REVIEW OF RECENT DECISIONS

MONOPOLY—PURPOSE OF SHERMAN ACT—COMBINATION BETWEEN PRODUCERS—ILLEGALITY OF TRADE ASSOCIATIONS.

In the recent case of *United States v. American Linseed Oil Company*, U. S. Supreme Court Advanced Opinions, No. 17, July 2, 1923, page 693, it was held that when competitors agree to be associated as producers of a particular commodity for the purpose of "securing intelligent competition" or "open competition," to "eliminate unintelligent selfishness" and "establish 100 per cent confidence," all to the end that members might stand out from the crowd as substantive co-owners under modern co-operative business methods, they unlawfully combine "in restraint of trade" forming a monopoly which is inhibited by the Sherman Anti-Trust Act.

The defendants were large manufacturers and distributors of commodities restricted by limited supplies of raw material (linseed), located at widely separated points and therefore conducting independent enterprises along customary lines, suddenly became parties to an agreement which took away their freedom of action by requiring each to reveal to all the intimate details of its affairs. All subjected themselves to an autocratic Bureau, paid large fees, and deposited funds to insure their obedience. With intimate knowledge of the affairs of other producers and obligated as stated, but proclaiming themselves competitors, the subscribers went forth to deal with widely separated and unorganized customers necessarily ignorant of the true conditions, which plainly showed that they were not competitors. The Court says: "Certain it is that the defendants are associated in a new form of combination, and are resorting to methods which are not normal * * * The situation here is wholly unlike an exchange where dealers assemble and buy and sell openly; and the ordinary practice of reporting statistics to collectors, stops far short of the practice which defendants adopted. Their manifest purpose was to defeat the Sherman Act without subjecting themselves to its penalties * * * The Sherman Act was intended to secure equality of opportunity and to protect the public against evils commonly incident to monopolies and those abnormal contracts and combinations which tend directly to suppress the conflict for the advantage called 'competition'—a free play of those contending forces ordinarily engendered by honest desire for gain."

The statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise. The words in restraint of trade should be given the meaning which would not destroy the individual right to contract, as to make it impossible to carry on the business of interstate commerce along the usual channels of business, for if it so interfered, it would defeat the object for which it was enacted, namely to protect the competition of trade. The Court further

says: "We are not called upon to say just when or how far competitors may reveal to each other the details of their affairs. In the absence of an intention to monopolize, or the compulsion that results from a contract or agreement; the individual may exercise great freedom of contract; but concerted action through combination presents a wholly different problem and it is forbidden when the necessary tendency is to destroy the kind of competition that the public have long looked for protection."

In the *American Column and Lumber Company v. United States*, 257 U. S. 377, the Court says of that case, "we considered a combination of manufacturers got up to effectuate this new conception of confidence and competition, and held it within the inhibition of the Sherman Act because of its inevitable tendency to destroy real competition, as long understood, and thereby restrain trade. Our conclusion there cannot be reconciled with the somewhat earlier opinion and judgment of the court below. They are in direct conflict."

There has been a growing tendency on the part of producers, manufacturers and other business enterprises to organize for the regulation of prices of their respective products or materials, which has forced upon the courts the necessity of construing the clause "in restraint of trade" more liberally and to bring such organizations under the inhibition of the Sherman Act. This case goes a little further, illustrating how the courts must meet new situations under old law. So when competitors attempt to evade its provisions by declaring their purpose to be otherwise then their actions indicate, the court will look at the facts, as in this case, and render the decision in the light of what was actually done under the agreement.

CONSTITUTIONAL LAW—GUARANTY OF LIBERTY—PROHIBITION OF TEACHING OF GERMAN LANGUAGE NOT VALID EXERCISE OF POLICE POWER.

In the recent case of *Meyer v. State of Nebraska*, Supreme Court Advance Opinions, page 698, the Supreme Court of the United States held as unconstitutional a law prohibiting the teaching of any foreign language to children who had not graduated from the eighth grade. The State sought to justify the law on the ground that such a measure is only a reasonable exercise of its police power and has for its purpose the protection of the public interest. Children are able to devote but comparatively few hours to school each day, and consequently this limitation necessitates a selection of the studies; and it is contended that such a selection by the State is a reasonable exercise of the police power.

The theory on which the constitutionality of the statute is attached is that it violates that liberty which is guaranteed to the individual by the Fourteenth Amendment to the Constitution. The court refrains from giving a definition of the "liberty" guaranteed but points out some things that have been included in various interpretations of the Amendment; namely, freedom from bodily re-