THE COAL TRUST INQUIRY: Arguments Before Judge Chester as to Whether ...
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THE COAL TRUST INQUIRY

Arguments Before Judge Chester as to Whether the Investigation Can Be Legally Conducted.

COURT'S DECISION RESERVED

Counsel for the Railway Presidents Argue the Unconstitutionality of the Law—Attorney General Hancock Shows that This Has No Bearing.

ALBANY, June 8.—Judge Chester, in Chambers this morning, opened at 10 o'clock the hearing in the application of the counsel for the Presidents of the various coal railroads to vacate an order directing the examination of such Presidents before a referee. There appeared in support of the motion, David McClure, for the Delaware, Lackawanna and Western Railroad, representing President Sloan; R. W. De Forest, for the New Jersey Central, representing President Maxwell; John B. Kerr, for the Ontario and Western, representing President Fowler, and Messrs. Wilcox and Carr, for the Delaware and Hudson Railroad, representing President Olyphant. The Attorney General's office was represented by Attorney General Hancock, Deputy Attorney General Davies, and Special Counsel Fiero. The pleas of the counsel for the railroad Presidents were very similar in tone and character.

Mr. Wilcox opened and was followed by the others. The arguments involved the Constitutionality of the law to quite a large extent. The principal points urged in favor of vacating the stay were:

For Vacating the Stay.

The order for the appearance and examination of the persons named should be vacated because the petition on which it was granted was and is insufficient to justify the order made. The right to enter upon and conduct an investigation, inquisitorial in its character, is so contrary to our notions of personal security, and is attended with such possible danger, it should only be exercised in a clear case, and then under suitable restrictions. The private affairs of the citizen are sheltered from inquiry by the Constitution, and such procedure as may result in the invasion of that right of privacy should be condemned.

The petition or application amounts to nothing, and it is clearly insufficient for such an order.

The allegation as to a combination, and that the persons named knew something about it, is the information and belief of the petitioner, without a fact to support it. Such an allegation is of no avail. The facts showing the occasion for the application must be stated.

When the combination was entered into is not stated, yet the time of its making is material because no law making it illegal antedates the statute of 1897. Where it was entered into we are not informed, yet that is of consequence because it is difficult to see how the Legislature of the State of New York can make a combination entered into in another State, where it is not prohibited illegal. Nor are we advised either in terms or by implication who are or were the parties to it, yet it would seem the court should have some information on that subject before authorizing an investigation.

Combination Not Accused.

Nor are we told that this combination will produce a monopoly, will prevent competition, or will restrict the free pursuit of any lawful business.

This procedure is new. If it is to be sustained at all, what is here done and decided will become a precedent for other like orders, and it is needful that all proper and suitable limitations, restrictions, and requirements be now established as prerequisites to the exercise of the power granted. The security of the citizen in his private business affairs is not to be lightly disturbed, nor should it be made easy for prosecution to make use of the garb of legitimate inquiry. The danger is great, however much the exercise of this power is limited and restrained. It should not be increased or added to by ignoring requirements and limitations that will be of value in preserving the constitutional fights of the citizen and which have ever been regarded and maintained as of the greatest importance to that end.

The law under which this application was made had been in existence but five days when the order was granted. No prior law can be found which makes such combinations as are hinted at here illegal.

That portion of the act of 1897 which authorizes an investigation under the order of a Supreme Court Justice in advance of any action pending or about to be commenced cannot be sustained as a valid exercise of legislative power. It offends the Constitution in three respects:

First—An imposing on the judiciary duties not judicial in their character.

Second—In depriving the citizen of his Constitutional right to remain silent when speech may tend to convict of crime without affording him the absolute immunity he is entitled to.

Third—In making certain provisions of law applicable without embodying the law, but leaving it as a matter of discretion to the applicant for an order.

Argument Against Vacating.

As against any delay or vacating of the orders granted and in support of the constitutionality of the act, J. Newton Fiero, for the Attorney General, argued that the Attorney General was not upon any reasonable construction of the act obliged to state that he proposed to or may bring action or proceeding, but simply that he may summon witnesses to ascertain whether he believes he may be justified in beginning such action. The fact that the statement of an alleged combination is made upon information and belief does not affect the validity of the application nor the right of the Court to grant an order. The petition does not set forth facts because the Attorney General has not possession of absolute knowledge in the matter. If, as the defendants claim, the allegations not being made enough in detail are a bar to prosecution, why the Legislature has failed signally in accomplishing its object of giving a simple and direct method of procedure. Such conclusion involves an absurdity. The act was Constitutional. It did not infringe upon personal rights any more than did any law requiring witnesses to give testimony.

During the argument David McClure argued in part as follows in relation to all sorts of combines:

"The arguments which are advanced in regard to railroads competing, and the ruinous competition resulting from such competition, must apply to any other branch of business. Competition resulting in the extinction of certain of the competitors will result eventually in either a monopoly in the hands of the survivor, or, if there be more than one survivor, in largely increased prices of the commodity dealt in.

"It must be assumed that persons, whether natural or artificial, engaged in business, are so engaged for the purpose of making profit, and that when they cease to make profit they will cease doing business. On the other hand, if the profits are more than reasonable, others will be induced to enter the fields as competitors. The matter thus eventually adjusts itself. It is much better for the public that all parties who are engaged in any business should enter into a contract restricting within reasonable bounds competition than to allow them to begin an open warfare which might apparently benefit the public for a short time, but would ultimately result in great loss to the public.

Validity of Contract Defined.

