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OFFICIAL COURT STENOGRAPHER'S REPORT OF THE AMERICAN NAVAL STORES COMPANY, SHOTTER, NASH, MOLLER AND OTHERS IN THE FEDERAL COURT AT SAVANNAH.

[Editor's Note:—These proceedings will be run as a serial and will be continued from week to week in this space until the last page of the proceedings has been published. Every person interested in naval stores, whether producer or consumer, cannot afford to miss this series.]

Now, that company was formed on the 3rd day of November, 1900. It did not go into business until the following December. These other companies that the assistant district attorney has referred to, had previously gone out of business. It is true that some gentlemen, any two of them, subsequently formed the American Naval Stores Company, which they had a perfect right to do; and there is no suggestion that that company was formed for the purpose of monopolizing trade or doing anything that was unlawful or questioned. Therefore, we shall object to matters of this kind being brought into the case. And if they are brought into it, we shall show, if the court pleases, that before the American Naval Stores Company was formed, two gentlemen standing high in their profession and in the community, laid the plan of the formation of the American Naval Stores Company before the head of the legal department of this country, and learned that there was no objection to the plan proposed, which was formed in absolute good faith—for the purpose of avoiding even the appearance of any infraction of the law.

Now, this American Naval Stores Company is formed. It is the only trader in the case. It is not claimed that Messrs. Nash, Myers, Boardman and others tried to get any trade for themselves personally: what they did was to try and get trade for the American Naval Stores Company.

Now, gentlemen of the jury, a man has a perfect right, or a corporation, either, to get as much trade as he can: there is nothing unlawful in that. Every man in every line of business: his ideal is to get all the trade he can. In a small community a grocer may have substantially all the trade of that community; a lawyer or a doctor may have substantially the cream of the business in his community. There is nothing unlawful in that. Suggestions about the amount of business that they do may excite among the unthinking some prejudice; but there cannot be anything wrong in that. No law has ever been passed that makes it improper, even for any man, in any line of business, to get it all, if he can. You do not put any arbitrary limit to the amount of business that a man may get; no, he may get all that he can. Therefore, the amount of business that may have been done by the American Naval Stores Company, the only trader mentioned in this indictment, the only material defendant, as we view the case, because whatever it did, it did through these officers; and the officers did it for them, and not for themselves.

I respectfully submit that there cannot be anything wrong or unlawful in the

American Naval Stores Company being as large as the means of the men who are interested in it. The time may come in the history of this country when you may put a limit to the amount of business that a man or company may do—but that idea smacks of socialism, to which men in this section have not come, and for which they have no sympathy.

Now, then, gentlemen of the jury, when you talk about monopoly; do not get into your minds that the law means—the court will charge you to the contrary—that it means all the business in a line. Why, there are some lines of business, doubtless, will occur to you in this country, that unless a man does all of it, it is not worth while going into it at all; the demand is so small in it, so slight, that the man in it has a substantial and practical monopoly of it. There is no law against such a monopoly: when we are taught loosely about a conspiracy to get a monopoly, we talk without intelligence; we discriminate; there is no law against a man getting all the business in a particular line, and to become a monopolist in that: there is no law against a restraint of trade unless it is an unlawful restraint of trade. If you have a rival in business in any community, and you endeavor to get all the business in that line, to the extent that you succeed, you restrain the other man; that is to say, you take it away from him; and your success may mean his loss. So do not let us get any wrong notion as to what restraint of trade means.

What we understand the law to be; and what we think the court will charge you is this: what the Sherman Act is directed against is, if it means anything, is this: Traders, be they individuals or corporations, in apparently the same line, seemingly competitors, by some secret arrangement and combination, are pooling their issues, apparently competing one against the other, but it is a fake competition.

