WHY IT IS TRUST

Decision of Supreme Court in Merger Case.

PEOPLE AT MERCY OF LINES

Competition Gone, Railways Could Overcharge.

CONGRESS' POWER SUPREME

It Does Not Intend That Before a Combination Is Held to Restrain Trade, Suppression Must Be Total.

DECISION IN A FEW WORDS.

Congress has the power to prohibit all contracts in restraint of trade.

The National laws are supreme in case of conflict with those of states. There is no doubt of the power of Congress to control interstate commerce. The only object of the merger was to prevent competition, and J. Pierpont Morgan, one of the defendants, knew this, if no one else did.

If not restrained, all the railroads of the United States might enter into a combination and by the device of a holding company corporation control rates throughout the country.

WASHINGTON, March 14.—Justice Harlan handed down the decision of the Supreme Court in the famous merger case. After announcing the origin and the purpose sought to be accomplished by the suit, Justice Harlan reviewed the facts as disclosed by the record in the case. Of the Government's case he said:

"The Government charges that if the combination was held not to be in violation of the act of Congress, then all efforts of the National Government to preserve to the people the benefit of free competition among carriers engaged in interstate commerce will be wholly unavailing, and all transcontinental lines, indeed the entire railroad systems of the country, may be absorbed, merged and consolidated, thus placing the public at the absolute mercy of the holding corporations." Of the railroad's case he said:

"The several defendants denied all the allegations of the bill imputing to them a purpose to evade the provisions of the act of Congress or to form a combination or conspiracy having for its object either to restrain or to monopolize commerce or trade among the state, or with foreign nations. They denied that any combination or conspiracy was formed in violation of the act."

Having outlined these preliminaries, Justice Harlan came immediately to the judicial consideration of the case, and practically indicated the decision of the court in the first sentence of the opinion proper. In that sentence he said:

"In our judgment the evidence fully sustains the material allegations of the bill, and shows a violation of the act of Congress in so far as it declares illegal every combination or conspiracy in restraint of commerce among the several states and with foreign nations, and forbids attempts to monopolize such commerce."

Combination Is Beyond Dispute.

He again recurred to the facts in the case, and said, laying aside any minor things, it was indisputable that, upon the principal facts of the record, under the leadership of Hill and Morgan, the stockholders of the two railroad companies, having practically parallel lines of road, had combined under the laws of New Jersey, by organizing a corporation for the holding of the shares of the two companies upon an agreed basis of value. Proceeding, he said:

"The stockholders of these two competing companies disappeared as such for the moment, but immediately reappeared as stockholders of the holding company, which was thereafter to guard the interests of both sets of stockholders as a unit, and to manage, or cause to be managed, both lines of railroad, as if held in one ownership. Necessarily, by this combination or arrangement, the holding company, in the fullest sense, dominates the situation in the interest of those who were stockholders of the constituent companies; as much so, for every practical purpose, as if it had been itself a railroad corporation which had built, owned and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent companies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become practically one powerful consolidated corporation by the name of a holding corporation, the principal, if not sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease."

He said the stockholders of the two old companies are now united in their interest in preventing all competition between the two lines, and that they would "take care no persons are chosen directors of the holding company who will permit competition between the constituent companies, the result being that all the earnings of the constituent companies make a common fund in the hands of the Securities Company upon the basis of the certificates of stock issued by the holding company. Continuing, Justice Harlan said:

Within Meaning of Trust Act.

"No scheme or device could more certainly come within the words of the act, 'combination, in the form of a trust or otherwise, . . . in restraint of commerce among the states or with foreign nations,' or could more effectively and certainly suppress free competition between the constituent companies. This combination is within the meaning of the act a 'trust'; but if not, it is a combination in restraint of interstate and international commerce, and that is enough to bring it under the condemnation of the act.

"The mere existence of such a combination, and the power acquired by the holding company as trustee for the combination, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected. If not destroyed, all the advantages that would naturally come to the public under the operation of the general law of competition as between the Great Northern and Northern Pacific Railways will be lost, and the entire commerce of the immense territory in the northern part of the United States between the Great Lakes and the Pacific Ocean at Puget Sound would be at the mercy of a single holding corporation organized in a state distant from the people of that territory."

Justice Harlan agreed with the summing up by the Circuit Court of the results of the combination, which was that it places the control of the two roads in the hands of a single person, and, second, that it destroyed every motive for competition between the two lines by pooling their earnings, notwithstanding both were engaged in interstate traffic.

Propositions of Law.

Entering upon an investigation of the authorities bearing upon the case, Justice Harlan deduced from the consideration of these precedents the following propositions as applied to the present case:

"That although the act of Congress known as the anti-trust act has no reference to the mere manufacture and production of articles or commodities within the limits of the several states, it embraces and declares to be illegal every contract, combination or conspiracy in whatever form, or whatever nature, and whoever may be parties to it, which directly, or necessarily, operates in restraint of trade or commerce among the several states or with foreign nations.

"That the act is not limited to restraint of interstate and international trade or commerce that are unreasonable in their nature, but is directed against all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy or monopoly upon such trade or commerce.

"That railroad carriers engaged in interstate or international trade or commerce are embraced by the act.

