

COMMENT.

The Supreme Court of the United States has recently had before it on writ of error the suit originally begun by the United States Attorney for the District of Kansas, against Henry Hopkins and other residents of Kansas, and members of the Kansas City Live Stock Exchange. The purpose of the suit was to obtain a dissolution of the exchange and to perpetually enjoin its members from entering into, or from continuing in any combination of like character. The action was founded upon the Anti-Trust Act of 1890, and in the bill it was alleged that the exchange had adopted certain rules governing its members, the effect of which was in restraint of trade and commerce between the States; that it was the purpose of the defendants in organizing the exchange and adopting the rules to prevent the shipment or consignment of any live stock to the Kansas City market unless consigned to the Kansas City stock yards, and to some one or other of the defendants, members of the exchange, and to compel these shippers from other States and Territories to pay them certain commissions, or be prevented from putting their property on sale at the Kansas City market. The Court passed over the invalidity of the agreement not to transact business with non-members as not coming before it for decision unless it was found that the defendants were engaged in interstate commerce. This the Court found in the negative, holding that their business was more in the nature of a service collateral to interstate commerce, and rather a local aid or facility provided for the cattle owner towards selling his cattle. This was not altered by the fact that they sent agents throughout different States to solicit cattle to be sent to them to be sold. The members of the exchange did not buy the cattle, nor did they transport them, but only engaged to sell them. Even granting that the cattle themselves, coming from different States, were articles of interstate commerce, "it does not follow that before their sale, all persons performing services with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their service are void as agreements made in restraint of interstate commerce." The Court further pointed out that even though it be true the charge of the agents on account of service rendered, and the commission for selling the cattle, may indirectly, and as an incident, enhance the cost to the owner of the cattle in finding a market, or may add to the price paid by the purchaser, "they are not charges which are directly laid upon the article in course of transportation, and which are charges upon the commerce itself." They are charges for facilities given or provided the owner in finding a market for his cattle. The Court further said: "The contract condemned by the Statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate. Charges for such facilities as we have already mentioned are not a restraint upon that trade, although the total cost of marketing a subject thereof may be thereby increased. Charges for facilities furnished have been held not a regulation of commerce, even when made for services rendered, or as compensation for benefits conferred." *Sands v. Improvement Co.*, 123 U. S. 288, 8 Sup. Ct. Rep. 113; *Monongahela Nav. Co. v. U. S.* 148 U. S. 312, 329, 330; *Kentucky & I. Bridge Co. v. L. & N. Ry.*, 37 Fed. 567.

As predicted in the JOURNAL (vol. 7, p. 44), the Supreme Court of New York has declared the law of that State which provides that convict-made goods shall not be sold or kept for sale in that State except the same be labeled "convict-made," to be unconstitutional, as violative of both the State and Federal Constitutions, and that a section of the Penal code providing a penalty for exposing convict-made goods for sale, except they be labeled or marked "convict-made," to be void for the same reason. The main grounds for the decision were that it operated as a burden or restriction upon interstate commerce. The case goes further than *People v. Hawkins* (85 Hun. 43), wherein a similar Statute, but which applied only to convict-made goods of other States, was held to be unconstitutional because an interference with interstate commerce. The present case, therefore, which holds that the act is not saved by the fact that it applies to all States alike, including the State enacting it, removes the doubt which arose after the above decision in that State as to whether this class of legislation was unconstitutional merely because it discriminated against the convict-made goods of other States. Interstate commerce cannot be restricted by a State law, even though operating wholly within its own jurisdiction, and it is immaterial whether this restriction is under the guise of a law requiring a municipal license to sell certain goods, or a health law requiring inspection of the article, or a label law requiring the article to be branded. On the argument that it was a proper police regulation to protect the laboring classes from competition with prison labor, the Court said that no Court had as yet invoked the police power, broad as it is, in aid of a Statute, the purpose of which was to enhance the wages of labor in certain factories by suppressing, through the agencies of the criminal law, the sale of competing products made in prisons. To do so would impliedly give the Legislature power to interfere in all cases to help those who need help at the expense of those who do not, which would clearly be unconstitutional.

The State of Ohio had a Statute in all essential particulars similar to the New York Statute, and which was declared unconstitutional about a year ago. *Arnold v. Vander*, 47 N. E. Rep. 50.

A decision was rendered in what is known as the Joint Traffic Association Case, by the Supreme Court of the United States, on the 24th ult. The decision in effect affirms the case of the *U. S. v. Trans-Missouri Freight Association*, decided about a year ago, in which it was held that combinations of railways, formed for the purpose of maintaining rates, are illegal under the Sherman Anti-Trust Act of 1890, and in contravention of the Interstate Commerce Act of 1887. In the present case the main contention was that the traffic agreement is a combination to prevent competition, and thus in restraint of trade. The only new point raised and not decided in the Trans-Missouri case was the constitutionality of the Anti-Trust Act. This the Court decided in the affirmative, basing its conclusion upon the quasi public character of public corporations, which gives Congress constitutional power to deal with them and regulate them, as provided by the Act. The question as to the policy of Congress in adopting such a measure was also brought up, but this was held to be a matter with which the Court could have nothing to do.

The decision was rendered by Justice Peckham, as it was in the Trans-Missouri case, and was concurred in by Chief Justice Fuller, and Justices Harlon, Brewer and Brown. Justices Gray, Shiras and White dissented, while Justice McKenna took no part, because when the action was begun he was Attorney-General.