"It will not do for the courts to confess their inability to determine what is a contract which places a reasonable restraint upon competition, and then to pronounce that all such contracts are inavlid. If the contract which has been entered into between individuals or corporations would otherwise be valid, the Legislature cannot declare simply by its fiat that such contract is invalid. If it can be held that because in certain events contracts restraining competition are invalid, therefore the Legislature can declare all such contracts to be invalid, regardless of the conditions surrounding them, it must follow that the Legislature could likewise declare invalid any contract which is now held to be perfectly proper and reasonable. Up to the point where a contract of this character ceases to be reasonable it is just as valid as any other kind of contract, and no distinction can be made between contracts of different kinds for such purposes as those of the act in question.

"We say, therefore, that these acts infringe the rights of citizens guaranteed to them by the Constitution of the State of New York, and by the Fourteenth Amendment to the Constitution of the United States, and deprive them of their rights as individuals, and of their liberty and property without due process of law."

It was 12:30 o'clock before Mr. Fiero began to speak, as against the proposition to vacate. After alluding to the portion of his brief already printed, he made some caustic observations about the constitutionality of the act. He said that there was absolutely no need to inject that question at this time, and it was merely done for the purpose of bewildering the Court. There was no doubt now that such a question would come up, but it could be later on. Such a question had no bearing upon the one now before the Court.

Mr. Hancock Waxes Sarcastic.

Attorney General Hancock spoke briefly. He said that it was really very pathetic the way the counsel for the coal road Presidents asked for relief for the poor. It was a new rôle, and a peculiar one for counsel to be put in, and the Court should be asked to excuse their awkwardness in the characters. Seriously, he believed that this court had no right to construe this law, except in the way that the Legislature intended to have it considered in connection with the circumstances that were alleged and allowed to have prevailed, demanding its passage and still believed to be in existence.

The bill, he admitted, was, in some of its features, extraordinary, but there were extraordinary conditions to reach, and this measure sought to reach them. It was not abrogating anybody's personal liberty.

Here the court took a recess for luncheon.

At the afternoon session Mr. McClure of the railroad counsel devoted his attention to what he termed the extraordinary power given the referee under the act. He said:

"What is proposed by the present act is this: It is proposed to use a Judge of a court, or somebody appointed by a Judge of a court, giving to him extraordinary powers of inquiry and the right of punishment for contempt, for the purpose of aiding the Attorney General of the State in performing a duty which is exclusively incident to his office. The Attorney General of the State is not a member of the judicial department of the Government; he is an executive officer.

Inquiry Not a Judicial Action.

"This present proceeding is not pending in a court. The act does not give to any court power in the premises. The proceeding as contemplated by the act is brought before a Judge, and the Judge's duty is little more than that of an amanuensis, under the act as it is now drawn, he not having even the power to punish for contempt. While the act gives to a referee the express power to punish a witness for contempt, it is silent with reference to the power of the Judge to punish. The Judge is acting merely as a clerk to the Attorney General. We submit that it can never be the function of a Judge or a court to assist in the taking of testimony for the use of the Attorney General when no action or proceeding is pending in court, and when none may ever be pending in court, and when such testimony, after being taken, is not subject to any control of the court.

"An inspection of the cases in the Supreme Court of the United States (herein before referred to will show that this proceeding, so far as it involves the examination of witnesses before suit is brought, is not a judicial proceeding. There are no parties to the proceeding, there is no issue, and there can be no judgment. It, therefore, lacks all the elements that go to make up judicial action. Upon the referee who is thus to act as amanuensis of the Attorney General under Chapter 383 of the Laws of 1897 is conferred the extraordinary powers of a referee appointed to hear and determine actions enabling him to punish a witness for contempt; whereas, a referee appointed to take testimony under Section 870 and the following of the Code has no such power whatever. All that the latter referee can do is to certify the facts to the Court or a Judge of the court, who must proceed to punish the witness for contempt.

Mr. McClure to the Attorney General.

Mr. McClure created a mild sensation by saying: "It is newspaper talk that the Attorney General was never consulted about these laws, and never saw them until they were signed by the Governor. I have my doubts as to whether he has even seen them yet."

And again: "Why, the Attorney General knows now all that President Sloan knows, or all that he will testify to. You can learn no more by getting him here."

"Do you mean to place that as a matter of record?" inquired Deputy Attorney General Davies.

"Why, certainly. The Attorney General has said that certain things exist, and has demonstrated that he knows even more than President Sloan," replied Mr. McClure sarcastically.

Lewis H. Carr, for the Delaware and Hudson Railroad, presented the points first set forth in the early stages of the hearing. He asked what possible right the State of New York had to prosecute certain persons because they protected their property in the State of Pennsylvania.

Special counsel for the Attorney General, Mr. Fiero, said that the counsels' very specious plea for liberty and independence had been a mere subterfuge. In the issuing of these orders the Attorney General had never assumed that the railroad Presidents were criminals, or would be convicted as criminals, but the counsel for the defense had so assumed all through their arguments, and such an assumption could only be made on the theory that their clients were guilty. The Attorney General was assuming that these Presidents were not guilty of any personal connection with any alleged crime, but might be able to give some evidence whereby the State might be put in possession of facts that would aid in protecting its citizens. As to the question of the right of the referee to send any of the Presidents to jail, the question could be appealed, and the referee would have no more right under this law than any other referee.

Referee Ward sat through the entire proceeding. Judge Chester said he would take the papers and briefs, and, considering them carefully, would render a decision. It is generally agreed upon both sides that an appeal will be taken from any decision he may make.

The proceedings before the referee, which are set down for to-morrow morning, will be again adjourned until such time as Justice Chester renders his decision.

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