PRESIDENT'S MESSAGE

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

Force 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. Criminal prosecutions have been brought, and a number are pending, but juries have felt averse to convicting for jail sentences and judges have been most reluctant to impose such sentences on men of respectable standing in society whose offense has been regarded as merely statutory. Still, as the offense becomes better understood and the committing of it partakes more of studied and deliberate defiance of the law we can be confident that juries will convict individuals and that jail sentences will be imposed.

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. It in effect commanded the dissolution of this combination, directed the transfer and pro rata distribution by the New Jersey company of the stock held by it in the thirty-seven corporations to and among its stockholders, and the corporations and individual defendants were enjoined from conspiring or combining to restore such monopoly, and all agreements between the subsidiary corporations tending to produce or bring about further violations of the act were enjoined.

In the tobacco case the court found that the individual defendants, twenty-nine in number, had been engaged in a successful effort to acquire complete dominion over the manufacture, sale and distribution of tobacco in this country and abroad and that this had been done by combinations made with a purpose and effect to stifle competition, control prices and establish a monopoly, not only in the manufacture of tobacco, but also of tin foil and licorice used in its manufacture and of its products of cigars, cigarettes and snuffs. The tobacco suit presented a far more complicated and difficult case than the Standard Oil suit for a decree which would effectuate the will of the court and end the violation of the statute. There was here no single holding company, as in the case of the Standard Oil trust. The main company was the American Tobacco company, a manufacturing, selling and holding company. The plan adopted to destroy the combination and restore competition involved the redivision of the capital and plants of the whole trust between some of the companies constituting the trust and new companies organized for the purposes of the decree and made parties to it and numbering, new and old, fourteen.

Situation After Readjustment.

The American Tobacco company (old), readjusted capital $92,000,000; the Liggett & Meyers Tobacco company (new), capital $67,000,000; the P. 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. The former one tin foil company is divided into two, one of $825,000 capital and the other of $400,000. The one snuff company is divided into three companies, one with a capital of $15,000,000, another with a capital of $8,000,000 and a third with a capital of $8,000,000. The licorice companies are two, one with a capital of $5,758,300 and another with a capital of $2,000,000. There is also the British-American Tobacco company, a British corporation, doing business abroad with a capital of $26,000,000, the Porto Rican Tobacco company, with a capital of $1,800,000, and the corporation of United Cigar Stores, with a capital of $9,000,000.

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. The stock of the other thirteen companies, both preferred and common, has been taken from the defendant American Tobacco company and has been distributed among its stockholders. All covenants restricting competition have been declared null and further performance of them has been enjoined. The preferred stock of the different companies has now been given voting power which was denied it under the old organization. The ratio of the preferred stock to the common was as 78 to 40. This constitutes a very decided change in the character of the ownership and control of each company.

In the original suit there were twenty-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 28½ 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. The twenty-nine individual defendants are enjoined for three years from buying any stock except from each other, and the group is thus prevented from extending its control during that period. All parties to the suit and the new companies who are made parties are enjoined perpetually from in any way effecting any combination between any of the companies in violation of the statute by way of resumption of the old trust. Each of the fourteen companies is enjoined from acquiring stock in any of the others. All these companies are enjoined from having common directors or officers, or common buying or selling agents, or common offices, or lending money to each other.

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. This contention results from a misunderstanding of the anti-trust law and its purpose. It is not intended thereby to prevent the accumulation of large capital in business enterprises in which such a combination can secure reduced cost of production, sale and distribution. It is directed against such an aggregation of capital only when its purpose is that of stifling competition, enhancing or controlling prices and establishing a monopoly. If we shall have by the decree defeated these purposes and restored competition between the large units into which the capital and plant have been divided we shall have accomplished the useful purpose of the statute.

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.

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 farreaching 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 inefficacy and innocuousness of judicial injunctions. The companies are enjoined from co-operation or combination; they have different managers, directors, purchasing and sales agents. If all or many of the numerous stockholders, reaching into the thousands, attempt to secure concerted action of the companies with a view to the control of the market their number is so large that such an attempt could not well be concealed, and its prime movers and all its participants would be at once subject to contempt proceedings and imprisonment of a summary character. The immediate result of the present situation will necessarily be activity by all the companies under different managers, and then competition must follow or there will be activity by one company and stagnation by another. Only a short time will inevitably lead to a change in ownership of the stock, as all opportunity for continued co-operation must disappear. Those critics who speak of this disintegration in the trust as a mere change of garments have not given consideration to the inevitable working of the decree and understand little the personal danger of attempting to evade or set at naught the solemn injunction of a court whose object is made plain by the decree and whose inhibitions are set forth with a detail and comprehensiveness unexampled in the history of equity jurisprudence.

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. It seems possible to bring about these reorganizations without general business disturbance.

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.

In the recent decisions the supreme court has said that there is nothing 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. The merging of two or more business plants necessarily eliminates competition between the units thus combined, but this elimination is in contravention of the statute only when the combination is made for purpose of ending this particular competition in order to secure control of and enhance prices and create a monopoly.

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. The answer to this hypothetical case is that when men attempt to amass such stupendous capital as will enable them to suppress competition, control prices and establish a monopoly they know the purpose of their acts. Men do not do such a thing without having it clearly in mind. If what they do is merely for the purpose of reducing the cost of production, without the thought of suppressing competition by use of the bigness of the plant they are creating, then they cannot be convicted at the time the union is made, nor can they be convicted later unless it happen that later on they conclude to suppress competition and take the usual methods for doing so and thus establish for themselves a monopoly. They can in such a case hardly complain if the motive which subsequently is disclosed is attributed by the court to the original combination.

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.

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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