Limited Judgments in Quo Warranto

By John S. Dawson, Attorney General of Kansas

When Colonel Roosevelt was campaigning in Kansas this fall he spoke in the highest terms of the Kansas way of dealing with corporations. This distinguished politician had in mind the Kansas law which provides for limited judgments in quo warranto.

I shall not assume that this kind of judgment is peculiar to Kansas, but I am sure that we did not knowingly borrow from the jurisprudence of other states when we wrought out this form of judgment. Chance and circumstance, business sagacity and newspaper criticism, legal and judicial philosophy, all contributed to the net result.

Some thirty years ago there was organized in our state the Kansas Mutual Life Insurance company, a corporation. It was largely the work of some enterprising young county officers in the northeastern part of the state. This institution had a remarkable growth and performed a useful function for a long stretch of years. Financially the company was sound and profitable. In time an effort was made on the part of the managing officers to re-form this company into a stock company, and certain corporate abuses and usurpations were charged against the corporation and its management. To correct these alleged abuses the company was taken into court, receivers appointed, and the company was wound up and dissolved. Its assets were sold to the Illinois Life Insurance company which also took over the insurance risks of the Kansas company to protect the interests of the policyholders. The able and learned jurist in whose court these proceedings were had came in for a good deal of criticism. That is one of the penalties which a man pays for being a judge. I was a very young lawyer at the time these transactions occurred, but I knew that (the necessary facts being established) the learned judge had only pronounced judgment according to law. He pronounced judgment as the law always had been and as it was in Kansas at that time. I knew more about Blackstone ten years ago than I do now, and I read therein:

"A corporation may be dissolved * * * by forfeiture of its charter through abuse of its franchises; in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the incorporation is void. And the regular course is to bring an information in the nature of a writ of quo warranto, to inquire by what warrant the members now exercise their corporate power, having forfeited it by such and such proceedings." (1 Blackstone, 485.)

Such was the law one hundred and fifty years ago, and the Kansas statute of ten years ago read as follows:

"Any corporation which is insolvent or which perverts or abuses its corporate privileges may be dissolved by order of the district court having jurisdiction, on petition of the attorney general, supported by positive affidavit; and if the court finds that the petition is true it may grant a receiver to wind up the affairs of the corporation and decree its dissolution; provided, that the court may, at its discretion, appoint a receiver at the time of the filing of the petition by the attorney general."

This statute was a mere repetition of the common law for corporate delinquencies—"capital punishment," as it was quaintly called by Lord Coke—the one cure for all corporate shortcomings.

About the same time that the Kansas Mutual Life Insurance company's troubles were being aired in the courts and discussed in the newspapers, a conspiracy in restraint of trade in Kansas was charged against the Santa Fe Railway company and the Standard Oil company whereby the Santa Fe increased its rates for the transportation of oil from Chanute to Kansas City from about thirty dollars per car to one hundred and twelve dollars per car, the object being to make the freight rates so high as to be prohibitive and to give a monopoly of the transportation of oil to the new pipe lines of the Standard Oil company, and a suit was brought in the name of the state of Kansas to forfeit the charter of the railway corporation on account of its part in this unlawful combination. Such a proposal diverted public criticism and newspaper comment into sarcastic channels about what the state of Kansas would do if perchance it should win that lawsuit. Would it run the Santa Fe railroad in its own behalf; or would it tear up the tracks and sell them for old junk? Would it sell the depots for city halls and the freight stations for cattle barns? Would it tear up the Standard Oil pipe lines and fling them over the moon? In what manner would the affairs of the Santa Fe railroad be wound up in compliance with the statute?

Still delving into my Blackstone I found that the attorney general of England in the reign of Charles Second did not hesitate to pursue the legal remedies afforded him by the same sort of law, and he actually did forfeit the charter of the City of London in 1665; and it could not be denied that the corporation of London town at that time was relatively as important to the kingdom of England as the Santa Fe railroad was in our time to the commonwealth of Kansas.

In my own humble cogitations on this subject I gradually arrived at a point where I began to see why corporate abuses and usurpations had been tolerated so long. It was because the cure prescribed for corporate misdeeds was worse than the disease. Prudent prosecutors hesitated to invoke remedies so drastic that the public conscience would be shocked at their application. Yet the public insisted that corporate abuses should be corrected. I was only a youngster in the state's law department at that time, but I was deeply interested in this whole subject. Our attorney general brought another suit to oust the International Harvester company from Kansas for violation of the anti-trust law, and still another suit of the same sort against the Standard Oil company of Indiana, the Standard Oil company of Kansas, and the Prairie Oil and Gas company, for violating the anti-trust law. The Harvester company had a monopoly of the harvesting machinery used by the Kansas farmers. The company had great warehouses in Salina, Hutchinson, Wichita, Topeka, and Kansas City, and employed large numbers of men. The Kansas subsidiary companies of the Standard Oil trust above-mentioned were also Kansas industries of the first rank and importance and employed thousands of men. These suits were all pending and progressing through the courts when W. R. Stubbs became governor in 1909, and he took the position that there ought to be some way to make corporations behave themselves without putting them out of business. Accordingly in his first message to the legislature he said:

"The present corporation law seems to provide that when a corporation abuses its power a receiver shall be appointed for the purpose of winding up its affairs and disposing of the corporate property. This is often too drastic. The law should be amended so as to provide for receivers to correct corporate abuses, and when corrected to hand back the corporate property, without dissolving the corporation, into the hands of its owners and managers, subject to the supervision of the court. This amendment should be supplementary to the present law, so that either judgment may be pronounced at the discretion of the court."

