POWER USURPED BY COURT, SAYS OLNEY

Functions Belonging to Legislative Body Wrongly Assumed.

CONGRESS SHOULD ACT

Ex-Secretary of State Declares Law-Making Body Is Only One to Decide What Trade Combinations Shall Live.

(Continued from First Page.)

dependence and co-operation—are too glaring and too appalling to be welcomed by the sturdiest enemy of the present order of things.

Court Has Taken Charge.

If big business is to continue, though as also the relations to it of the National judiciary as defined in the latest trust decision, the result is that the National Supreme Court has taken upon itself practical charge of the business of the country. Nine-tenths of it will be done by the combinations which will effectually control the other one-tenth and the existence, the character and proceedings of all will be dependent upon edicts of the Supreme Court. Was ever a country's judiciary in that position before?

Two things, it is believed, may be confidently asserted. In point of law the present position of the court is not tenable, unless the Constitution is to be regarded as obsolete and the National judiciary has become clothed with legislative and administrative as well as judicial functions.

In point of fact, the task of supervising the business combinations of 90,000,000 people, of passing judgment upon the reasonableness of the innumerable partnerships, firms, associations and corporations by which that business is done, is a task incapable of real performance by the National courts, because reasonableness is never the same in two cases, but in each must be separately investigated and determined.

Suppositious Case Cited.

What must happen, perhaps, will be better realized if we assume the doctrine laid down in the recent trust cases to apply to restraints of trade other than those arising from business combinations.

Duties on imports, for instance, operate to restrain trade in the most effective manner. Suppose Congress, after giving a list of dutiable articles, should enact that the rate of duty in each case should be a reasonable rate as determined by the National courts, or should be a fixed rate, or such other rate as the courts might find reasonable. The result would be that a crowd of tariff cases would be likely to occupy those courts to the exclusion or detriment of all other cases and to produce such a congestion of business as to practically stop the wheels of justice.

Similar results are to be expected from the National courts undertaking to sit in judgment upon the reasonableness of all business combinations. Not only are the suits likely to be as numerous as they would be if the courts were to attempt to make reasonable tariff schedules. They necessitate investigations of a great variety of subjects, each requiring the ascertainment and analysis of masses of facts and the weighing of a great body of conflicting expert opinions.

Great Volume of Evidence Collected.

By way of illustration there could be nothing better than what the tobacco and oil cases have furnished. The record in each is enormous. There are volumes of evidence, and the rise, progress and development of each industry to date are set forth at full length, with all accompanying facts respecting foreign and domestic markets and foreign and domestic consumption and competition.

When it is remembered that every industry of the country and every business combination carrying it on may be subjected to the same ordeal, the wonder will be not that the mills of the National judiciary grind slowly but that they do not cease grinding altogether.

When the decision in the trust cases was first announced there was a general sigh of relief on the part of the American business world. Lawyers, statesmen, and captains of industry joined in a chorus of praise for the judgment and the court. They were seemingly captivated by what struck them, or what they chose to treat as a new discovery—namely: the existence of a rule of reason in accordance with which the courts discharged their functions.

Rule Is Not New.

They did not know, or ignored the fact, that there was nothing new about the rule; that the Supreme Court had not invented it for use in the trust cases, and that English jurists and English courts had acted upon it for centuries, to the great advantage both of society at large and of the law itself.

Of late, however, paeans in honor of the court and of its adjudication have rather abruptly ceased and have given place to general skepticism, not as to the existence of the rule of reason and its value, but as to the justness of the application of the rule by the court to the Sherman anti-trust statute.

Did the rule justify or call for any such application? Did it authorize or require the court to evolve out of its own inner consciousness a standard by which the reasonableness of business corporations should be determined?

In undertaking to settle such a standard without any guidance or clew from Congress as to the elements or requirements of the public policy involved, did not the Supreme Court trespass upon a field committed by the Constitution to the possession of Congress exclusively? And did not the rule of reason demand that the court should hold the statute to be altogether and incurably defective, on the court's first version of it, for the reasons the court sets forth, and, on the second and only alternative version, because that would enable and require the court to make its views of public policy the law of the land instead of the views of Congress?

Question Not for Judiciary.

These are the questions now being put up by statesmen and lawyers and captains of industry and being more and more uniformly answered in the affirmative. It is being more and more completely and generally realized that only the legislative department of the National Government is competent to determine what business combinations should or should not be permitted to carry on interstate and foreign trade and that the question of public policy is not for the National judiciary, either as qualified by having power over the subject matter or as well fitted to make such pertinent investigations and obtain such pertinent data as are easily made by and easily accessible to Congress and its committees.

Lawyers, in particular, are impressed with the unfortunate consequences to the National courts likely to ensue from their undertaking the duties required of them by the late decisions of the trust cases. It is only too true that no uniform rule touching the reasonableness of business combinations is likely to be found in the decisions of the various National courts of the country; that reasonableness in one district is likely to wear a wholly different aspect from reasonableness in another; that in the nature of things no consistent principle covering all such cases can be formulated by the Supreme Court, and that the result to be expected is not merely confusion and perplexity in business circles, but great loss of prestige by the National judiciary.

