

# WEEKLY INDUSTRIAL RECORD.

PUBLISHED EVERY MONDAY, DEVOTED TO NAVAL STORES, LUMBER AND MANUFACTURING INTERESTS.

Adopted Sept. 12, 1902, by the Executive Committee of the Turpentine Operators' Association as its Exclusive Official Organ, and adopted Sept. 11, 1902, in Annual Convention, as an Official Organ also of the General Association. Adopted Sept. 11, 1903 as the Only Official Organ of Turpentine Operators' Association. Adopted April 27, 1903, as Official Organ of the Inter-State Cane Growers' Association. Endorsed by Georgia Sawmill Association. Official Organ of Southeastern Stock Growers Association.

## NAVAL STORES TRUST CASE MUST BE TRIED ON ITS MERITS IN SAVANNAH

Judge Sheppard Overruled Demurrer of Defendants to Two Counts of Indictment Against American Naval Stores Company—Demurrer to One Count Sustained by the Court.

The case against the American Naval Stores Company and certain officials of the company, must now proceed to trial on its merits, as Judge W. B. Sheppard, before whom the case is being tried in the United States Court in Savannah, on Saturday overruled the demurrer of the defendants to two counts of the indictment, alleging a violation of the Sherman anti-trust law. The demurrer was sustained as to the last count of the indictment.

The two counts upon which the case will go to trial deal with the alleged conspiracy to monopolize, describing how the monopoly was to have been effected, and the general scheme of effecting the object of the alleged conspiracy.

In rendering his decision Judge Sheppard reviewed the points made by both prosecution and defense, and concluded as follows:

### Sustains Two Counts.

"Without critically reviewing the indictment, the first count charges that the defendants conspired in the usual form of a conspiracy charge, and then proceeds to describe with some detail how they were engaged in interstate trade and commerce and the character of the trade points had places, the relation of the officers to the corporation and then follows a description of means and ways of effecting the conspiracy.

"The second count charges a conspiracy to monopolize and describes in like manner how the monopoly was to be effected and the general scheme of effecting the object of that conspiracy. I am of the opinion that these counts charge sufficiently the offense of conspiracy to put the defendant on notice of the nature of the

accusation. But the third count is a more difficult proposition. It is very doubtful whether by the use of the generic term monopolize and what follows as a description of the offense in this count is sufficient to meet the requirements as laid down in the Cruikshank and Hess cases. As pointed out by Justice Holmes, the statute intends to create two distinct and different offenses, by monopolizing and attempting to monopolize.

"It is elementary that two separate offenses cannot be included in one count of an indictment. Besides it is important that the defendants should know whether the government will proceed to prove that the defendants monopolized or attempted to monopolize. I think there is clearly a distinction between the two and although there is not different punishment provided the count is bad for duplicity and lack of certainty."

### COL. TOOMER'S ARGUMENT.

The Savannah Morning News of last Thursday contained the following news story concerning arguments in the case:

Mr. Toomer attempted to answer most of the points which were emphasized by Judge Adams. He asserted in the outset that the government construes the Sherman anti-trust act to apply where trade has been "unreasonably" retained.

"It is idle to say that a combination of two factors, or two consumers, or two exporters, constitutes an infraction of this law," declared the speaker. "This act was designated to reach the ones who monopolize a part or all of the trade among the several States, or with foreign nations. A

co-partnership handling an infinitesimal part of the commerce is not a violation of this law. It is not the ownership, but the control of the traffic and for the shipment of the product which is offensive to the law."

Mr. Toomer read and commented upon the first section of the Sherman law, and in response to a request from Judge Sheppard analyzed the indictment against the defendants. In doing this he illustrated hypothetically some of the alleged facts which are later to figure in the trial, if the case goes on for a hearing on its merits. Counsel discussed the charge that the defendants are accused of boycotting the Savannah or primary market and buying in the closed markets of this country. In this connection Mr. Toomer put Jacksonville along with Pensacola, Tampa, and Fernandina, as being "closed" markets.

### Claims of Prosecution.

Mr. Toomer, by way of illustrating his claim that the American Naval Stores Company manipulated the market in a way to stifle competition, declared that on the day the indictment in the pending case was filed, the average turpentine producer was being required to market his product at a price below the actual cost of production.