"That combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the act.

"That Congress has the power to establish rules by which interstate and international commerce shall be governed, and by the anti-trust act has prescribed the rule of free competition among those engaged in such commerce.

"That every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act.

"That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce.

"That to vitiate a combination such as the act of Congress condemns, it need not be shown that such combination, in fact, results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition.

"That the Constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce.

"That under its power to regulate commerce among the several states and foreign nations, Congress had authority to enact the statute in question."

State's Right Plea.

Speaking of the state's rights plea of the railroad representatives, Justice Harlan said:

"This view does not impress us. There is no reason to suppose that Congress had any purpose to interfere with the internal affairs of the state, nor is there any ground whatever for the contention that the anti-trust act regulates their domestic commerce."

Justice Harlan brushed aside as scarcely worth mentioning the contention on the part of the Securities Company that the question involved is the right of an individual to dispose of his stock in a state corporation, and that in such transactions the individuals whose interests are involved are subject only to the restraint of state laws.

Justice Harlan also referred to the argument that the position of the Government amounts to declaring that the ownership of stock in a railroad corporation is in itself interstate commerce, and to other similar declarations, and, commenting on these, he said:

"We do not understand that the Government makes any such contentions, or takes any such positions as those statements imply. It does not contend that Congress may control the mere ownership of stock in a state corporation, engaged in interstate commerce. It does not contend that Congress can control the organization of mere ownership of state corporations, authorized by their charters to engage in interstate and international commerce. But it does contend that Congress may protect the freedom of interstate commerce by any means that are appropriate and lawful and not prohibited by the Constitution."

The opinion then takes up the right of Congress to enact such legislation as the anti-trust law, and goes into an inquiry as to how far the courts may go in order to give effect to such an act, and to remedy the evils designed to be suppressed by it.

Justice Harlan said it was the intention of legislation of this character to prescribe a rule for interstate and international commerce which would prevent vexation of combinations, conspiracies or monopolies which restrain commerce by destroying or restricting competition. He then added:

"We say that Congress has prescribed such a rule because in all the prior cases in this court the anti-trust act has been construed as forbidding any combination which, by its necessary operation, destroys or restricts free competition among those engaged in interstate commerce, in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce. How can this court in reason say that such a rule is prohibited by the Constitution, or is not one that Congress could appropriately prescribe, when exerting its power under the commerce clause of the Constitution?"

States Did Not Authorize It.

Taking up the contention that railroad corporations created under the laws of a state can be consolidated only with the authority of that state, Justice Harlan said he could not understand why this suggestion was made in this case. "For," he went on, "there is no pretense that the combination here in question was under the authority of the states under which laws these railroad corporations were made.

"But even if the state allowed consolidation, it would not follow that the stockholders of two or more state corporations engaged in interstate commerce could lawfully combine, and form a distinct corporation to hold the stock of the constituent corporations, and by destroying competition between them restrain commerce among the states and with foreign nations."

Justice Harlan announced the inability of the court to concur in the view that the anti-trust act is repugnant to the Constitution of the United States.

"The contention of the defendants," he said, "could not be sustained without, in effect, overruling the prior decision of this court as to the scope and validity of the anti-trust act."

Proceeding further, in propounding this line of argument, he said:

"Indeed, if the contentions of the defendants are sound, why may not all the railway companies in the United States that are engaged under state charters, in interstate and international commerce, enter into a combination such as the one here in question, and by the formation of a holding corporation obtain the absolute control throughout the entire country of rates for passengers and freight beyond the power of Congress to protect the public against their exactions?

The argument in behalf of the defendants necessarily leads to such results and places Congress, although invested by the people of the United States with full authority to regulate interstate and international commerce, in a condition of utter helplessness, so far as the protection of the public against such combinations are concerned.

Coming again to the consideration of the contention that interference by the Federal Government with the affairs of a state corporation will prevent the Securities Company from exercising its functions, and will be an invasion of the rights of the state under which the company was chartered, he said:

"We cannot conceive how it is possible for anyone seriously to contemplate such a proposition." Continuing in this line, he said:

"We reject any such view of the relations of the National Government and the states composing the Union. It cannot be given effect without destroying the just authority of the United States."

Business Will Not Be Hurt.

Discussing the question as to the effect of the anti-trust law on financial interests, Justice Harlan said the prediction had been made that disaster to business and widespread financial ruin would follow the execution of its provisions and, he added, that such predictions had been made in connection with all preceding questions under that act, "but," he said, "they have not been verified," and continued:

"It is the history of monopolies in this country and England that predictions of ruin are habitually made by them when it is attempted, by legislation, to restrain their operations and to protect the public against their exactions. In this, as in former cases, they seek shelter behind the reserved rights of the states and the constitutional guarantees of liberty of contract. But this court has heretofore adjudged that the act of Congress did not touch the rights of the states, and that liberty of contract did not involve a right to deprive the public of the advantages of free competition in trade and commerce. But, even if the court shared the gloomy forebodings in which the defendants indulge, it could not refuse to respect the action of the legislative branch of the Government, if what it has done is within the limits of its constitutional power.