President Taft, in his present record traveling and speechifying trip, is vigorously lauding the Supreme Court's changed attitude on the trust question and is vigorously assailing the views and motives of its critics. But it is clear that he once deprecated any such change and was particularly alarmed by its probable effects upon the prestige and usefulness of the court.

Richard Olney, ex-Secretary of State, Who Declares Courts in Deciding Trust Cases Are Wont to Usurp Powers of Legislatures.

In a special message to Congress in January, 1910, noticing the contention that "reasonable" should be a part of the statute and that it should be left to the court to say what is a reasonable restraint of trade and what is a reasonable monopoly, he used this language:

"I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment. It is to thrust upon the courts a burden that they have no precedents to enable them to carry and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster."

It is quite impossible to believe that the law respecting big business will permanently stay in the condition in which the latest trust decisions of the court have landed it. Congress, and Congress alone, can effectually and permanently lift business out of the slough of despond in which it is now plunged. It is its plain duty to vindicate its jurisdiction over the subject matter; to get all possible light upon it by proper investigations and by study of the experience of other countries; and, being thus informed and guided, to determine what are the conditions under which big business can be and ought to be carried on without loss of its advantages, but with practical elimination of possible dangers to the public welfare.

WOMEN MOB MOTORMAN

LOS ANGELES CROWD INFURIATED BY CHILD'S DEATH.

Crew Forced to Hide, While Two Riot Details of Police Are Needed to Quell Disturbance.

LOS ANGELES, Oct. 31.—A score of infuriated women, supported by as many more men, attacked a streetcar crew with such frenzy today, following an accident in which a 3-year-old child was killed, that two riot details of police were necessary to save the lives of the intended victims. The motorman, John Coward, was afterward taken to a hospital. J. P. McArthur, the conductor, was uninjured.

The accident occurred in front of a small grocery on the East Side, belonging to Joseph Buccola. Buccola's little daughter, Mary, was playing in the street and was runover and killed.

After the accident the motorman brought his car back to the spot and was promptly set upon by a crowd of screaming women. Coward and McArthur were driven from their car and forced to flee for their lives to the end of the carline, several blocks away. When the police arrived the men were in hiding and Coward was injured and in a state of collapse.

Dr. Henry C. McCook Dead.

PHILADELPHIA, Oct. 31. — Dr. Henry C. McCook, 74, a noted Presbyterian clergyman, died today. He wrote many religious works and hymns.

CHECK ON TOBACCO TRUST IS PROPOSED

Wickersham Asks Court to Hold Injunction Over Reorganized Concern.

SUGGESTION IS RESISTED

Attorneys for Company and Bondholders Declare Plans Would Be Upset—Government Would Avoid Receivership.

NEW YORK, Oct. 31.—The end was reached today in the arguments before the United States Circuit Court on the plan of dissolution filed by the American Tobacco Company. A decree is expected within a few days determining whether the plan is in accordance with the decision of the Supreme Court, which held the American Tobacco Company to be an illegal combination in restraint of trade and ordered that it be disintegrated to restore competition.

Interest in the argument centered in the appearance of Attorney-General Wickersham. He said he approved generally of the plan, but made recommendations which met protest on the part of the stock and bondholders of the American Tobacco Company. Mr. Wickersham insisted that the court, by injunction for from three to five years, reserve to the Government the right to appeal to the court at any time it should appear that the dissolution of the trust had not resulted in conditions in harmony with the anti-trust law.

Bondholders Enter Protest.

Joseph H. Choate, counsel for the 6 per cent bondholders who are to surrender their bonds for stocks in the newly-segregated companies, protested against this amendment. He was supported by Lewis Cass Ledyard, of counsel for the company. Both declared that the incorporation of such a clause would upset the disintegration plans.

Mr. Wickersham also was criticised by counsel for the company for suggesting that the court revise the dissolution scheme insofar as it relates to the United Cigar Stores Company. Characterizing the alliance of the stores company and the trust as one of the chief sources of complaint from the independent tobacco trade, the Attorney-General urged that the stores company be segregated through the sales of its stock controlled by trust holders to outside investors.

Receivership Would Be Disaster.

The Attorney-General declared he had sought to bring about a plan of reorganization without resort to receivership, which would be disastrous, and in outlining the Government's attitude in trust prosecutions, he quoted from President Taft's message to Congress on the subject expressing desire to conserve the legitimate interests of property.

How the reorganization would result in restoration of competition, Delancey Nicoll, attorney for the American Tobacco Company, sought to show by analyzing in detail the segregation of the company into four big corporations and 14 companies. The minority interests of each, he declared, would be different and each of the four corporations, the American Tobacco Company, P. Lorillard & Co. and the R. J. Reynolds Company, which already has withdrawn from the trust, would be controlled by their preferred stockholders.

