Supreme Court "Pulled the Teeth" of the Sherman Law

Mr. Bryan has contended that the supreme court Standard Oil decision in which the court legislated the word reasonable into the statutes eliminated the criminal clause of the Sherman anti-trust law. That this is the view also taken by trust lawyers is evident from many pleas recently filed. It is particularly shown in court proceedings at Detroit described in the following dispatch:

Detroit, Jan. 16.—Whether the recent Standard Oil decision of the United States supreme court did not eliminate the criminal feature from the Sherman anti-trust law was a question that arose today in the United States district court. Arguments were in progress before Judge A. C. Angell on a motion made in behalf of the Colwell Lead company, of New York, to quash indictments in the government's case against the "bathtub" trust.

Former District Attorney Frank H. Watson, special counsel for the government, sent a telegram to Washington to summon Edward B. Grosvenor, special assistant to the attorney general, and Mr. Grosvenor is expected to appear before Judge Angell Thursday and argue for the government against the motion. There will be no hearing tomorrow.

Likelihood of a postponement of the trial, which is set for January 30, appeared this afternoon when Judge Angell received with evident interest a suggestion from Attorney Henry E. Bodman, for the defense, that if the pending motion to quash was sustained, the government could appeal at once directly to the United States supreme court, while if the ruling was against the defense, the matter could not reach the supreme court until after an expensive trial.

"If I dismiss the case, it seems that my ruling could be reviewed by the supreme court of the United States," commented Judge Angell, after hearing Mr. Bodman's suggestion.

Mr. Bodman had argued that if the contentions raised by the defense were found by Judge Angell to be of sufficient force to justify attention at the hands of the United States supreme court, it would not only be better for the two score defendants in the case, who are scattered all over the country, but would be more in harmony with the general principles of justice, if a supreme court decision could be obtained before the defendants and the government had been put to the expense of a long trial.

President Taft's name was injected into the case today when Attorney Bodman, arguing in favor of the motion to quash, said:

"If the Sherman law had been shown to Judge Taft when it was being drafted, if he had been asked whether it could be sustained as a criminal act, and if it was so drawn that a person subject to its provisions could not tell until he had been tried whether he had violated the act or not, Judge Taft would, in my judgment, have advised that such a statute could not be sustained."

Mr. Bodman referred to the Sherman law under present conditions as a veritable trap in which a man might suddenly find himself liable to imprisonment after having conducted his business carefully with the advice of lawyers.

"The United States department of justice is not the great oppressive machine pictured yesterday by counsed for defendant," declared Attorney Frank H. Watson in opposing the motion to quash indictments in the government's criminal case against the "bath-tub" trust.

"I never knew of a case," he continued, "where a rat was pinched that it didn't squeal, and probably the department does appear oppressive to those who disobey the law.

"We do not believe that this court is interested in the conduct of the department of justice as long as the papers presented here are legal and fairly set forth a case."

Mr. Watson declared that he himself examined before the grand jury witnesses whom counsel for the Colwell Lead company of New York declared did not appear and that the government in its investigation found that of the American proportion of 93 per cent of the world supply of enameled sanitary supplies, the defendants controlled 85 per cent.

Judge Angell asked if there would not be some force to the contention of the defense if it appeared that the grand jury acted entirely on hearsay evidence. Mr. Watson in reply cited a court decision to bear out his contention that the presumption was that the jury acted on competent evidence.

Mr. Watson declared that the tariff, which was mentioned yesterday, had no bearing on the case, that it was quite a different matter to raise prices through an economic policy from raising them through a business combination that obliterated competitors.

The constitutionality of the Sherman anti-trust law, he declared, had been declared by the supreme court within the last few weeks in the Swift case.

Judge Angell said this was perhaps the first time a court had been asked to decide whether an indictment under the Sherman law must classify an alleged restraint of trade as unreasonable within the meaning of the Standard Oil decision.

"A judge is placed in a very delicate position in having to pass upon that point at this time," he said.

MR. CARNEGIE'S CONFESSION

The Carnegie Steel company had a book value of $84,000,000 at the organization of the United States Steel corporation in 1901. But Mr. Morgan for the trust paid $420,000,000 in first-mortgage bonds to get it, and Mr. Carnegie says he has since learned that Mr. Morgan would have offered $100,000,000 more had the Carnegie crowd held out.

The difference between the Carnegie book value and what the Morgan Steel trust would have paid is $436,000,000. Mr. Carnegie affects the belief that this sum chiefly represents actual value. He is evidently mistaken. It was the monopolistic measure of Mr. Carnegie's competitive "trouble" value in the steel industry at that time.

The Carnegie plan had large trouble value when the earlier monopolizers, Moore & Co., talked of $250,000,000 for it. It added enormously to that trouble value by threatening to build a great tube-works at Conneaut, O., by which prices were to be cut $10 a ton. And Mr. Morgan paid the trouble price for what? To preserve trouble and competition, or to get rid of them?

The question answers itself. There was the intent to monopolize in the building of the Steel corporation, and the measure of proof of the intent is in hundreds of millions of dollars.