"The suggestions of disaster to business have, we apprehend, their origin in the zeal of parties who are opposed to the policy underlying the act of Congress, or are interested in the result of this particular case; at any rate, the suggestions imply that the court may and ought to refuse the enforcement of the provisions of the act if, in its judgment, Congress was not wise in prescribing as a rule, by which the conduct of interstate and international commerce is to be governed, that every combination, whatever its form, in restraint of such commerce, and the monopolizing or attempting to monopolize such commerce, shall be illegal. These plainly are the questions as to the policy of legislation which belong to the legislative department and this court has no function to supervise such legislation from the standpoint of wisdom or policy."

Clear It Was No Investment.

Justice Harlan sets aside as fallacious the argument that the acquisition of stock by the Northern Securities Company was in the nature of an investment, saying there had been no actual investment in any substantial sense. In this connection, he referred to Mr. Morgan as authority for the statement that the stock had been transferred to the Securities Company merely for the purpose of suppressing competition, and in support of this statement quoted the testimony of Mr. Morgan, in which he had said the Securities Company had been created a custodian, because it had no other alliances.

Referring to the decree of the Circuit Court, Justice Harlan said no valid objection could be made to it in form or in substance.

Discussing the effectiveness of relief at the hands of the court, he quoted approvingly the disposal by the Circuit Court of the point and continued:

"The Circuit Court has done only what the actual situation demanded. Its decree has done nothing more than to meet the requirements of the statute."

Attention also was given to the argument that the anti-trust act must be strictly construed in its criminal features. Quoting a number of authorities on this subject, Justice Harlan said:

"Guided by these long-established rules of construction, it is manifest that if the anti-trust act is held not to embrace a case such as is now before us, the plain intention of the legislative branch of the Government will be defeated."

Justice Harlan in conclusion said:

"The judgment of the court is that the decree below is hereby approved with liberty to the Circuit Court to proceed in the execution of its decree as the circumstances may require."

Brewer Dissents in a Measure.

Justices Brewer, Brown, McKenna and Day concurred in this opinion, and they, with Justice Harlan, constituting a majority of the court, made it the opinion of the court. Justice Brewer, however, did not accept the reasoning of Justice Harlan in all its details and therefore delivered a brief opinion of his own. He expressed the opinion that some of the recent decisions of the court in anti-trust cases had gone too far, and, after mentioning several of them, said:

"Instead of holding that the anti-trust act included all contracts, reasonable or unreasonable, in restraint of interstate trade, the ruling should have been that the contracts there presented were in themselves unreasonable restraints of interstate trade, and therefore within the scope of the act. Congress did not intend by that act to reach and destroy those minor contracts in partial restraint of trade, which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose, rather, was to add to a statutory prohibition with prescribed penalties and remedies to nullify those contracts which were in direct restraint of trade, unreasonable and against public policy. Whenever a departure from common law rules and definitions is alleged, the purpose to make the departure should be clearly shown. Such a purpose does not appear and such a departure was not intended."

He also held that the general language of the act is limited by the power which the individual has to manage his own property and determine the place and manner of its investment.

Stand of Dissenting Judges.

The dissenting Justices, including Chief Justice Fuller and Justices White, Peckham and Holmes, presented two opinions, giving their reasons for not agreeing with the majority of the court in the decision reached. The first of these was delivered by Justice Holmes, and the second by Justice White. Justice Holmes, in his opinion, contended that the anti-trust statute is of a criminal nature, and said:

"It is in vain to insist that this is not a criminal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction."

He conceded, he said, for the purpose of discussion that Congress might take steps not only to regulate commerce, but also to regulate instruments of commerce, or contracts, the bearing of which upon commerce would be only indirect. But the mere fact of an indirect effect on commerce not shown to be certain, he argued, would not justify such a law.

Referring to the contention as to the effect that acquisition of the stock of the Great Northern and he Northern Pacific Companies would have in preventing competition between the two roads, Justice Holmes said:

"If such a remote result of the exercise of an ordinary incident of property and personal freedom is enough to make that exercise unlawful, there is hardly any transaction concerning commerce between the states that may not be made a crime by the finding of a jury or a court."

Referring to the point of personal responsibility, Justice Holmes said:

"Do not expect to hear it maintained that Mr. Morgan could be sent to prison for buying as many shares as he liked of the Northern Pacific and Great Northern, even if he bought both at the same time, and got more than half the stock of each road."

Justice White also read a dissenting opinion, dealing especially with the power of Congress to control commerce. Beginning with an argument in sppport of the dissenting opinions, he outlined the points involved in the case. He deferred to its importance, and called attention to the fact that only four members of the court, one less than a majority, had united in the opinion of the court. He said that the principles as laid down in that opinion are "destructive of government, destructive of human liberty and destructive of every principle upon which organized society depends."

CAREY TO SUCCEED MITCHELL.

One of the Matthews-Carey ring's members said yesterday to a prominent Independent Republican: "I don't like 'Jack' Matthews any better than you do; but I want Judge Carey for Senator."

Wouldn't it be grand for "Jack" Matthews to have a tool in the Senate?

Carey for United States Senator! Wouldn't he be a "beaut"!