

PRESIDENT'S MESSAGE

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which such a dangerous theory of judicial discretion in enforcing this statute can derive the slightest sanction.

Ferocity and Effectiveness of Statute a Matter of Growth.

We have been twenty-one years making this statute effective for the purposes for which it was enacted. The Knight case was discouraging and seemed to remit to the states the whole available power to attack and suppress the evils of the trusts. Slowly, however, the error of that judgment was corrected, and only in the last three or four years has the heavy hand of the law been laid upon the great illegal combinations that have exercised such an absolute dominion over many of our industries.

The Remedy in Equity by Dissolution.

In the Standard Oil case the supreme and circuit courts found the combination to be a monopoly of the interstate business of refining, transporting and marketing petroleum and its products, effected and maintained through thirty-seven different corporations, the stock of which was held by a New Jersey company.

Confiscation Not the Purpose of the Statute.

It is not the purpose of the statute to confiscate the property and capital of the offending trusts. Methods of punishment by fine or imprisonment of the individual offenders, by fine of the corporation or by forfeiture of its goods in transportation are provided, but the proceeding in equity is a specific remedy to stop the operation of the trust by injunction and prevent the future use of the plant and capital in violation of the statute.

Situation After Readjustment.

The American Tobacco company (old), readjusted capital \$82,000,000; the Liggett & Meyers Tobacco company (new), capital \$67,000,000; the F. Lorillard company (new), capital \$47,000,000, and the R. J. Reynolds Tobacco company (old), capital \$7,525,000, are chiefly engaged in the manufacture and sale of chewing and smoking tobacco and cigars.

Under this arrangement each of the different kinds of business will be distributed between two or more companies with a division of the prominent brands in the same tobacco products, so as to make competition not only possible, but necessary. Thus the smoking tobacco business of the country is divided so that the present independent companies have 21.39 per cent, while the American Tobacco company will have 33.08 per cent, the Liggett & Meyers 20.05 per cent, the Lorillard company 22.82 per cent and the Reynolds company 2.66 per cent.

ty-nine defendants, who were charged with being the conspirators through whom the illegal combination acquired and exercised its unlawful dominion. Under the decree these defendants will hold amounts of stock in the various distributee companies ranging from 41 per cent as a maximum to 23 1/2 per cent as a minimum, except in the case of one small company, the Porto Rican Tobacco company, in which they will hold 45 per cent.

Size of New Companies.

Objection was made by certain independent tobacco companies that this settlement was unjust because it left companies with very large capital in active business and that the settlement that would be effective to put all on an equality would be a division of the capital and plant of the trust into small fractions in amount more nearly equal to that of each of the independent companies.

Effectiveness of Decree.

I venture to say that not in the history of American law has a decree more effective for such a purpose been entered by a court than that against the tobacco trust. As Circuit Judge Noyes said in his judgment approving the decree:

"The extent to which it has been necessary to tear apart this combination and force it into new forms with the attendant burdens ought to demonstrate that the federal anti-trust statute is a drastic statute which accomplishes effective results, which so long as it stands on the statute books must be

obeyed and which cannot be disobeyed without incurring far-reaching penalties. And, on the other hand, the successful reconstruction of this organization should teach that the effect of enforcing this statute is not to destroy, but to reconstruct; not to demolish, but to recreate in accordance with the conditions which the congress has declared shall exist among the people of the United States."

Common Stock Ownership.

It has been assumed that the present pro rata and common ownership in all these companies by former stockholders of the trust would insure a continuance of the same old single control of all the companies into which the trust has by decree been disintegrated. This is erroneous and is based upon the assumed inefficiency and innocuousness of judicial injunctions.

Voluntary Reorganizations of Other Trusts at Hand.

The effect of these two decisions has led to decrees dissolving the combination of manufacturers of electric lamps, a southern wholesale grocers' association, an interlocutory decree against the powder trust, with directions by the circuit court compelling dissolution, and other combinations of a similar history are now negotiating with the department of justice looking to a disintegration by decree and reorganization in accordance with law.

Movement For Repeal of the Anti-trust Law.

But now that the anti-trust act is seen to be effective for the accomplishment of the purpose of its enactment we are met by a cry from many different quarters for its repeal. It is said to be obstructive of business progress, to be an attempt to restore old-fashioned methods of destructive competition between small units and to make impossible those useful combinations of capital and the reduction of the cost of production that are essential to continued prosperity and normal growth.

New Remedies Suggested.

Much is said of the repeal of this statute and of constructive legislation intended to accomplish the purpose and blaze a clear path for honest merchants and business men to follow. It may be that such a plan will be evolved, but I submit that the discussions which have been brought out in recent days by the fear of the continued execution of the anti-trust law have produced nothing but glittering generalities and have offered no line of distinction or rule of action as definite and as clear as that which the supreme court itself lays down in enforcing the statute.

ing in the statute which condemns combinations of capital or mere bigness of plant organized to secure economy in production and a reduction of its cost. It is only when the purpose or necessary effect of the organization and maintenance of the combination or the aggregation of immense size are the stifling of competition, actual and potential, and the enhancing of prices and establishing a monopoly that the statute is violated. Mere size is no sin against the law.

Lack of Definiteness in the Statute.

The complaint is made of the statute that it is not sufficiently definite in its description of that which is forbidden to enable business men to avoid its violation. The suggestion is that we may have a combination of two corporations which may run on for years and that subsequently the attorney general may conclude that it was a violation of the statute and that which was supposed by the combiners to be innocent then turns out to be a combination in violation of the statute.

Supplemental Legislation Needed, Not Repeal or Amendment.

I see no objection, and indeed I can see decided advantages, in the enactment of a law which shall describe and denounce methods of competition which are unfair and are badges of the unlawful purpose denounced in the anti-trust law. The attempt and purpose to suppress a competitor by underselling him at a price so unprofitable as to drive him out of business or

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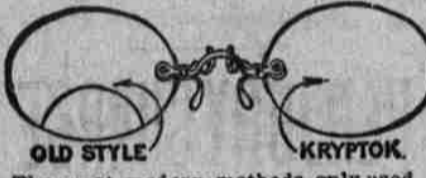
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