But even though there was intent to monopolize, has there been the effect of monopoly in the Steel trust? Mr. Roosevelt has proved a negative to his own satisfaction. He has shown that the trust controls less than 55 per cent of the country's output, of which less than 2 per cent belongs to the Tennessee Coal and Iron company, which he allowed the trust to absorb. He has said:

"I do not believe that these figures can be successfully controverted, and if not successfully controverted they show clearly not only that the acquisition of the Tennessee Coal and Iron properties wrought no change in the status of the Steel corporation but that the Steel corporation during the decade has steadily lost instead of gained in monopolistic character."

But Mr. Carnegie now declares that "the day of competition is over" in the steel trade. It is over because combination has reduced control to a few men who can sit down together and "agree to fix prices and maintain them." And he comes to the same conclusion so illogically reached by Mr. Roosevelt—control of prices by government instead of by competition.

Mr. Carnegie unwittingly proves an intent to monopolize against the Steel corporation. He now asserts a monopolistic effect of which he is so great a beneficiary. And what was likely to be the consequence to competition of massing over half an industry in a $1,500,000,000 entity? If the Steel trust has been losing in monopolistic character it is no fault of Mr. Roosevelt. But it still retains that character and Mr. Carnegie's word is hardly needed to prove it.—New York World.

THE COCKED HAT BUSINESS

Everything at the recent Jackson Day dinner in Washington was as smooth as silk. There was not a cloud in the sky, not a discordant note, and as Dr. Cook, the Original Discoverer of the North Pole, would express it, the ice was good, the weather fine and the travelling easy. Bryan was there and Champ Clark and Marshall and Hearst and Woodrow Wilson. The papers told about how Mr. Bryan received more applause than all the rest of them put together, how he smiled upon this one and paused long enough to pass the time of day with that one and, finally, how he engaged himself in earnest conversation with the governor of New Jersey by whom he sat during the blissful evening. Some of the papers immediately came to the conclusion that he was making his last will and testament in the interest of the likeliest man, in some respects, who has appeared in politics for many years and pictures were printed of those twain standing under the full glare of the calcium side by side, thinking, perhaps, of cocked hats or anything else that would make them "look pleasant." It looked like such "a dead sure thing" that when Mr. Bryan reached Philadelphia, it was reported in one of the papers of that somnolent community that Mr. Bryan had declared that "Woodrow Wilson was the most available of the democratic presidential candidates and the most progressive of any." When Mr. Bryan reached New York, he denied that he had ever made such statement, and is reported by the Sun as follows:

"It is not true that I spoke of Governor Wilson as being the most progressive of the candidates who are being talked of. I want, of course, as a progressive myself, to see a man nominated who will represent the ideas of the progressive element; but I did not say that Governor Wilson was the best representative of that element. If you were to ask me now which of the several men who have been mentioned as possible nominees I would support as representing progressiveness, I could not answer you. I am in doubt and I hope that before any attempt is made to reach an understanding there will be the fullest discussion of the qualifications of those who are being talked of as possibilities. For myself I want more light before I commit myself to anyone."

Which is to say that all the candidates who care anything at all for Mr. Bryan's favor are put on probation, and will have to "come to time" before they can be assured of good and regular standing. They are "up against it," as the street says, and we shall all watch for signs of "progressiveness" in them hereafter with some alarm lest they overdo the business of making themselves wholly acceptable to the man who will not sleep when the dead have been awakened, or crouch when the world is at war with tyrants, or fail to make hay while the harvest is ripe. It would appear from the story in the Sun that Mr. Bryan is not at all uncertain that he can do a little turn himself in knocking things into a cocked hat, if he be so minded.—Charlotte (N. C.) Observer.

STILL OPEN TO OTHER HERODS

Three hours out from Washington, Mr. Bryan threw off the semblance of reserve and confirmed the prevailing impression that he fancies Woodrow Wilson above the other aspirants. But the inference is drawn from the language of his avowal that Bryan's decision is not final. That is, Woodrow Wilson's fine points do not fill Bryan's eye entirely. The field is still open to competition, and he who in the interim may have overtaken and surpassed the Jerseyman in keeping the true doctrine to the fore shall enter the convention carrying the Bryan indorsement. No effort longer is being made to discount the supremacy of Bryan. The developments of Jackson day dispelled all illusions to the contrary. The managers of every boom admit openly or tacitly that no candidate who does not come out unreservedly for "progressive" Bryanism stands any sort of chance to get the nomination. This is hardly in the nature of news to the conservative wing of the democratic party, which body of voters, as this newspaper said a day or so ago, already have come to understand that their votes are not wanted. They are the allies of plutocracy, whereas the money devil plank in the Baltimore platform is to have preference over the declaration on the tariff, if Bryan's express wishes are respected.

Bryan's nominal choice of a candidate narrows the field of speculation in the east, owing to the general belief that no man could go farther than Woodrow Wilson has gone and still retain the confidence and support of the bulk of the party. This aspect of the new situation is a matter of rejoicing in the camps of the western candidates, with the exception of Harmon. They may go as far as they like, which is vastly farther than the last dares go without flounting public opinion of all shades.

The Crystallization of Bryan feeling, follow-