The plan of the opponents, as outlined in Louis J. Brandeis' remonstrance in behalf of the independent tobacco growers, Mr. Nicoll declared, would give the independents a speedy monopoly of the market.

INSURANCE CRITIC RAPPED

Hint of Unfair Ruling Resented by Washington Commissioner.

OLYMPIA, Wash., Oct. 31.—(Special.)—J. H. Schively, State Insurance Commissioner, in a letter written to John C. Fiver, editor of the Underwriters Reporter, of San Francisco, severely takes to task the latter for intimating in a recent issue of the paper that politics will govern Attorney-General Tanner in making his ruling on "Separation." This point involves whether the action of the board companies, in refusing to pay higher commissions for business unless agents cease doing business with non-board companies, is in violation of the "anti-compact" laws of Washington. The section to which Mr. Schively takes exception follows:

"As a seeker for re-election, with elections close at hand, it is not difficult, say insurance men, to forecast the Attorney-General's ruling."

Schively asserts Tanner will rule as he thinks right, regardless of results.

NEW REGIME IS EXPECTED

Harry Ding, Chinese Student at Oregon Gives Views on China.

UNIVERSITY OF OREGON, Eugene, Oct. 31.—(Special.)—Tomorrow's Emerald, the student newspaper, will print an interview from Harry Ding, '12, a prominent Chinese registered at the university, who has decided views on the current agitation in his home country. Ding confidently believes that a new regime will be ushered in before many months.

His statement follows:

"If China obtains her independence she will become one of the leading nations of the globe within a space of ten years. And no great difficulty will be encountered in establishing a republic in China if the foreign powers keep their hands off.

"China, more than any other country, needs an awakening. The Chinese people were the first to become civilized yet today their country is the most backward in the world.

"The wonderful resources of the country have not been developed because capitalists have feared to invest in the country where no protection or encouragement has been offered in any form.

"Every Chinese citizen who has had the benefit of modern education or association with progressive people desires the overthrow of the present decayed and crumbling government of China."

Ding is a prominent member of the university glee club. He received his preparatory training at the Lincoln High School in Portland.

STRIKERS STILL HOPE

REGUIN SAYS REASONABLE METHODS WILL YET WIN.

At End of First Month, Harriman Line Coast Officials Say Forces Are Still Unimpaired.

SAN FRANCISCO, Oct. 31.—At the end of the first month of the strike of the shop employes of the Harriman lines, both sides in the Pacific Coast division are declaring their forces unimpaired and that they are ready to continue the fight. Officials of the railroad point to the fact that traffic has continued uninterrupted and that the shops at Sacramento, Los Angeles, Dunsmuir, Oakland and San Francisco have been kept in operation with almost full forces at work.

Leaders among the strikers point to the fact that there has been almost an entire absence of violence and declare it is their intention to continue the strike peaceably. E. L. Reguin, president of the San Francisco local of the Shop Employes' Federation, was hopeful of a victory for the strikers today.

"We were prepared for the strike when we began," he said, "and we are prepared to continue it. We knew it would be a long, hard fight and would test all our resources, but we have something to fight for and we will fight it out. Our men have refrained from violence and I am sure will continue to do so."

Officials of the Southern Pacific road would make no statement other than that the strike has not seriously interfered with the business of the road and that the shops will be kept in operation. Rumors of elaborate preparations against attack by strikers in the building of stockades and the employment of hundreds of private watchmen were denied.

Famous Surgeon Dies.

NEW YORK, Oct. 31.—Dr. John Bunton Palmer, eye, ear, throat and nose specialist, is dead at his home here of heart disease. He was widely known as a surgeon and author of medical works.

MEN PROMINENTLY IDENTIFIED WITH "BIG BUSINESS" TO PRESENT VIEWS OF INDUSTRIAL SITUATION.

There is no question of more pressing importance to the country today than that of the relations which shall subsist between the Government and the people on the one hand and combinations of capital on the other.

This question involves not only the present but the future development of the Republic, and affects intimately the life of every citizen. During the next session of Congress consideration will be given to proposals designed to solve the trust question, probably resulting in the enactment of a law which shall enable effective co-operation in business and at the same time prevent the abuses which have outraged public sentiment.

Big business holds that the days of cut-throat competition have gone and that modern conditions compel co-operation. A law which will give the best results is a law that will be approved both by the business community and by the masses. To crystallize the situation, The Oregonian has arranged with the Chicago Tribune for a series of articles written by several of the most prominent men engaged in big business, which will present their views on the following points:

1—The effect of the operation of the Sherman anti-trust law, as construed by the United States Supreme Court in the Standard Oil and tobacco trust cases.

2—Whether it is possible to restore the old-time competition, or whether the country must legalize capitalistic and industrial co-operation.

3—If co-operation is necessary under existing conditions, to what extent shall the Government exercise regulation and supervision.

To this series have contributed statesmen, lawyers, railroad chiefs, bankers, heads of industrial enterprises and labor leaders.

It will be a series of great value to the people and their representatives in the National Congress, since it will be the first important presentation of the business view of the trust question.