He spoke rather lightly of the long demurrer which was interposed by the defendants. After paying his respects to the first two grounds he adds: "Then follows the most remarkable aggregation of instruments ever used to attack an indictment." He said counsel should have raised their objections in a different manner, by a motion to quash or strike. He asserted

that there is no such thing as a special demurrer known in criminal practice in the United States. If the accused wished more light on the charge they were called upon to answer a bill of particulars should have been called for, he said.

In reply to Judge Adams' assertion that the indictment failed to allege that the defendants did anything in pursuance of the alleged conspiracy, Mr. Toomer declared that it is not necessary to allege any act subsequent to the conspiracy, except as an aggravation of the conspiracy.

### No Overt Act Alleged.

He said that in the preparation of the indictment the government carefully considered this point, and purposely omitted to allege overt acts for the reason that the controlling decisions authorized them to do so. He said it was sufficient to charge that the conspiracy was to do some criminal act.

Mr. Toomer got a smile from the audience when he declared that "if the charges in the indictment are true your honor will know that the naval stores industry in this country is in the hands of a monopoly, and a man would be an ass to attempt to engage in business in competition with the monopoly."

Judge Adams reiterated the fact that he does not make the point that the Sherman law is unconstitutional. He asks the court to pass on the question whether it is bad as a penal statute, because it is not sufficiently definite and certain.

He said this is a most opportune time to have the question settled. Should there be a trial, he said the defendants would take the case to the Circuit Court of Appeals in the event it went against them.

### NEW STEAMSHIP LINE FROM FLORIDA TO CUBA.

Will Be a Big Factor in Developing Commercial Relations—Strong Body of Stockholders.

The officials of the American and West Indian Steamship Company, which purposes to establish a line of freight and passenger ships between Jacksonville and Havana, Cuba, state that offers for stock in that company by northern capitalists are such as to cause them to consider the proposition of increasing the stock of the concern from \$100,000 to \$250,000.

Dr. E. Southers, president of the company, who has just returned to Jacksonville from an extensive trip through the North and Northwest, states that the first ship will sail from this port direct to Havana, not later than September 1. In speaking of the ship, which has been secured by the company, President Southers says: "She is a passenger ship with saloon accommodations for 200 passengers,

and her service and equipment will be equal to the best. I have been in the North," said he, "during the entire past month in the interest of the line and I have succeeded in placing most of the stock. The original intention of the company was to place a steamship in operation during the present month, but with the uncertain summer season coming on and possible quarantine restrictions, we have decided to begin operations with the regular season's heavy traffic.

"Should we decide to increase the regular capital stock to a quarter of a million dollars, we will place a fleet of not less than three ships in commission for this trade."

Dr. Southers believes firmly that he will experience no difficulty in placing every dollar of the increased capitalization among northern capitalists.

The following is a partial list of the stockholders of the company as furnished by President Southers, and he states that besides there, there are thirty or forty

more not mentioned: J. C. Muir, Detroit, Mich., 2,000 shares; L. H. Perry, Little Rock, Ark., 2,000 shares; Edwin Southers, Jacksonville, Fla., 2,000 shares; Capt. William Manley, Pt. Huron, Mich., 1,000 shares; C. H. Mooney, Monroe, Mich., 500 shares; Case Martin, Athens, O., 500 shares; D. M. Gornto, Starke, Fla., 2,000 shares; G. H. Greenwood, Atlanta, Ga., 100 shares.

The officers of the American and West Indian Steamship Company are Edwin Southers, president; John C. Muir, vice president; Joseph N. Muir, general traffic manager, and David M. Gornto, secretary and general counsel.

Joseph N. Muir, the general traffic manager, who is at present connected with the Pierre-Marquette Railroad, President Southers says, "will command a powerful influence among Northern travelers and shippers for the new line, as he is one of the most popular and well known transportation men in the Northwest."

### SOMETHING BADLY NEEDED.

A means of suddenly and certainly extinguishing gasoline or kerosene fires in these days, when one or the other of these fluids are so much used in automobiles, motor boats, small stationary engines, and in cooking and heating stoves and carried in stock in garages and grocery stores is a great need. Experiments have been made by German fire departments with two compounds, which, mingling as they flow without pressure out of a double cylinder, provided with a long spout, form a tough, tenacious foam on the surface of the burning liquid, the vesicles of the foam being filled with carbon dioxide, smothering the flames almost or quite immediately. All the tests were successful. One compound is an aqueous solution of potash, alum and sodium sulphate, the other a similar solution of sodium bicarbonate, sodium sulphate and licorice root extract.—Times-Union Short Talks.