Sometimes, you are doing a large interstate business, in anything, furniture, or not; and another man is your rival, and you come to him and say, Let us pool issues; we will apparently compete; we will divide up the territory; we will have this secret trade arrangement. That is what the law directed against; and it is directed against the traders; and the only trader in this case is the American Naval Stores Company. These individuals come in not as individuals, but as officers of a corporation, which could only trade through them; could only conspire through them. Now, if the Court please, and gentlemen of the jury, we shall respectfully insist that the evidence be

confined to the only charge made in these two counts, that these six defendants combined, conspired, confederated and agreed together to restrain trade in that one count, and in that other count to monopolize trade; and that agreement was to be effected by doing certain things and then to make assurance doubly sure, concluding each account. Each and all the foregoing counts being for crushing competitors, and so forth.

It is not charged in this indictment that they did anything; it is charged that they entered into not only a conspiracy, but a contract; they entered into a conspiracy and a contract or agreement; and they were to carry it out by certain means. In other words, the means were such a term of the agreement, as it was to restrain trade, or to monopolize trade.

Now, we shall insist, that what we are called upon to meet here is chiefly an alleged unlawful agreement, that these parties, in the Southern division and District, agreed together to restrain trade or to monopolize trade, and that the agreement was that we will do that by the means stated in both of these counts.

Now, gentlemen of the jury, we shall respectfully insist that we did not make and such agreement, or understanding of any such agreement, or understanding of any such agreement, or understanding of any such agreement; and we shall insist that such testimony is not relevant to this charge; and in addition to that, should such testimony be admitted to the jury, we will explain it, and show, gentlemen of the jury, that there is absolutely nothing in it, to justify you or any intelligent tribunal, in finding any of the defendants guilty of either charge. Glancing at them hurriedly, we are charged that the purpose of the agreement, the things that we were to do under the agreement was to regrade, or falsely grade rosin and falsely gauge spirits of turpentine.

We will show to you, gentlemen of the jury, that it becomes necessary, under the ruling of the court, that what we did was thoroughly understood, there was no deception upon anybody; we sold them under our guaranty. They were not sold upon the Georgia market, sold unto our customers, who were not misled; we sold them just as you would have the right to buy cotton left to you; call it what you please, and sell it what you believe it to be; and if the purchaser from you is satisfied, there is no reason for anybody else to complain.

So far as false statements are concerned, the defendants utterly deny everything of that kind. We shall insist that the evidence will not justify, from cross-examinations, the making of the charge that we used false warehouse receipts—absolutely

no reason why it should be done; it would have been foolish—asinine, without any excuse at all. They did not need to resort to such means; if they had to, they would not have resorted to anything of the kind.

It is true, we are guilty of some things that they have charged. It is true that we have diverted trade from Jacksonville to Savannah; that may be a great crime; if the trade had been diverted from Savannah to Jacksonville—that might have been praiseworthy. It is true, gentlemen of the jury, that we have endeavored to push our business; it is true that sometimes we have gone into the market, and that sometimes we have stayed out of the market; if that is crime, then we are guilty of a terrible crime; if that is crime, then there is an end to all business diplomacy, all tactics, all ingenuity; and a man of ability and resources and zeal and industry must not do business at all; that is what it means.

Some of the specifications strike us as remarkable. And if it be true that they had violated any law, either of the courts of this State or of any other State or country; then that information, I submit, will startle every reasonable and rational mind. We respectfully submit that the evidence will show that these defendants are not guilty of any offense; that they have done nothing, which under any sensible or rational interpretation of the Sherman act, involves a violation of that law. If a man uses a false warehouse receipt, he may violate the law of his State; and if he does that, he ought to be punished in his State; but there is nothing in that that involves a violation of the Sherman act. We shall submit that there has been no violation of the law, no conspiracy to restrain trade, to monopolize trade or any other.

Whether the evidence will suggest a conspiracy to undo the American Naval Stores Company by disgruntled and discomfited competitors, who could not succeed in the open, that is another question.

THE EVIDENCE.

Mr. Toomer: We tender in evidence, may it please Your Honor, first, the certified copy of the charter of the American Naval Stores Company.

(Said document was duly admitted).

Mr. Toomer: We tender next, may it please Your Honor, certified copy of the letters of incorporation of the National Transportation and Terminal Company of New Jersey.

Mr. Adams: If the Court please, we object to this, on the ground that it is not the defendant charged. The incorporation is the National Transportation and