to himself by discriminating against others was lawful. The act operates solely on combinations and conspiracies which possess in the aggregate, power which no individual could possess, and which are enabled thereby to destroy free competition among the states.

It might not be apparent why the defendants should not conduct their business as they see fit had the act never been passed, but after its passage and the formation of the combination the freedom of individual action which the trader had prior to that time is curtailed and his method of conducting business to conserve his own selfish interests can not be adopted as the method of the combination, but must give way to the public good in accordance with the terms of the act.

There would never have been any occasion for this passage had not the defendants and similar institutions combined to make the individual's method of doing business a power with which to gather greater profits to themselves, to coerce the community dependent upon them into paying their extortionate demands and to exercise other acts of oppression which no one individual theretofore had power to do.

The Supreme Court of the United States in U. S. v. Addyston Pipe & Steel Co., 175 U. S. 228, cited and applied in U. S. v. Northern Securities Co., 120 Fed. 721 (729) has ably disposed of this argument that such a combination has a sacred right to do as it pleases in the following language: "It has been held that the word 'liberty,' as used in the Constitution, was not to be confined to the mere liberty of persons, but included, among others, a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. * * * But it has never been, and in our opinion ought not to be held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature, and wholly irrespective, among other things, of the fact that they would, if performed, result in the regulation of interstate commerce, and in violation of an act of Congress upon that subject. The provision of the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the states. On the contrary, we think the provision regarding the liberty of the citizen is to some extent limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate to a greater or less degree commerce among the states. We cannot so enlarge the scope of the language of the constitution regarding the liberty of the citizen as to hold that it includes, or that it was intended to include, a right to make a contract which in fact restrained and regulated interstate commerce, notwithstanding Congress, proceeding under the constitutional provision giving to it the power to regulate that commerce, had prohibited such contracts."

If the defendants view with so much concern their right to contract as they please, with what grace do they deny the plaintiff, an individual, the right to purchase lumber where he sees fit? In this case the defendants have contended that competition was free and the plaintiff could purchase lumber in Vancouver if he so desired. This cannot be so, for the moment plaintiff purchased lumber in Vancouver, Washington, his business was destroyed. The defendants refused to sell him lumber which he must have and which he cannot procure anywhere else, or he must submit to their demands upon him for arbitrary amounts of money as damages for purchasing lumber in Vancouver, and he must promise never to do it again.

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Daily		Daily
LEAVE	ASTORIA	ARRIVE
7:45 a.m.	For Portland and Way Points.	11:30 a.m.
6:10 p.m.		10:30 p.m.
LEAVE	SEASIDE DIVISION.	ARRIVE
8:25 a.m.	Astoria for Warrenton, Flavel, Fort Stevens, Hammond and Seaside.	7:45 a.m.
11:55 a.m.		4:00 p.m.
5:50 p.m.		
LEAVE	SEASIDE.	ARRIVE
9:15 a.m.	Seaside for Warrenton, Flavel, Hammond, Ft. Stevens and Astoria.	12:30 p.m.
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Arrives Yakima.....	6:10 P. M.
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Leaves Yakima.....	6:45 A. M.
Leaves Corvallis.....	11:30 A. M.
Arrives Albany.....	12:15 P. M.
No. 3 For Detroit:	
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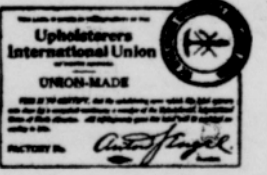


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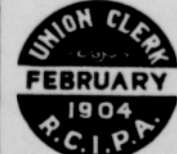
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