Armed with the prestige of this recommendation of the governor, I undertook the task of preparing and putting through the legislature the present Kansas law on this subject, which is as follows:

"Any corporation which is insolvent or which perverts or abuses its corporate privileges may be dissolved by order of the district court having jurisdiction, on petition of the attorney general, supported by positive affidavit; and if the court finds that the petition is true it may appoint a receiver to wind up the affairs of the corporation and decree its dissolution; provided that the court may, at its discretion, appoint a receiver at the time of the filing of the petition by the attorney general; provided also, that if the dissolution of any such corporation is not considered by the court to be either necessary or advisable and that the corporate abuses can be corrected without dissolution, receivers may be appointed to manage the corporate property and business under the supervision of the court until fully corrected, after which the corporate management and property may be returned to owners and managers thereof; and the court may remove any officers responsible for the abuse and mismanagement of the corporate property and business, and may order the calling of an election of the stockholders to fill such vacancies."

(Chapter 96, Session Laws of 1909.)

The new law was available by the time the case against the Harvester company was brought to a conclusion, and in the syllabus of that case, written by the court, is the following:

"Where a corporation has by its conduct become liable to a complete ouster the court may in its discretion make a limited or qualified order of ouster prohibiting certain specific acts, and retain jurisdiction and control of the parties for the purpose of making further orders in the premises should just and proper cause arise therefor in the future."

In the body of the opinion the court said:

"As to the first count the court finds that under the evidence a complete forfeiture of the defendant's charter and right to transact business within the state of Kansas would be justifiable, but it does not deem such an order necessary or expedient at this time. It finds that the volume of business in harvesting machinery transacted in this state by the defendant is sufficiently large to make it a matter of public concern and a proper subject for regulation. It is therefore ordered that the defendant be, and it is, prohibited from using exclusive contracts with its agents and dealers in this state restraining or restricting them from handling or selling goods or implements of the nature sold by the defendant in this state other than those obtained from the defendant; and it is restrained and prohibited from making any unfair discrimination in the sale of its goods in this state against any section, community or city or between persons for the purpose of destroying competition. No finding is made as to the reasonableness or unreasonableness of the prices at which the defendant sells its goods in this state, nor as to the propriety of restricting local agents to the sale of a single line of harvesting machines. The right is reserved to make any further order in the premises hereafter which upon complaint and adequate showing may appear to be just and proper."

State v. Harvester Company, 81 Kan. 615.

When the Standard Oil cases were brought to a conclusion in our state, after five years' litigation, the judgment was drawn along the same general lines, but descended into details, stating specifically and with exactness the particular practices which these corporations should refrain from doing. The decree reads more like a book of rules promulgated by a general manager of a railroad for the instruction and guidance of conductors, engineers and brakemen than it does like an old-fashioned judgment. But it does the work. Scarcely any complaint, and not a single one of any consequence, has come to my office concerning the Harvester trust, the Standard Oil company of Indiana, the Standard Oil company of Kansas, or the Prairie Oil and Gas company since these judgments were entered. You will note that they are all doing business in Kansas under the supervision of the supreme court, and there is a suggestion in the learned opinion of the court in the Harvester case that in a proper case it might make an order concerning the prices at which goods may be sold in Kansas when once the fact is established that the goods are the property of a corporation which has obtained a complete monopoly of the particular article of trade or commerce. For myself I would say that the fixing of a price on goods produced by a corporation which has obtained a complete monopoly of their production and distribution is more clearly a legislative function than a judicial one, but certainly the court would have a right to order that the corporation managers or receivers should treat the public fairly in the matter of prices, and that would virtually amount to a fixing of prices.

I apprehend that limited judgments of ouster can be worked out in almost any state in the union.

The original jurisdiction of the Kansas supreme court, like that of most state supreme courts, is limited to the three old common-law proceedings, quo warranto, mandamus and habeas corpus; but this limited judgment in quo warranto is not in any sense an extension of the original jurisdiction of our supreme court. That point is clear. Neither is it judicial legislation. We have not amended the constitution by statutory enactment. It is a mere logical working out of the remedies furnished by quo warranto. If capital punishment, according to Lord Coke and Blackstone and the Kansas statute, is the full legal remedy to which the state is entitled in quo warranto for corporate